# Labor Policies

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9 Labor Policies

9.1 General

Purchase teams must:

1. Maintain good relations with industry and labor so that Postal Service purchasing requirements may be met without delay;
2. Be impartial in any dispute between supplier management and labor, and not try to conciliate, mediate, or arbitrate a labor dispute;
3. Cooperate fully with the Department of Labor’s investigation and enforcement activities; and
4. Cooperate fully with federal and state agencies responsible for enforcing requirements in such areas as safety, health and sanitation, work hours and minimum wages, equal employment opportunity, and child and convict labor.

9.2 Convict Labor

9.2.1 Policy

Under 39 U.S.C. 2201, the Postal Service may not contract for supplies to be manufactured by convict labor, except for purchase from Federal Prison Industries, Inc. (see 3.4.2). The Postal Service may purchase supplies from firms employing persons on parole or probation under the conditions set forth in Executive Order 11755, December 29, 1973, as amended, which the Postal Service has elected to follow.

9.2.2 Clause

Except for purchases from Federal Prison Industries, Inc., all contracts involving the employment of labor must contain Clause 9-1, Convict Labor. Clause 9-1 is incorporated by reference in Clause 4-2, Terms and Conditions Required to Implement Policies, Statutes and Executive Orders.
9.3 Contract Work Hours and Safety Standards Act

9.3.1 Requirement
The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) requires that certain contracts contain a clause specifying that no laborer or mechanic doing any work under the contract may be required or permitted to work more than 40 hours in any workweek unless paid at least one and one-half times the basic rate of pay for all overtime hours. A violation makes the supplier liable for liquidated damages. Lease agreements, being subject to Reorganization Plan No. 14 of 1950 under 39 U.S.C. 410(d), are subject to the safety standards of the Act in addition to the overtime pay requirements.

9.3.2 Exemptions
The Secretary of Labor is responsible for enforcement of the Act and may permit variations and exemptions from the Act's requirements when necessary in the public interest or to prevent injustice or undue hardship (29 CFR 5.14).

9.3.3 Clause
Clause 9-2, Contract Work Hours and Safety Standards Act — Overtime Compensation, is incorporated by reference in Clause 4-2, and must be checked-off by contracting officers for all contracts, lease agreements, and ordering agreements that may involve the employment of laborers or mechanics, except:

9.3.3.a Construction contracts and lease agreements involving alterations or improvements of $2,000 or less, and other contracts and lease agreements of $2,500 or less;

9.3.3.b Indefinite delivery contracts and ordering agreements, if the total amount of all orders placed for 1 year after the effective date will not exceed the limits in 9.3.3.a;

9.3.3.c Contracts for supplies usually purchased in the open market or requiring labor merely incidental to the sale;

9.3.3.d Contracts for work subject solely to the Walsh-Healey Public Contracts Act (see 9.5);

9.3.3.e Contracts for transportation by land, air, or water; and

9.3.3.f Any other contracts exempt under regulations of the Secretary of Labor (see 29 CFR 5.15).

9.3.4 Enforcement
Investigation and enforcement will be in accordance with 9.4.5.
9.4 Construction Contracts and Lease Agreements

9.4.1 Definitions

9.4.1.a Construction. Is defined in 4.4.3.a.2; however, for the purposes of this paragraph, this definition:

1. Applies only if the work is performed at a specified work site, so that wage rates can be determined for the locality;
2. Does not apply to construction so closely related to research, experiment, and development that it cannot be performed separately, or is itself the subject of research, experiment, or development;
3. Does not apply to manufacturing or furnishing equipment, components, or other materials, except manufacturing or fabricating construction materials and components on site by a construction supplier or subcontractor under a contract that otherwise meets the definition; and
4. Does not apply to contracts solely for dismantling, demolishing, or removing improvements, unless further work that will result in the construction, alteration, or repair of a building or work at that location is contemplated.

9.4.1.b Laborers and Mechanics. People who work predominantly with their hands or with construction tools and equipment. In this part, the term includes working foremen, apprentices, trainees, helpers, watchmen, guards, firefighters, fireguards, cooks, and storekeepers.

9.4.1.c Work Site. The place where a construction contract is performed, and adjacent or nearby sites of job headquarters, storage yards, prefabrication or assembly yards, quarries or borrow pits, batch plants, and similar facilities set up to serve the contract operation exclusively. Transportation of materials, equipment, or personnel to and from the construction site by employees of construction suppliers or subcontractors is included, but transportation by common carriers, material suppliers, or manufacturers is not.

9.4.2 Labor Standards for Construction

9.4.2.a Davis-Bacon Act. The Davis-Bacon Act (40 U.S.C. 276a et seq.) requires that construction contracts over $2,000 contain a provision setting the minimum wages to be paid to all classes of laborers and mechanics working on the work site. Minimum wage rates are determined by the Secretary of Labor on the basis of prevailing wage rates.

9.4.2.b Copeland Act. The Copeland Anti-Kickback Act (18 U.S.C. 874 and 41 U.S.C. 276(c)) applies to any contract over $2,000 subject to the Davis-Bacon Act. The Copeland Act makes it unlawful to force laborers or mechanics to give up any part of their compensation except for permissible deductions such as taxes and union dues.
9.4.2.c *Contract Work Hours and Safety Standards Act*. The overtime pay requirements of the Contract Work Hours and Safety Standards Act (see 9.3) apply to all construction contracts and lease agreements involving the employment of laborers and mechanics in construction work, with the exceptions described in 9.3.3.a.

