SERVICE CONTRACT ACT WAGE DETERMINATIONS

SERVICE CONTRACT ACT, as amended (excerpt)

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GUIDE TO COMPLETING AN INDIVIDUAL SF-98 REQUEST

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SERVICE CONTRACT ACT, as amended (excerpt)

"Sec. 2(a) Every contract (and any bid specification therefor) entered into by the United States or the District of Columbia in excess of \$2,500, ... whether negotiated or advertised, the principal purpose of which is to furnish services in the United States through the use of service employees shall contain the following:

- (1) A provision specifying the minimum monetary wages to be paid the various classes of services employees in the performance of the contract or any subcontract thereunder, as determined by the Secretary [of Labor], or her authorized representative, in accordance with prevailing rates for such employees in the locality or where a collective bargaining agreement covers any such service employees, in accordance with the rates for such employees provided for in such agreement, including prospective wage increases provided for in such agreement as a result of arm's-length negotiations.
- (2) A provision specifying the fringe benefits to be furnished the various classes of service employees....
- Sec. 4 ... (c) No contractor or subcontractor under a contract, which succeeds a contract subject to this Act under and which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits, including accrued wages and fringe benefits, and any prospective increases in wages and fringe benefits provided for in a collective-bargaining agreement as a result of arm's-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract: *Provided*, that in any of the foregoing circumstances such obligations shall not apply if the Secretary finds after a hearing ... that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality." (Emphases added.)

SERVICE CONTRACT ACT WAGE DETERMINATIONS

A. SCA wage determination requirements

- > The SCA wage determination (WD) sets the minimum wages and fringe benefits that contractors and their subcontractors must pay service employees working on covered contracts.
 - >> Wages are defined as monetary compensation provided to employees. They are usually listed in the wage determination as hourly wage rates.
 - \gg Fringe benefits are defined in section 2(a)(2) of the Act as follows:

"Such fringe benefits shall include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other bona fide fringe benefits not otherwise required by federal, state, or local law to be provided by the contractor or subcontractor."

The various fringe benefits listed in the Act are illustrative of those which may be included in the WD. Which fringe benefits are included in the WD depends upon the type of WD to be issued and the evaluation of source data used to develop the WD. Fringe benefits may be provided as monetary compensation (cash payments) in lieu of providing the listed benefits, provided certain records are kept.

- >>> Most WD's are revised periodically, as new health and welfare benefits or wage survey data become available. However, if a WD is properly included in the contract at the time of award, the contract does not need to be modified to include subsequent revisions to the WD prior to completion of the first year of the contract.
- > Section 10 of the Act requires the Department of Labor to issue a WD for every service contract employing more than five service employees.
 - >> If the contract requires five or fewer service employees, the contracting agency must still request a WD, and if one is issued, include the applicable WD in the contract. There is a common misconception among contracting officers that they need not submit a request if there will be five or fewer service employees performing on the contract. This has never been the case. The contracting agency must request a WD even if only one service employee will be employed on the contract, but the Wage and Hour

Division (WH) has the option of not issuing a WD for contracts with five or fewer service employees.

>> If no WD has been issued for a service contract involving five or fewer service employees, the contractor can pay no less than the minimum wage required by section 6(a)(1) of Fair Labor Standards Act. If the contract involves more than five service employees, the contract must contain a WD. However, we have over 204 wage determinations with each containing over 300 classifications. It would be a rare occurrence if the Department of Labor had not issued a wage determination for a geographic area.

B. SCA wage determinations format

- > In 1994, WH began to issue SCA wage determinations in a revised format that includes nearly all standard occupations on a single wage determination. In the past, wage determinations were issued that only covered classes in broad occupational groupings. This format, generally referred to as the consolidated wage determination, reduces the need for Service Contract Act (SCA) conformance actions, and improves service to SCA wage determinations customers.
- > Currently there are 204 areas for which consolidated wage determinations are being issued.

