

# Subpart 22.10 - Service Contract Labor Standards

**Parent topic:** [Part 22 - Application of Labor Laws to Government Acquisitions](#)

## 22.1000 Scope of subpart.

This subpart prescribes policies and procedures implementing the provisions of [41 U.S.C. chapter 67](#), *Service Contract Labor Standards* (formerly known as the *Service Contract Act* of 1965), the applicable provisions of the Fair Labor Standards Act of 1938, as amended ([29 U.S.C.201](#), *etseq.*), and related Secretary of Labor regulations and instructions (29 CFR parts 4, 6, 8, and 1925).

## 22.1001 Definitions.

As used in this subpart-

*Contractor* includes a subcontractor at any tier whose subcontract is subject to the provisions of the statute.

*Multiple year contracts* means contracts having a term of more than 1 year regardless of fiscal year funding. The term includes multi year contracts (see [17.103](#)).

*United States* means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act ([43 U.S.C.1331](#), *etseq.*), but does not include any other place subject to U.S. jurisdiction or any U.S. base or possession within a foreign country (29 CFR 4.112).

*Wage and Hour Division* means the unit in the Department of Labor to which is assigned functions of the Secretary of Labor under the *Service Contract Labor Standards* statute.

*Wage determination* means a determination of minimum wages or fringe benefits made under [41 U.S.C.6703](#) or 6707(c) applicable to the employment in a given locality of one or more classes of *service employees*.

## 22.1002 Statutory and Executive order requirements.

### 22.1002-1 General.

*Service contracts* over \$2,500 *shall* contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowable compensation, and equivalent Federal employee classifications and wage rates. Under [41 U.S.C.6707\(d\)](#), *service contracts* may not exceed 5 years.

## **22.1002-2 Wage determinations based on prevailing rates.**

*Contractors* performing on *service contracts* in excess of \$2,500 to which no predecessor *contractor's* collective bargaining agreement applies *shall* pay their employees at least the wages and fringe benefits found by the Department of Labor to prevail in the locality or, in the absence of a *wage determination*, the minimum wage set forth in the Fair Labor Standards Act.

## **22.1002-3 Wage determinations based on collective bargaining agreements.**

(a) Successor *contractors* performing on contracts in excess of \$2,500 for substantially the same services performed in the same locality *must* pay wages and fringe benefits (including accrued wages and benefits and prospective increases) at least equal to those contained in any bona fide collective bargaining agreement entered into under the predecessor contract. This requirement is self-executing and is not contingent upon incorporating a *wage determination* or the wage and fringe benefit terms of the predecessor *contractor's* collective bargaining agreement in the successor contract. This requirement will not apply if the Secretary of Labor determines-

(1) After a hearing, that the wages and fringe benefits are substantially at variance with those which prevail for services of a similar character in the locality; or

(2) That the wages and fringe benefits are not the result of arm's length negotiations.

(b) Paragraphs in this [subpart 22.10](#) which deal with this statutory requirement and the Department of Labor's implementing regulations are [22.1010](#), concerning notification to *contractors* and bargaining representatives of *procurement* dates; [22.1012-2](#), explaining when a collective bargaining agreement will not apply due to late receipt by the *contracting officer*; and [22.1013](#) and [22.1021](#), explaining when the application of a collective bargaining agreement can be challenged due to a variance with prevailing rates or lack of arm's length bargaining.

## **22.1002-4 Application of the Fair Labor Standards Act minimum wage.**

No *contractor* or subcontractor holding a *service contract* for any dollar amount *shall* pay any of its employees working on the contract less than the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act ([29 U.S.C.206](#)).

## **22.1002-5 Executive Orders 13658 and 14026.**

Executive Order (E.O.) 13658 established minimum wages for certain workers at \$10.10 per hour. The E.O. 13658 rate has increased each year since 2015, rising to \$11.25 on January 1, 2022. As of January 30, 2022, E.O. 13658 is superseded by E.O. 14026 to the extent that it is inconsistent with E.O. 14026; the minimum wage rate for certain workers is increased to \$15.00 per hour. The wage rate is subject to annual increases by an amount determined by the Secretary of Labor. See [subpart 22.19](#). The clause at [52.222-55](#), Minimum Wages for *Contractor* Workers under Executive Order 14026, requires the E.O. 14026 minimum wage rate to be paid if it is higher than other minimum wage rates, such as the [subpart 22.10](#) statutory *wage determination* amount.