9.4.2.d *Department of Labor Regulations*. Regulations covering the administration and enforcement of these laws are published by the Department of Labor in 29 CFR 3 and 5.

9.4.2.e *Other Contracts Involving Construction*. The labor standards and regulations described in 9.4.2.a through 9.4.2.d do not apply to contracts for supplies, services, maintenance, research and development, or other nonconstruction requirements, unless the contracts also involve construction. The labor standards in this part apply whenever such a contract specifically requires substantial construction work, or a substantial amount of construction work will be necessary to meet the requirements, and the construction work is performed separately from the rest of the contract work. ("Substantial" refers to the type and quantity of construction, not merely its total value in relation to the contract price.) The contract must specifically identify the work covered by the labor standards.

9.4.3 **Labor Standards for Leases**

9.4.3.a *Davis-Bacon Act*. The Davis-Bacon Act requirements for minimum wages for laborers and mechanics (see 9.4.2.a) apply to any lease of, or agreement to lease, interior space netting more than 6,500 square feet.

9.4.3.b *Work Hours and Safety Standards*

1. The Contract Work Hours and Safety Standards Act requirements for overtime pay apply to all leases except those described in 9.3.3.a. The Act's health and safety standards apply to all leases and agreements to lease, regardless of building size or rental amount, that involve the employment of laborers or mechanics in construction work.

2. These requirements apply not only to laborers and mechanics employed at the work site but to any laborers or mechanics working under the contract, including subcontractors furnishing supplies or materials if the work is performed directly on or adjacent to the work site or fabricated specifically for the project.

9.4.4 **Clauses**

9.4.4.a *Construction Contracts*. Clause 9-2 (see 9.3) and Clause 9-3, *Davis-Bacon Act*, are incorporated by reference in Clause 4-2, and must be checked-off by contracting officers for all construction contracts over $2,000.

9.4.4.b *Construction Contracts With States*. If a construction contract over $2,000 is with a state or a political subdivision of a state, the contract must include Clause 9-4, *Compliance by States with Labor Standards*. 
9.4.4.c **Leases**

1. All leases and agreements to lease involving construction work by laborers or mechanics must contain Clause 9-5, *Contract Work Hours and Safety Standards Act — Safety Standards*.

2. All leases and agreements to lease involving more than $2,000 of construction work by laborers or mechanics must contain Clause 9-2.

3. All leases and agreements to lease interior space netting more than 6,500 square feet and involving construction work over $2,000 must include Clause 9-3.

9.4.5 **Administration and Enforcement**

9.4.5.a **General**. Contracting officers must make sure that suppliers and lessors are fully informed of the labor standards provisions in their contracts and their responsibilities under those provisions. Unless it is clear that the supplier or lessor is already fully informed, the supplier or lessor must be informed by conference or letter as soon as possible after the contract is awarded.

9.4.5.b **Applicability**. The following requirements apply to all contracts and leases containing the clauses prescribed in 9.4.4.

9.4.5.c **Wage Determinations**

1. **General Wage Determinations**. Unlike project wage determinations, general wage decisions do not expire, but are modified or superseded to keep them current. They are available by subscription from the Department of Labor. A general wage determination may be requested for an area where none presently exists if a large number of contracts for a specific type of construction are expected in that area.

2. **Project Wage Determinations**. If no general wage determination is applicable to a project, the contracting officer must request a project wage determination from the local Regional Administrator, Department of Labor, using Standard Form 308, *Request for Determination and Response to Request*.

3. **Time for Making Requests**. Whenever possible, the contracting officer must request any needed wage determination in sufficient time to receive it for inclusion in the solicitation, normally 30 days before the date planned for issuance of the solicitation.

4. **Incorporation by Amendment**. If a wage determination cannot be obtained before issuing the solicitation, it may be incorporated in the solicitation by an amendment furnished to all offerors. If there is not enough time to issue an amendment before proposals are due, and the due date for proposals cannot be extended, the amendment must be a subject of discussions (see 4.2.5.c).

5. **Limitations**. Project wage determinations are effective for 120 days from the date of the determination. If a project wage determination will expire before a contract or lease agreement can be awarded, the contracting officer must request a new determination in time for it to be included in a solicitation amendment before proposals are due.
6. **Extensions.** The Department of Labor may extend the effective period of a wage determination that expired after proposals were due but before award. The request must be submitted to the Secretary of Labor with a finding by the Vice President of Purchasing and Materials that the wage determination expired unavoidably and an extension is necessary and proper in the public interest to prevent injustice or undue hardship or to avoid serious impairment in the conduct of Postal Service business.

7. **Modifications.** Any modification of a wage determination by the Department of Labor must be made part of the contract or lease agreement if received before award, using the procedures in 9.4.5.c.4.

8. **Posting.** The contracting officer must instruct the supplier to post a copy of the wage determination in a prominent place at the work site where it can easily be seen by the workers.

9. **Additional Classifications.** Any class of laborers or mechanics working under the contract but not listed in the wage determination must be classified or reclassified to conform to the wage determination. Whatever action is taken must be reported to the Department of Labor. If there is any disagreement about the proper classification or reclassification, the contracting officer must submit the question, with a recommendation, to the Secretary of Labor for final determination.

9.4.5.d **Subcontracts.** The contracting officer must obtain a list of all subcontracts, with descriptions of the work to be done under each, to assist in the payroll review required under subparagraph 9.4.5.e.

9.4.5.e **Payrolls and Compliance Statements**

1. **Submissions.** Suppliers, or lessors, and subcontractors must submit copies of weekly payrolls to the contracting officer within 7 days after the payroll payment dates. They must also submit weekly compliance statements required by the Copeland Act regulations (see 29 CFR 3.3).