C. Two bases on which SCA WD's are issued:

- 1. Prevailing in the locality. Determinations that set forth minimum monetary wage and fringe benefits determined to be prevailing for various classes of service employees in the locality after giving "due consideration" to the rates applicable to such service employees if directly hired by the Federal Government. (Sections 2(a)(1), 2(a)(2), and 2(a)(5) of the Act); and
- ➤ Wage rates and fringe benefits prevailing in the locality (29 CFR 4.51):
 - >>> Rates based on surveys and rates based on union dominance. These determinations are usually based on data collected by the Bureau of Labor Statistics (BLS) under the National Compensation and Occupational Employment Statistics Surveys.
 - >>> Union Dominance. The SCA regulations provide that "where a single rate is paid to a majority (50 percent or more) of the workers in a class of service employees engaged in similar work in a particular locality, that rate is determined to prevail". 29 CFR 4.51(b). These majority rate prevailing wage determinations are typically called union dominance wage determinations.

- 2. Collective Bargaining Agreement (Successorship). Determinations that set forth the wage rates and fringe benefits, including accrued and prospective increases, contained in a collective bargaining agreement applicable to the service employees who performed on a predecessor contract in the same locality. (Sections 4(c) and 2(a)(1) and (2) of the Act).
- > Wage rates and fringe benefits based on the <u>predecessor contractor's collective</u> bargaining agreement (CBA) See 29 CFR 4(c):
 - >> For section 4(c) to be applicable, the predecessor contract must involve substantially the same services being provided in the same locations.

Provisions of 4(c):

- >> The successor contractor is obligated to pay its employees the wages and fringes in the predecessor's CBA that they would have been entitled to if they were employed by the predecessor.
- >>> This obligation exists whether or not the employees of the predecessor contractor are hired by the successor contractor. This obligation will continue to exist even if the successor contractor is signatory to its own CBA or chooses to sign or not sign the same CBA as entered into by the predecessor contractor.
- >> Since the obligations of section 4(c) are statutory, self-executing, they are not dependent upon the inclusion of the CBA rates in the WD. For example, if the Department of Labor issues a WD for a particular contract based upon prevailing rates rather than the CBA because the agency failed to advise WH of the existence of the CBA or the WD does not reflect accurately all the economic terms of the CBA, the successor contractor is still obligated to pay the CBA rates, unless the limitation in section 4.1b(b) applies, or if there is a hearing and a finding of "substantial variance," as discussed below.
- >>> The limitations to Section 4(c) can be found in 29 CFR 4.1(b). Specifically, the limitations in 4.1b(1) and (2) only apply if the contracting agency gives written notification to both the incumbent contractor and the union at least 30 day in advance of all applicable estimated procurement dates. If such notification is given, the CBA must be provided to the contracting officer (Not DOL) within the timeframes specified in Section 4.1b(b). If the CBA is not provided to the contracting officer within these timeframes then the CBA does not apply pursuant to Section 4(c) of SCA.

REQUESTING SCA WAGE DETERMINATIONS

A. Responsibility of contracting agency to request SCA wage determinations

Contracting agencies request a wage determination (WD) from the Department of Labor's Division of Wage Determinations, Branch of SCA Wage Determinations, using Standard Forms 98 (SF-98) and 98a, "Notice of Intention to Make a Service Contract and Response to Notice". The contracting agency must submit this form not less than 60 days nor more than 120 days, except with approval of WH, prior to any invitation for bids, request for proposals, or commencement of negotiations.

The initial responsibility for determining whether a proposed contract may be subject to SCA and requires a wage determination rests with the contracting agency.

B. Individual SF-98 Requests

- For each proposed contract, contracting agencies must submit an individual SF-98 request. To do so, the agency must fill out and submit the Notice of Intention to Make a Service Contract -- Standard Form (SF) 98, with an attached SF-98a. These forms must be submitted for each anticipated contract. The wage determination issued in response to the request must be incorporated into the bid specifications and the resultant contract.
- The SF-98 requires the requesting agency official to specify the relevant procurement dates, the county and the state where the work will be performed, and the type of services to be performed under the contract. In addition, the agency must provide information on incumbent contractors. The previous wage determination, and any collective bargaining agreements that may apply. The SF-98a identifies the occupational classes and the number of service employees who will perform the work on the contract, and the hourly wage rates that would be paid if such workers were federally-employed.