## **22.1002-6 Executive Order 13706.**

Executive Order 13706 establishes paid sick leave for employees of certain Federal *contractors*. See [subpart 22.21](#) and the clause at [52.222-62](#), Paid Sick Leave under Executive Order 13706.

## **22.1003 Applicability.**

### **22.1003-1 General.**

This [subpart 22.10](#) applies to all Government contracts, the principal purpose of which is to furnish services in the *United States* through the use of *service employees*, except as exempted in [22.1003-3](#) and [22.1003-4](#) of this section, or any subcontract at any tier thereunder. This subpart does not apply to individual contract requirements for services in contracts not having as their principal purpose the furnishing of services. The nomenclature, type, or particular form of contract used by *contracting* agencies is not determinative of coverage.

### **22.1003-2 Geographical coverage of the Act.**

The *Service Contract* Labor Standards statute applies to *service contracts* performed in the *United States* (see [22.1001](#)). The *Service Contract* Labor Standards statute does not apply to contracts performed outside the *United States*.

### **22.1003-3 Statutory exemptions.**

The *Service Contract* Labor Standards statute does not apply to-

- (a) Any contract for *construction*, alteration, or repair of public buildings or public works, including painting and decorating;
- (b) Any work required to be done in accordance with the provisions of [41 U.S.C.chapter 65](#);
- (c) Any contract for transporting *freight* or personnel by vessel, aircraft, bus, truck, express, railroad, or oil or gas pipeline where published tariff rates are in effect;
- (d) Any contract for furnishing services by radio, telephone, or cable companies subject to the Communications Act of 1934;
- (e) Any contract for public utility services;
- (f) Any employment contract providing for direct services to a *Federal agency* by an individual or individuals; or
- (g) Any contract for operating postal contract stations for the U.S. Postal Service.

## **22.1003-4 Administrative limitations, variations, tolerances, and exemptions.**

(a) The Secretary of Labor *may* provide reasonable limitations and *may* make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of the *Service Contract* Labor Standards statute other than [41 U.S.C.6707\(f\)](#). These will be made only in special circumstances where it has been determined that the limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Government business, and is in accord with the remedial purpose of the *Service Contract* Labor Standards statute to protect prevailing labor standards ([41 U.S.C.6707\(b\)](#)). See 29 CFR 4.123 for a listing of administrative exemptions, tolerances, and variations. Requests for limitations, variances, tolerances, and exemptions from the *Service Contract* Labor Standards statute *shall* be submitted *in writing* through *contracting* channels and the *agency labor advisor* to the Wage and Hour Administrator.

(b) In addition to the statutory exemptions cited in [22.1003-3](#) of this subsection, the Secretary of Labor has exempted the following types of contracts from all provisions of the *Service Contract* Labor Standards statute:

(1) Contracts entered into by the *United States* with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom.

(2) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service if it is not contemplated at the time the contract is made that the owner-operator will hire any *service employee* to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or *emergency* situations such as illness, or accident.

(3) Contracts for the carriage of *freight* or personnel if such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act.

(c) *Contracts for maintenance, calibration or repair of certain equipment.-*

(1) *Exemption.* The Secretary of Labor has exempted from the *Service Contract* Labor Standards statute contracts and subcontracts in which the primary purpose is to furnish maintenance, calibration, or repair of the following types of equipment, if the conditions at paragraph (c)(2) of this subsection are met:

(i) Automated data processing equipment and office information/word processing systems.

(ii) Scientific equipment and medical apparatus or equipment if the application of micro-electronic circuitry or other technology of at least similar sophistication is an essential element (for example, Product or Service Code (PSC) 6515, "Medical and Surgical Instruments, Equipment, and *Supplies*;" PSC 6525, "Imaging Equipment and *Supplies*: Medical, Dental, Veterinary;" PSC 6630, "Chemical Analysis Instruments;" and PSC 6655, "Geophysical Instruments," are largely composed of the types of equipment exempted in this paragraph).

(iii) Office/business machines not otherwise exempt pursuant to paragraph (c)(1)(i) of this subsection, if such services are performed by the manufacturer or supplier of the equipment.

(2) *Conditions.* The exemption at paragraph (c)(1) of this subsection applies if all the following

conditions are met for a contract (or a subcontract):

(i) The items of equipment to be serviced under the contract are used regularly for other than Government purposes and are sold or traded by the *contractor* in substantial quantities to the general public in the course of normal business operations.