2. **Examination.** The contracting officer must examine the payrolls and statements to make sure the suppliers, lessors, and subcontractors comply with contract, statutory, and regulatory requirements.

3. **Retention.** Payrolls and compliance statements must be retained for 3 years from the contract completion date and produced to the Department of Labor upon request.

9.4.5.f **Investigations**

1. The contracting officer must make whatever investigations are necessary to ensure compliance with contract, statutory, and regulatory requirements. Contracts of 6 months or less must be investigated before final payment is made, if possible. Longer contracts and lease agreements must be investigated as often as necessary to ensure compliance. Investigations must include interviews with employees on a sampling basis.
2. Special detailed investigations must be made when there are complaints or other evidence of violations. Complaints must be given priority.

3. Written or oral statements made by an employee must be kept confidential and may not be disclosed to the employer without the employee’s consent.

9.4.5.g Enforcement Reports

1. If underpayments total less than $1,000, are not willful, and have been made good to the employees, the contracting officer must submit a factual summary report to the Department of Labor in accordance with 29 CFR 5.7(a)(1), unless the Department did not request any future compliance investigation.

2. If underpayments total $1,000 or more or are willful, the contracting officer must submit as soon as possible a detailed enforcement report to the Secretary of Labor through the Office of Inspector General. The report must include a statement of findings about the violations and information about restitution, payment deductions, and contract terminations, as well as the names and addresses of the workers, lessors, suppliers, and subcontractors concerned.

3. If there is substantial evidence that violations are willful and violate the False Affidavits Act (18 U.S.C. 1001) or another criminal statute, the matter must be referred to the Office of Inspector General, the Attorney General, and the Secretary of Labor.

9.4.5.h Semiannual Enforcement Reports. The Vice President, Purchasing and Materials (VP, P&M), must submit semiannual reports to the Secretary of Labor on compliance with and enforcement of labor standards and prevailing wage determinations. A copy of each report must be furnished to the Inspection Service. Reports for the period January 1-June 30 are due by July 31, and reports for the period July 1-December 31 are due by January 31.

9.4.5.i Suspensions and Deductions of Contract Payments. If a supplier, lessor, or subcontractor fails or refuses to pay all or any part of the wages due workers, the contracting officer may suspend contract or rent payments in amounts equal to the unpaid wages and liquidated damages that may be due, until restitution has been made or deductions against payment vouchers are made as provided in this paragraph. If failure or refusal to pay continues or appears to be willful or there is failure or refusal to comply with other contract, statutory, or regulatory requirements, the contracting officer may suspend contract or rent payments until violations stop. If restitution is not made within a reasonable time or before final payment under the contract or lease agreement, the contracting officer must send the information service center a report on Standard Form 1093, Schedule of Withholdings Under the Davis-Bacon Act, and/or the Contract Work Hours and Safety Standards Act, stating the amounts to be withheld for underpayment of wages and liquidated damages. These amounts must be deducted from the payments made to the supplier or lessor and disposed of in accordance with the contracting officer’s instructions.
9.4.5.j 

**Restitution.** Suppliers, lessors, or subcontractors may make restitution of amounts due workers at any time. If wages were underpaid, the contracting officer must ask the supplier to make restitution to the employees or to plans, funds, or programs for any type of fringe benefit listed in the wage determination.

9.4.5.k 

**Contract Termination**

1. **Construction Contracts.** Whenever a contract is terminated for labor standards violations, the contracting officer must send a report to the Secretary of Labor and the Comptroller General. The report must give the name and address of the violating supplier or subcontractor; the name and address of the supplier or subcontractor that will complete the work; and the contract number, dollar amount, and description of work for the replacement contract.

2. **Lease Agreements.** A lease agreement may be terminated and the lessor, general supplier, or subcontractor declared ineligible under 29 CFR 5.6 for violating the Contract Work Hours and Safety Standards Act. However, a lease agreement may not be terminated for failure to pay prevailing wages.

9.4.5.l 

**Liquidated Damages.** If the VP, P&M, finds that an assessment of liquidated damages for failure to pay overtime wages is incorrect, or that the failure to pay overtime wages was inadvertent, the Vice President may adjust the damages or release the supplier, lessor, or subcontractor from liability when the amount of damages is $100 or less. If the amount is over $100, the Vice President may recommend adjustment or relief to the Secretary of Labor (see 29 CFR 5.8).

9.5 

**Walsh-Healey Public Contracts Act**

9.5.1 

**General**

The Walsh-Healey Public Contracts Act (41 U.S.C. 35-45) requires that certain contracts for the manufacture or furnishing of supplies must incorporate the Walsh-Healey Public Contracts Act requirements by reference. No contracting officer, supplier, or subcontractor may purchase quantities amounting to less than $10,000 to avoid compliance with the Act.

9.5.1.a 

If a contract for $10,000 or less is modified to exceed $10,000, the Act applies.

9.5.1.b 

If a contract that exceeds $10,000 is modified to $10,000 or less, the work performed after the modification is subject to the Act if both parties agreed to the modification.

9.5.1.c 

The Act applies to indefinite delivery contracts and ordering agreements if the aggregate amount of all orders is expected to exceed $10,000 during the year following award. Indefinite delivery contracts and ordering agreements not initially subject to the Act become subject to the Act if orders will exceed $10,000 during any year after the first year. Applicability must therefore be determined annually until the contracts or agreements become subject to the act.
9.5.2 Clause

All contracts subject to the Act (see 9.5.3) must include Clause 9-6, 
*Walsh-Healey Public Contracts Act*, which is incorporated by reference in 
Clause 4-2, and must be checked-off by the contracting officer as appropriate.