C. Multi-year and Two-Step Procurement

- > In the case of multi-year contracts subject to annual fiscal appropriations of Congress, the contracting agency must request a new WD <u>each year</u> for use on the anniversary date of the contract. 29 CFR 4.4(a)(1) and 4.145(a).
- > If the multi-year contract is not subject to annual fiscal appropriations, the contracting agency must request a new WD at least every two years. Section 4(d) of the SCA and 29 CFR 4.145(b).
- > When the place of performance of a contract is unknown at the time of solicitation, the contracting agency should contact the Wage and Hour Division's

Branch of Service Contracts Wage Determination for guidance. 29 CFR 4.4(a)(2)(i). The two step procedure:

- >> In the first step, the contracting agency will issue an initial solicitation with no wage determination, from which it identifies all interested bidders and their possible places of performance and then transmits this information to the Department of Labor with SF-98.
- >> In the second step, the Department of Labor will issue separate wage determinations for the various localities identified in the first step, to be incorporated in the solicitation prior to the submission of final bids. The appropriate wage determination applicable to the geographic location of the successful bidder shall be incorporated in the resultant contract and shall be observed, regardless of whether the contractor subsequently changes the place(s) of contract performances.

THE SERVICE CONTRACT ACT DIRECTORY OF OCCUPATIONS

A. Development of the SCA Directory of Occupations for Use in Requesting, Developing, and Applying SCA Wage Determinations

Since April 1985, the Wage and Hour Division has been publishing standard occupational titles and definitions in the "Service Contract Act Directory of Occupations." This is a key resource to be utilized in requesting and applying SCA wage determinations. The Directory is accessible at:

http://www.dol.gov/esa/regs/compliance/whd/wage/main.htm.

- Each year, WH receives requests for wage determinations for employees engaged in approximately 60,000 government service contracts covered under the SCA. Total annual federal government service contracting has been estimated in the billions of dollars. These SCA-covered contracts involve the performance of a wide range of services, including such diverse activities as aerial spraying, barber and beauty shop services, computer services, electronic equipment maintenance, furniture repair, surveying and mapping, trash removal, and warehousing. Employees in a wide spectrum of occupations are needed to perform these services.
- For any SCA-covered contract exceeding \$2,500 the contracting agency must request a wage determination on standard form SF-98 and SF-98a. In submitting these forms, the requesting agency is to list occupational titles of workers to be employed on the contracts. Use of the Directory allows contractor, federal procurement agency, and WH staff to associate standard job descriptions with these titles. Prior to publication of the Directory, ascertaining the content of each job for wage determination purposes became a difficult and time-consuming task. Widespread distribution and use of the Directory has greatly simplified this process.
- The great variety of services procured by the federal government and the many different occupations required in the performance of these services continue to present a major challenge in the acquisition of data and the development of appropriate wage determinations. At the present time, a variety of data sources are utilized in the development of SCA prevailing wage determinations. These sources include the Bureau of Labor Statistics (BLS) National Compensation Survey, and the Occupational Employment Statistics Survey. Since payroll titles and work assignments vary among establishments and geographic areas, such descriptions are useful as standards in classifying workers by occupation so that wage rates representing specific job content can be established.

- > In order to effectively implement its primary assignment of issuing wage determinations, the Wage and Hour Division's Branch of Service Contract Wage Determinations requires standardized occupational language for use with all of the contracting establishments. In response to this need, the first edition of this Directory of commonly used occupational titles and descriptions was developed in 1985. A second edition was published in 1986, a third in 1991 that was never used and eventually withdrawn, and a fourth in 1993.
- The Directory contains occupational titles and descriptions and a classification structure under which the occupations are arranged according to their interrelationships. It makes available uniform occupational information providing composites of similar jobs performed in many geographic areas all over the country.