9.5.3 Exemptions

The following purchases are exempt from the Walsh-Healey Public Contracts Act:

9.5.3.a Noncompetitive purchases when delaying the purchase would seriously harm 
the Postal Service.

9.5.3.b Perishables, including dairy, livestock, and nursery products.

9.5.3.c Purchases of agricultural or farm products processed for first sale by the 
original producers.

9.5.3.d Commercially available items.

9.5.4 Other Responsibilities

When a contract subject to the Act is awarded, the contracting officer, under 
the regulations or instructions issued by the Secretary of Labor, must:

9.5.4.a Give the supplier a Department of Labor combination letter and poster (WH 
Publication 1313) explaining the Walsh-Healey Public Contracts Act; and

9.5.4.b Report any violation of the representations or stipulations required by the 
Walsh-Healey Public Contracts Act to the Secretary of Labor through the 
Inspection Service.

9.5.5 Exceptions to Required Stipulations

The Secretary of Labor may allow exceptions to the requirement that the 
representations and stipulations of the Act be included in contracts. The 
contracting officer must submit requests for exceptions to the Administrator, 
Wage and Hour Division, Department of Labor, through the Manager, 
Purchasing Policies and Programs.

9.6 Fair Labor Standards Act of 1938

9.6.1 General

The Fair Labor Standards Act (29 U.S.C. 201-219) provides for minimum 
wages and maximum workhours and a Wage and Hour Division in the 
Department of Labor to interpret and enforce the Act (including investigating 
and inspecting general suppliers). It also prohibits oppressive child labor. The 
Act applies to all employees (with some exceptions) engaged in interstate or 
foreign commerce, the production of supplies for such commerce, or any 
closely related process or occupation essential to such production.
9.6.2 Inquiries About the Act

Suppliers or their employees who inquire concerning the applicability or interpretation of the Act must be advised that rulings on it fall under the jurisdiction of the Department of Labor and must be referred to the Regional Administrator, Wage and Hour Division, Department of Labor.

9.7 Equal Employment Opportunity

9.7.1 General

9.7.1.a Executive Order (EO) 11246 prohibits any discrimination in employment by government suppliers and subcontractors based on race, color, religion, sex, or national origin. The Executive Order sets forth a clause for inclusion in all nonexempt government contracts and subcontracts (Clause 3-7, Equal Opportunity).

9.7.1.b The Secretary of Labor is responsible for issuing regulations implementing EO 11246. These regulations are in 41 CFR 60. The Secretary has delegated to the Director, Office of Federal Contract Compliance Programs (OFCCP), the authority and responsibility to carry out the program.

9.7.1.c No contract (or contract modification involving new procurement) may be entered into, and no subcontract approved, with a supplier or subcontractor found ineligible by the Director, OFCCP, for reasons of noncompliance with EO 11246.

9.7.1.d Contracting officers and suppliers may not contract for supplies and services in a way designed to avoid the requirements of EO 11246.

9.7.1.e Supplier disputes related to compliance with EO 11246 must be handled according to the regulations of the Secretary of Labor (see 41 CFR 60-1.1).

9.7.2 Exempt Contracts

9.7.2.a Transactions of $10,000 or Less

1. Contracts and subcontracts of $10,000 or less are exempt from the requirements of EO 11246 and Clause 3-7, unless the aggregate amount of all contracts or subcontracts awarded to the supplier or subcontractor in any 12-month period will exceed $10,000. (However, government bills of lading, contracts with depositories of Postal Service funds, and contracts with financial institutions that are issuing and paying agents for U.S. savings bonds and savings notes are not exempt regardless of amount.)

2. Indefinite delivery contracts and ordering agreements are exempt only when the amount to be ordered in any year under the contract will not exceed $10,000. The contracting officer must determine this at the time of award for the first year, and annually for each succeeding year. Whenever a single order exceeds $10,000, Clause 9-7 applies. Once Clause 9-7 applies, it continues in effect for the duration of the contract or ordering agreement, regardless of the amounts ordered or expected to be ordered.
9.7.2.b Contracts With State or Local Governments. If a contract is with a state or local government, the agencies, instrumentalities, or subdivision that are not involved in the contract work do not fall under the requirements of EO 11246.

9.7.2.c Contracts With Certain Educational Institutions. It is not a violation of EO 11246 for an educational institution to employ members of a particular religion if the institution is owned, supported, controlled, or managed (in whole or substantial part) by a religious group, or if the curriculum propagates a particular religion.

9.7.2.d Work On or Near Indian Reservations. It is not a violation of EO 11246 for a supplier to announce publicly a preference for employment of American Indians living on or near an Indian reservation. “Near” includes the area within which a person could commute daily. Suppliers extending such a preference must not, however, discriminate among Indians on the basis of religion, sex, or tribe. Using such a preference does not exclude a supplier from complying with the Executive Order.

9.7.2.e Contracts Exempted by the Vice President. The VP, P&M, may determine that a contract is essential and must be awarded without complying with one or more of the requirements of EO 11246 in the interest of the Postal Service.

9.7.2.f Contracts Exempted by the Director, OFCCP

1. The Director, OFCCP, may exempt the Postal Service from having to include one or more of the requirements of EO 11246 in any contract when required by special circumstances in the national interest. The Director may also exempt groups or categories of contracts when it is not feasible to act upon each request individually or when group exemptions are more convenient.

2. The Director, OFCCP, may exempt any facilities of a supplier that are totally separate and distinct from work related to the contract when the exemption will not interfere with the effectiveness of EO 11246.

3. Contracting officers may request exemptions by submitting a justification to the Director, OFCCP, through the VP, P&M.

4. The Director, OFCCP, may withdraw an exemption for a specific contract or group of contracts. Such withdrawal does not apply to contracts awarded before withdrawal, or to competitive contracts when the withdrawal is made less than 10 days before the date set for receipt of proposals.

9.7.3 Preaward Compliance Reviews

9.7.3.a Before awarding any contract of $10 million or more (excluding construction contracts and contracts exempt under 9.7.2), the contracting officer must request the appropriate OFCCP regional office to conduct a compliance review of the supplier's employment practices, and those of all known first-tier subcontractors with subcontracts of $10 million or more, except when a compliance review has been conducted within 12 months before award. This requirement applies to a modification of an existing contract that increases its value to $10 million or more, a contract modification adding new procurement of $10 million or more, a letter contract, and an indefinite delivery contract or ordering agreement under which orders are expected to aggregate $10 million or more.
9.7.3.b The contracting officer must include the following information in the preaward request: name and address of prospective supplier or subcontractor; telephone number; anticipated award date; information about previous government contracts or subcontracts held; place of performance; and the estimated dollar amount of the contract or subcontract. Whenever possible, preaward review requests must be submitted at least 30 days before the anticipated award date. Oral requests must be confirmed in writing.

9.7.3.c If the OFCCP has not made a final preaward determination within 30 days from submission of the request, the contracting officer must withhold award of the contract for an additional 15 days, or until clearance is received, whichever occurs first. If the additional 15 days expire, and the OFCCP has neither found the supplier to be in compliance nor made a final written determination declaring the supplier ineligible for reasons of noncompliance, the award may be made. The contracting officer must notify the OFCCP regional office of the award.

9.7.3.d These procedures do not apply when the VP, P&M, finds that the procedures would delay an urgent or critical award or delay an award beyond the time specified for acceptance of a proposal. In such cases, the contracting officer must inform the Director, OFCCP, requesting a postaward review.

9.7.4 Affirmative Action Programs

9.7.4.a Nonconstruction. Except for contracts exempt under 9.7.2, each nonconstruction supplier and each subcontractor with 50 or more employees and (1) a contract or subcontract of $50,000 or more or (2) government bills of lading that in any 12-month period, total, or can reasonably be expected to total, $50,000 or more, is required to develop a written affirmative action program for each of its establishments (see 41 CFR 60-1.40).

9.7.4.b Construction

1. Except for contracts exempt under 9.7.2, construction suppliers are required to meet affirmative action requirements that apply to covered geographical areas or projects, and the applicable requirements of 41 CFR 60-1 and 60-4.

2. A contracting officer contemplating a construction project over $10,000 within a geographic area not known to be covered by specific affirmative action goals must request the most current information from the OFCCP regional office before issuing the solicitation.

3. Contracting officers must give written notice to the OFCCP regional office within 10 days after award of a contract subject to these requirements.
9.7.5 **Poster OFCCP-1420**

The contracting officer must supply appropriate quantities of Poster OFCCP-1420, *Equal Opportunity Is the Law*, to suppliers subject to EO 11246. The poster is available from the General Services Administration and contains text in both English and Spanish. The stock number is 7690-00-926-8988.

9.7.6 **Inquiries**

9.7.6.a Inquiries from suppliers regarding status of compliance with EO 11246, or rights to appeal any of the enforcement actions in 9.7.8, must be referred to the OFCCP regional office.

9.7.6.b Inquiries from labor unions regarding revision of a collective compliance with EO 11246 must be referred to the OFCCP regional office, and the complainant must be notified of the referral in writing. The complainant's name, the nature of the complaint, or the fact that the complaint was received may be disclosed only to the OFCCP.

9.7.7 **Complaints**

Any complaint received by a contracting officer concerning compliance with EO 11246 must be referred to the OFCCP regional office, and the complainant must be notified of the referral in writing. The complainant's name, the nature of the complaint, or the fact that the complaint was received may be disclosed only to the OFCCP.

9.7.8 **Enforcement**

At the written direction of the Director, OFCCP, one or more of the following actions, as well as administrative sanctions and penalties, may be exercised against suppliers found to be in violation of EO 11246, the regulations of the Secretary of Labor, or the applicable contract clauses:

9.7.8.a Publication of the names of the suppliers or their unions.

9.7.8.b Cancellation, termination, or suspension of the supplier’s contracts or portion thereof.

9.7.8.c Debarment from future contracts, or extensions or modifications of existing contracts, until the supplier has established and carried out personnel and employment policies in compliance with EO 11246 and the regulations of the Secretary of Labor.

9.7.8.d Referral by the Director, OFCCP, of any matter arising under EO 11246 to the Department of Justice or to the Equal Employment Opportunity Commission (EEOC) for the institution of appropriate civil or criminal proceedings.
9.7.9 Solicitation Provisions

Paragraph d of Provision 4-3, Representations and Certifications, addresses the certification for nonsegregated facilities and applies to all contracts except those exempt from EO 11246 under 9.7.2. In addition, solicitations must include the following provisions:

9.7.9.a Other Than Construction
1. Provision 9-1, Equal Opportunity Affirmative Action Program, which is incorporated by reference in Provision 4-3, and must be checked-off by contracting officers when proposals of $50,000 or more are anticipated from offerors having 50 or more employees.
2. Provision 9-2, Preaward Equal Opportunity Compliance Review, which is incorporated by reference in Provision 4-3, and must be checked-off by contracting officers when the amount of the contract is expected to be $10 million or more.