B. Federal Grade Equivalency (FGE) Information in the Directory

The Fourth Edition Directory provides information on the federal civil service grade levels most likely to correspond to the occupations included.

- This information reveals the grade levels that would be assigned to such occupations, if the work was being performed by a federal employee.
- For WH staff, such information is especially <u>useful in connection with the development of prevailing wages</u> for occupations for which no survey data are available or for which survey data are not available for various levels within a job family.
- Contractors and federal procurement agency staff may utilize federal grade equivalency (FGE) data to guide wage rate proposals for occupations to be conformed. FGE use for conformances is covered in the SCA Conformance Manual.

FGE rates are divided into the following three classifications for purposes of SCA administration:

- > GS (General Schedule) refers to grade rates utilized for non-supervisory appropriated fund "white-collar" positions;
- > WG (Wage Grade) refers to grade rates utilized for non-supervisory appropriated fund "blue-collar" positions; and
- > AS refers to non-supervisory non-appropriated fund Administrative Services rates.

C. Using the SCA Directory of Occupations to Communicate Clearly in Completing the SF-98a: Needed Occupational Information

There are three arrangements of occupational information in the Directory:

- ➤ the Numerical Listing of Occupational Categories and Titles, Federal Grade Equivalencies, and location by page;
- > titles and descriptions of categories; and
- > the Alphabetical Index of Occupational Titles.

The classification system developed is structured on a three-tier arrangement: category, occupation, and level of difficulty. Each tier represents groupings in successively finer detail. This should enable users who so desire to tabulate or analyze data at different levels of aggregation.

Noted below are the 20 broad occupational categories arranged alphabetically and coded numerically.

01000	Administrative Support and Clerical Occupations
03000	Automatic Data Processing Occupations
05000	Automotive Services Occupations
07000	Food Preparation and Service Occupations
08000	Forestry and Logging Occupations
09000	Furniture Maintenance and Repair Occupations
11000	General Services and Support Occupations
12000	Health Occupations
13000	Information and Arts Occupations
15000	Laundry, Dry Cleaning, Pressing and Related Occupations
19000	Machine Tool Operation and Repair Occupations
21000	Materials Handling and Packing Occupations
23000	Mechanics and Maintenance and Repair Occupations
24500	Personal Needs Occupations
25000	Plant and System Operation Occupations
27000	Protective Service Occupations
29000	Technical Occupations
31000	Transportation/Mobile Equipment Operation Occupations
47000	Water Transportation Occupations
99000	Miscellaneous Occupations

The detailed numerical listing presents the categories, occupations, levels of difficulty, federal grade equivalencies, and the page numbers on which the occupational descriptions can be found. The coding system utilized by the Directory has the following characteristics:

- > Each occupational title is identified by a five digit code.
- The first two digits of each occupational code identify the broad category of occupations to which each specific occupation belongs. For example, since the code for the broad category of Administrative Support is <u>01</u>000, each specific occupation within this category begins with the first two digits <u>01</u>, i.e., Court Reporter, 01030.
- Within each broad category, occupations are listed in alphabetical order. Therefore, the third and fourth digit of each occupation's code follow that alphabetical progression. For example, the code for Rental Clerk is 01290, while the code for Scheduler, Maintenance is 01300.
- > Occupations that reflect distinct levels in "job families" are prefaced by "base" statements that describe occupational content common to each level.
- The levels of difficulty have been denoted by Roman numerals placed after the title, with the numeral "I" being the least difficult, and each numeral thereafter indicating a more difficult level. In general, the higher the grade level, the greater the level of complexity and compensation. The codes for each level, i.e., General Clerk I, General Clerk II, General Clerk III, and General Clerk IV, utilize the fifth digit to differentiate one from the other. For example, General Clerk I, 01115; General Clerk II, 01116; and General Clerk III, 01117, and General Clerk IV, 01118.
- Each broad category is defined so that homogeneous groupings can be delineated. The titles represent those most commonly used in the wage determination process. The descriptions represent composites of jobs found in a number of establishments and may differ from those in use in individual establishments or those prepared for other purposes.
- > Some of these definitions have been adjusted to meet SCA operations requirements. Immediately following the title, there may be one or more titles in parentheses. These are alternative titles that are synonymous with the main titles with which they are shown, and appear in the alphabetical index in lower case.