9.7.9.b Construction. Paragraph d of Provision 4-3 applies, as does Provision 9-3, Notice of Requirement for Equal Opportunity Affirmative Action. This provision is also included by reference in Provision 4-3, and must be checked-off as appropriate.

9.7.10 Clauses

Contracts not exempt from EO 11246 under 9.7.2 must include the following clauses:

9.7.10.a Clause 9-7, Equal Opportunity, which is incorporated by reference in Clause 4-2 and must be checked-off by the contracting officer.
9.7.10.b Clause 9-8, Affirmative Action Compliance Requirements for Construction, in contracts for construction.
9.7.10.c Clause 9-9, Equal Opportunity Preaward Compliance of Subcontracts, in contracts over $10 million.

9.8 Service Contract Act

9.8.1 General

The Service Contract Act of 1965 (Public Law 89-286, 41 U.S.C. 351 et seq.) applies to any contract whose principal purpose is to provide services to be performed by service employees.

9.8.1.a Employees working under a service contract must be paid no less than the minimum wage specified by the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201 et seq.).
9.8.1.b Service contracts over $2,500 must contain the clauses required by 9.8.5 concerning minimum wages, including fringe benefits; safe and sanitary working conditions; and employee notification of the compensation required under the Act.
9.8.1.c Many types of services are covered by the Act, which attempts to cover contract workers who do not fall under the Davis-Bacon Act for construction and the Walsh-Healey Public Contracts Act for supplies. 29 CFR 4, Subpart C, and CFR 4.101 provide examples of coverage. The Act does not cover executive, administrative, or professional personnel. If services are only incidental to the performance of a contract, the Act does not apply.

9.8.1.d The Act also applies to subcontracts under covered contracts, and suppliers must include the Service Contract Act provisions in subcontracts for services. Except where indicated, the terms “contract” and “supplier” include “subcontracts” and “subcontractors” in this part.


9.8.2 Exemptions

9.8.2.a The following contracts are exempt from the Service Contract Act, subject to 9.8.2.b:

1. Any contract for construction, alteration, or repair, including painting and decorating.
2. Any work covered by the Walsh-Healey Public Contracts Act (see 9.5).
3. Any contract for transporting freight or personnel by ship, plane, bus, truck, express, railway line, or oil or gas pipeline when published tariff rates are in effect or rates are covered by section 10721 of the Interstate Commerce Act.
4. Any service contract with a radio, telephone, telegraph, or cable company subject to the Communications Act of 1934.
5. Any contract for public utility services, including electric light and power, water, steam, and gas.
6. Any employment contract with individuals for direct services.
7. Any contract that is principally for contract postal units.
8. Contracts with common carriers for mail transportation by rail, air (except air-taxi routes), bus, or ocean vessel on regularly scheduled runs over established routes, when mail accounts for a small portion of the revenue.
9. Contracts for mail service with an individual owner/operator, when it is not believed that the supplier will hire service employees under the contract except for short vacations or unexpected contingencies or emergencies.
10. Contracts principally for the maintenance, calibration, or repair of:
   (a) Automated data processing equipment (including office information and word processing equipment);
   (b) Scientific and medical equipment involving sophisticated technology; or
   (c) Office or business machines not included under (1) above, when the services are performed by the manufacturer or supplier.
9.8.2.b The exemptions in 9.8.2.a apply only when the supplier certifies that:

1. The equipment is commercially available, used regularly outside the government, and normally sold or traded by the supplier to the public in substantial quantities;

2. Prices are established catalog or market prices; and

3. Wages and fringe benefits paid under the contract are the same as the supplier pays employees servicing the same equipment for commercial customers.

9.8.3 Clauses

9.8.3.a Contracts Over $2,500. Clause 9-10, Service Contract Act, must be included in every contract for services covered by the Act that is over $2,500 or is modified to exceed $2,500. This includes indefinite-delivery contracts and ordering agreements when orders are expected to aggregate more than $2,500. Clause 9-10 is incorporated by reference in Clause 4-2, when checked-off by the contracting officer.

9.8.3.b Contracts of $2,500 or Less. Every contract of $2,500 or less for services covered by the Act must include Clause 9-11, Service Contract Act — Short Form. Clause 9-11 is incorporated by reference in Clause 4-2, when checked-off by the contracting officer.

9.8.3.c Multiyear Service Contracts and Service Contracts With Renewal Options. Except for mail transportation contracts, multiyear service contracts and service contracts with options to renew that include Clause 9-10 or Clause 9-11 must also include Clause 9-12, Fair Labor Standards Act and Service Contract Act — Price Adjustment. Clause 9-12 is incorporated by reference in Clause 4-2, when checked-off by the contracting officer.

9.8.4 Notice of Intent to Make a Service Contract

9.8.4.a The contracting officer must file a notice of intent to make a service contract with the Wage and Hour Division, Employment Standards Administration, Department of Labor, for any contract over $2,500 covered by the Act. Standard Form 98, Notice of Intention to Make a Service Contract, must be used. The notice must be accompanied by Standard Form 98a or a statement indicating the numbers and classes of service employees expected to perform the contract, or a statement that the number will not exceed five.