D. Job description and Federal Grade Equivalent must be provided if the Directory does not include a class for the given job duties.

> Users of the Directory who are able to locate a given title or description, or who cannot match specific job duties with a corresponding occupational description in the Directory, should submit an appropriate occupational title and description with

the SF-98 request. This procedure will assist the Branch of Service Contract Wage Determinations in issuing wage determinations for occupations in response to SF-98 requests. Such information also provides the basis for future updates and revisions of the Directory. Note that wage determinations will not be issued for occupational titles requested if the applicable job duties are performed by an occupational classification listed in the wage determination of the SCA Directory. Job definitions included in the Directory may not be applicable when the service contract is governed by Section 4(c) of the Service Contract Act.

GUIDE TO COMPLETING AN INDIVIDUAL SF-98 REQUEST

A. Introduction

Supplies of the SF-98 and SF-98a are available in all General Services Administration (GSA) supply depots under stock numbers 7540-926-8972 and 75409-118-1008, respectively.

Key aspects of procedures for submitting individual SCA WD requests:

- ➤ TIMING
- ➤ CONTENT

B. Timing

The SF-98/98a and any required supporting documentation should be submitted to WH not less than 60 days (nor more than 120 days) prior to any:

- > Invitation for bids;
- Request for proposals;
- > Commencement of contract negotiations;
- > Exercise of options or contract extensions;
- Annual anniversary date of multi-year contracts subject to annual appropriation of the U.S. Congress; or
- > Biennial anniversary date of multi-year contracts not subject to annual appropriations of the U.S. Congress, unless otherwise advised by WH.

For unplanned procurement needs, individual SF-98 requests must be submitted as soon as possible, but not later than 30 days prior to the above listed contracting actions. For emergency procurement needs, appropriate WH officials should be consulted prior to submission (see WH staff listings at the back of this resource book). Requests should then be submitted as soon as possible according to instructions provided by the WH official contacted.

C. Content

The SF-98 specifies the relevant procurement dates, the location – **county and State** – of the work to be performed, the type of services to be covered by the contract, and provides information on incumbent contractors, previous wage determinations, and collective bargaining agreements that may apply. The SF-98a identifies the occupations (classes) of service employees to be employed under the SCA-covered contract, the number to be employed, and the hourly wage rates that would be paid if such workers were federal direct-hires.

The SF-98 includes instructions for proper completion on the reverse side. While all requested information is important for the proper issuance of the wage determination, certain items are key, as described below. See the properly completed sample individual request (SF-98 and SF-98a). The items discussed below reference the appropriate SF-98 or SF-98a blocks.

Procurement Dates (SF-98, Blocks 2, 3, & 4)

Procurement dates are important for evaluating the timeliness of requests and the WD response issued by WH. In addition, these dates are important to the evaluation of the currency of data sources to be used in developing the WD and the proper tracking of annual vs. multi-year service contracts.

Note that for multi-year contracts not subject to annual U.S. Congressional appropriations, a written statement describing the type of funding and anticipated term of the proposed contract must be attached to the SF-98 request. This type of multi-year service contract requires a new wage determination issuance at least every two years.

Place(s) of Performance (SF-98, Block 5)

Listing the city, **county**, and State where the services will be performed is critical to the issuance of the wage determination. Prevailing, area wide WDs are based on wage rates and fringe benefits determined to prevail in the locality of the place of performance. The place of performance could be the contractor's site, a government installation, or elsewhere.

When the place(s) of performance of an SCA-covered contract is unknown at the time of solicitation, a two-step solicitation process should be used.

> In the first step, the contracting agency will issue an initial solicitation with no wage determination, from which it identifies all interested bidders and their possible places of performance and then transmits this information to the Department of Labor with the SF-98.

In the second step, the Department of Labor will issue separate wage determinations for the various localities identified in the first step, to be incorporated in the solicitation prior to the submission of final bids. The appropriate wage determination applicable to the geographic location of the successful bidder shall be incorporated in the resultant contract and shall be observed, regardless of whether the contractor subsequently changes the place(s) of contract performance.

Services to be Performed (SF-98, Block 6)

A clear description of the types of services called for by the procurement assists the wage determination staff in evaluating the request and in determining SCA coverage.

Usually a simple statement, such as that shown on the sample SF-98, will suffice. If services to be provided are unusual in any way, however, a detailed description may be necessary.

Information About Performance (SF-98, Block 7)

Identification of the status of the procurement alerts the wage determination staff to several important considerations that will be addressed. This include:

- Box A Service Now Performed by a Contractor: Checking this box indicates that the procurement is recurring. Depending upon the procurement dates, the contract may be an annual, recurring contract, or a continuous, multi-year contract. Also, a contract that is currently being performed by a contractor may have a previously-issued wage determination on file that will be evaluated by WH staff as part of the WD development process. If you check this box, you must also complete box 8(a), 8(b), and if applicable, 8(c).
- ➤ Box B -This box indicates that no wage determination applicable to the specified locality and classes of employees is in effect.
- >> <u>Box C Service Not Presently Being Performed</u>: Checking the box indicates that the procurement is a completely new service.

Collective Bargaining Agreement (SF-98, Block 8)

Attachment of the current, signed, applicable collective bargaining agreement (CBA) is necessary for SCA-covered contracts for which the SCA requires application of a section 4(c) wage determination. If an incumbent contractor is performing the services called for by the proposed contract and the service employees performing the contract are covered by one or more CBAs, the applicable CBAs must be attached. In addition to CBA(s) addressing the wage rates and fringe benefits afforded to the incumbent contractor's service employees, any related documents must be attached.

Note: For section 4(c) to apply, the proposed or successor contract must be for the same or substantially the same services and be performed in the same locality as that of the incumbent contract. If the applicable CBA(s) does/do not apply to all the service employees employed under the incumbent contract, the contracting agency must identify the occupational classes and/or work subject to the CBA(s).

Official Submitting Notice/Where To Send Response (SF-98, Blocks 9 and 10)

All information requested should be properly completed so that WH staff can address any inquiries it may have and issue its response to the appropriate contracting agency officials.

Occupational Classes and Number of Employees (SF-98a, Blocks 12 and 13)

The occupational classes of service employees expected to perform the proposed contract work must be listed on the SF-98a. The listing of all occupational classes of service employees to be employed under the proposed contract should utilize job titles and corresponding code numbers found in the <u>SCA Directory of Occupations</u>, where applicable. For occupations not contained in the Directory, an appropriate job title shall be given in Block 12 and a job description must be attached to the SF-98 request.

The WD to be issued will include the minimum wage rates and fringe benefits to be paid by the contractor for the occupational classes listed in the SF-98a for use in the performance of the SCA-covered contract. An occupational class is classified according to the duties, skills, and knowledge required. Such factors affect the job's relative rate of pay. Occupational classes vary considerably with regard to these factors; wage rates may, therefore, vary considerably by class.

Compare Federal Rates (SF-98a, Block 14)

The hourly rates or grade levels that would be paid if workers were federal direct-hires must be listed in the SF-98a. Wage rates for white collar classes have been established by the federal General Schedule (GS) rates and grades. Wage rates for blue collar classes are established by the federal Wage System Schedules (Wage Board or non-appropriated fund (NAF) rates and grades). These comparable pay rates or grade levels are used to apply the principles of due consideration required by section 2(a)(5) of the SCA.

Response to Notice Segment

These boxes are completed by WH staff as part of its response to the SF-98 request.

SAMPLE CONSOLIDATED SCA WAGE DETERMINATION

SAMPLE SF-98 AND SF-98a REQUEST FOR AN SCA WAGE DETERMINATION