9.8.4.b Whenever possible, notice of intent must be filed at least 60 days (30 days for unanticipated requirements) before a competitive solicitation is issued, noncompetitive negotiations begin, an option is exercised, a contract is extended, or the anniversary date of a multiyear contract. If it is not possible to file a notice before the 30-day limit, it must be filed as soon as possible, with an explanation of why it was not filed on time.
9.8.4.c If the contract will be for substantially the same services as are being furnished at the same location by an incumbent supplier whose contract the proposed contract will succeed, and the wages and fringe benefits of the service employees are determined by a collective bargaining agreement, the agreement must be filed with the Standard Form 98, along with any related documents specifying wages and fringe benefits that will apply to the contract. If the contracting officer believes that the collective bargaining agreement was not the result of “arm’s-length” negotiations, a statement of the facts leading the contracting officer to that conclusion must accompany the agreement and the Office of Special Wage Standards must be advised if the wages and fringe benefits vary substantially from those for similar services.

9.8.5 Minimum Wage Determinations

9.8.5.a If more than five service employees will be involved in performing work covered by the Service Contract Act, the contract may not be awarded without a Department of Labor determination of applicable minimum wages and fringe benefits, unless the determination will be incorporated in the contract after award.

9.8.5.b The required determination will normally be issued by the Wage and Hour Division, Employment Standards Administration, in response to the notice of intent filed under 9.8.4, in sufficient time to be included as an attachment to the solicitation.

9.8.5.c If the place of performance is unknown when the solicitation is issued, a wage determination need not be included in the original solicitation. Instead, when proposals are received, a notice of intent must be filed in accordance with 9.8.4 showing each location where the contract might be performed, so that a wage determination may be made for each. The wage determination that applies to the successful offeror must be included in the contract. If the Department of Labor finds this impracticable, the Department may issue a composite wage determination.

9.8.5.d The contracting officer must contact the Wage and Hour Division to find out whether a wage determination is still current when a solicitation or negotiation has been delayed for more than 60 days from the anticipated date of award stated on the Standard Form 98 submitted. Any wage determination received in response must replace the earlier wage determination.

9.8.5.e When a notice of intent has been filed but the wage determination has not been received in time for attachment to the solicitation, the solicitation must state that the wage determination will be issued as an amendment to the solicitation or incorporated into the contract at the time of award.

9.8.5.f Any revision of a wage determination received less than 10 days before proposals are due is not effective unless there is enough time to notify offerors. If the contract action involves noncompetitive procedures, exercise of an option or extension of a contract, any revision of a wage determination received after award is not effective if performance begins within 30 days after award; otherwise, any revision received at least 10 days before performance begins is effective.
9.8.5.g If circumstances require that a contract be awarded before a wage determination is obtained, the contract must include Clause 9-10, Service Contract Act, and provide for equitable adjustment of the contract terms when the wage determination is incorporated, effective from the date of issuance unless another effective date is specified in the determination. The notice of intent, if not already filed, must be filed promptly and explain the need for immediate award.

9.8.5.h The Wage and Hour Division may require that a wage determination be applied to a contract retroactively, if the contract is subject to the Service Contract Act and more than five service employees are involved in performing the work. If the contracting officer questions the applicability of the Act to the contract, the contracting officer must forward the matter for resolution to assigned counsel. If it is determined that the Service Contract Act is not applicable to the contract, the contracting officer must advise the Department of Labor of the basis for this determination. No further action is needed unless the Secretary of Labor determines that the contract is subject to the Act.

9.8.5.i If a wage determination does not contain all the classifications and rates requested in the notice of intent, those classifications for which no determinations were received must be deleted from the attachment incorporating the wage determination. When omitted classifications or classifications not previously contemplated are found necessary after award, they must be incorporated following the procedures in Clause 9-10.

9.8.6 Notice of Award

Upon the award of the contract of $10,000 or more that includes Clause 9-10 (or upon issuing the first order under an indefinite delivery contract or ordering agreement containing that clause), the contracting officer must send an original and one copy of Standard Form 99, Notice of Award of Contract, to:

ATTENTION OFFICE OF SPECIAL WAGE STANDARDS
DEPARTMENT OF LABOR
WASHINGTON DC  20210-0001

9.8.7 Department of Labor Poster

At the time of award, the contracting officer must supply the supplier with WH Publication 1313, a Department of Labor combination letter and poster explaining the Service Contract Act.

9.8.8 Inquiries Concerning the Act

Suppliers or their employees with questions about the applicability of the Service Contract Act must be referred to:

DEPUTY ASSISTANT SECRETARY
EMPLOYMENT STANDARDS ADMINISTRATION
DEPARTMENT OF LABOR
WASHINGTON DC  20210-0001
Questions concerning safety or health must be referred to:

DIRECTOR
BUREAU OF LABOR STANDARDS
EMPLOYMENT STANDARDS ADMINISTRATION
DEPARTMENT OF LABOR
WASHINGTON DC  20210-0001

Questions may also be directed to any regional office of the Employment Standards Administration.

9.8.9 Withholding Contract Payments and Contract Termination

9.8.9.a Withholding

1. A violation of the stipulations of Clauses 9-10 or 9-11 makes the responsible party liable for the sum of any deductions, rebates, refunds, or underpayments due employees. At the written request of a District Director (or above) of the Department of Labor, as much of the accrued payment due on the contract (or any other contract between the supplier and the Postal Service that has not been assigned) must be withheld as is necessary to pay the employees. Withheld sums must be kept in an escrow fund. Any compensation that the Postal Service or the Wage and Hour Division has found to be due must be paid directly from the withheld payments.

2. If the withheld payments are insufficient to reimburse the underpaid employees, this fact must be reported to the General Accounting Office (for possible setoff), the Wage and Hour Division of the Department of Labor, and the Department of Justice. The United States may bring an action to recover the remaining amount. Any sums recovered must be held in the escrow fund and paid, on order of the Secretary of Labor, directly to the underpaid employees.

9.8.9.b Termination. Any violation of Clauses 9-10 or 9-11 may be cause to terminate the supplier’s right to continue the work. If the contract is terminated, the Postal Service may enter into other contracts or arrangements to complete the work, charging any additional costs to the supplier.

9.8.10 List of Violators

The Comptroller General sends a list of the names of people or firms in violation of the Service Contract Act to all government agencies. Unless the Secretary of Labor recommends otherwise, Postal Service contracts may not be awarded to any violator on the list (or to any firm, corporation, partnership, or association in which such violator has a substantial interest) for 3 years from the date the list was published.
9.9 Employment of the Handicapped

9.9.1 Policy

It is Postal Service policy to comply with the Rehabilitation Act of 1973 (29 U.S.C. 702 et seq.), Executive Order 11758 of January 15, 1974, and the implementing regulations of the Secretary of Labor (41 CFR 60-741). The Act requires suppliers to take affirmative action to employ and advance qualified individuals without discrimination as to their physical or mental handicaps.

9.9.2 Applicability

With the exceptions below, every contract for supplies or services (including construction and transportation services) over $2,500 must include Clause 9-13, Affirmative Action for Handicapped Workers. Clause 9-13 is incorporated by reference in Clause 4-2, and must be checked-off by the contracting officer when applicable.

9.9.2.a Contracts with State and Local Government. The requirements of Clause 9-13 do not apply to any agency, instrumentality, or subdivision of the state or local government that does not participate in work under the contract.

9.9.2.b Exemption. The VP, P&M, may exempt any supplier or subcontractor (or any group or category of supplier or subcontractor) from any provisions of Clause 9-13 in the Postal Service’s interest.

9.9.2.c Request for Exemption. The contracting officer must submit a justification for any proposed exemption to the VP, P&M.

9.9.2.d Department of Labor Notices. Under Clause 9-13, the contracting officer must supply the supplier with Department of Labor notices that state the supplier’s obligations and handicapped individuals’ rights under the Employment of the Handicapped program. These notices may be obtained from:

OFFICE OF INFORMATION
EMPLOYMENT STANDARDS ADMINISTRATION
DEPARTMENT OF LABOR
WASHINGTON DC 20210-0001

9.9.3 Collective Bargaining Agreements

When performance under Clause 9-13 requires revision of a collective bargaining agreement, the unions that are parties to such agreements must be advised that the Department of Labor will give them appropriate opportunity to express their views. Neither the contracting officer nor any representative of the contracting officer may discuss with representatives of the supplier or of labor any aspects of the collective bargaining agreements.
9.9.4 **Complaints**

The contracting officer must forward any complaint concerning the Act through channels to the VP, P&M. No investigation or attempt to resolve the complaint may be made without specific instructions from the VP, P&M.

9.9.5 **Department of Labor Sanctions**

When Policies, Planning, and Diversity is notified that the Department of Labor has imposed sanctions on a supplier (such as withholding progress payments, terminating or suspending the contract, or debarring the supplier) for violation of Clause 9-13, the contracting officer must put the sanctions into effect as soon as possible.

9.10 **Veterans**

9.10.1 **Requirement**

The Vietnam Era Veterans Readjustment Assistance Act of 1972 (38 U.S.C. 4212), Executive Order 11701 of January 23, 1973, the Veterans Employment Opportunities Act of 1999, and the implementing regulations of the Secretary of Labor (41 CFR 60-250) require suppliers to take affirmative action to employ veterans of the Vietnam era without discrimination based on their disability, and to list all employment openings with appropriate local employment services.

9.10.2 **Applicability**

9.10.2.a **General.** Except as provided in 9.10.2.b, every contract for supplies or services (including utility, construction, and transportation services) or for the use of real or personal property (including lease arrangements) in the amount of $10,000 or more must include Clause 9-14, *Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era*, which is included in Clause 4-2, and must be checked-off by the contracting officer as applicable. No contracting officer, supplier, or subsupplier may purchase quantities of supplies or services in less-than-normal quantities to avoid application of Clause 9-14.

9.10.2.b **Exceptions**

1. **Contracts with State and Local Governments.** Clause 9-14 does not apply to any agency, instrumentality, or subdivision of a state or local government that does not participate in work under the contract.

2. **Exemption.** The Postmaster General (with the concurrence of the Director, Office of Federal Contract Compliance Program (OFCCP), Department of Labor) may exempt any contract or category of contracts from any part of Clause 9-14 in the national interest.
9.10.2.c Request for Exemption. The contracting officer must submit a detailed justification for any proposed exemption to the VP, P&M, for submission through channels to the Postmaster General and the Director, OFCCP.

9.10.3 Department of Labor Notices
The contracting officer must furnish the supplier appropriate notices for posting when such notices are prescribed by the Director, OFCCP.

9.10.4 Complaints
The contracting officer must forward any complaint concerning the Act through channels to the VP, P&M. No investigation or attempt to resolve the complaint may be made without specific instructions from the VP, P&M.

9.10.5 Department of Labor Sanctions
When Purchasing Policies and Programs is notified that the Department of Labor has imposed sanctions on a supplier (such as withholding progress payments, terminating or suspending the contract, or debarring the supplier) for violation of Clause 9-14, the contracting officer must put the sanctions into effect as soon as possible.