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of such equipment. As defined at 29 CFR 4.123(e)(1)(ii)(B)-

(A) An established catalog price is a price included in a catalog price list, schedule, or other form that is regularly maintained by the manufacturer or the *contractor*, is either published or otherwise available for *inspection* by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.

(B) An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or *contractor*.

(iii) The *contractor* will use the same compensation (wage and fringe benefits) plan for all *service employees* performing work under the contract as the *contractor* uses for these employees and equivalent employees servicing the same equipment of commercial customers.

(iv) The apparent successful *offeror* certifies to the conditions in paragraph (c)(2)(i) through (iii) of this subsection. (See [22.1006\(e\)](#).)

### (3) *Affirmative determination and contract award.*

(i) For source selections where the *contracting officer* has established a competitive range, if the *contracting officer* determines that one or more of the conditions in paragraphs [22.1003-4\(c\)\(2\)\(i\)](#) through (iii) of an *offeror's* certification will not be met, the *contracting officer shall* identify the deficiency to the *offeror* before receipt of the final proposal revisions. Unless the *offeror* provides a revised *offer* acknowledging applicability of the Service Contract Labor Standards statute or demonstrating to the satisfaction of the *contracting officer* an ability to meet all required conditions for exemption, the *offer* will not be further considered for award.

(ii) The *contracting officer shall* determine *in writing* the applicability of this exemption to the contract before contract award. If the apparent successful *offeror* will meet all conditions in paragraph (c)(2) of this subsection, the *contracting officer shall* make an affirmative determination and award the contract without the otherwise applicable *Service Contract Labor Standards* clause(s).

(iii) If the apparent successful *offeror* does not certify to the conditions in paragraph (c)(2)(i) through (iii) of this subsection, the *contracting officer shall* incorporate in the contract the *Service Contract Act* clause (see [22.1006\(a\)](#)) and, if the contract will exceed \$2,500, the appropriate Department of Labor *wage determination* (see [22.1007](#)).

### (4) *Department of Labor determination.*

(i) If the Department of Labor determines after award of the contract that any condition for exemption in paragraph (c)(2) of this subsection has not been met, the exemption *shall* be deemed

inapplicable, and the contract *shall* become subject to the *Service Contract* Labor Standards statute, effective as of the date of the Department of Labor determination. In such case, the procedures at 29 CFR 4.123(e)(1)(iv) and 29 CFR 4.5(c) *shall* be followed.

(ii) If the Department of Labor determines that any conditions in paragraph (c)(2) of this subsection have not been met with respect to a subcontract, the exemption *shall* be deemed inapplicable. The *contractor* may be responsible for ensuring that the subcontractor complies with the *Service Contract* Labor Standards statute, effective as of the date of the subcontract award.

(d) *Contracts for certain services.-*

(1) *Exemption.* Except as provided in paragraph (d)(5) of this subsection, the Secretary of Labor has exempted from the Service Contract Labor Standards statute contracts and subcontracts in which the primary purpose is to provide the following services, if the conditions in paragraph (d)(2) of this subsection are met:

(i) Automobile or other vehicle (*e.g.*, aircraft) maintenance services (other than contracts or subcontracts to operate a Government motor pool or similar facility).

(ii) Financial services involving the issuance and servicing of cards (including credit cards, debit cards, purchase cards, smart cards, and similar card services).

(iii) Hotel/motel services for conferences, including lodging and/or meals, that are part of the contract or subcontract for the conference (which *must* not include ongoing contracts for lodging on an as needed or continuing basis).

(iv) Maintenance, calibration, repair, and/or installation (where the installation is not subject to the *Construction Wage Rate Requirements* statute, as provided in 29 CFR 4.116(c)(2)) services for all types of equipment where the services are obtained from the manufacturer or supplier of the equipment under a contract awarded on a sole source basis.

(v) Transportation by common carrier of persons by air, motor vehicle, rail, or marine vessel on regularly scheduled routes or via standard *commercial services* (not including charter services).

(vi) Real estate services, including real property appraisal services, related to housing *Federal agencies* or disposing of real property owned by the Government.

(vii) Relocation services, including services of real estate brokers and appraisers to assist Federal employees or military personnel in buying and selling homes (which *shall* not include actual moving or storage of household goods and related services).

(2) *Conditions.* The exemption for the services in paragraph (d)(1) of this subsection applies if all the following conditions are met for a contract (or for a subcontract):

(i)

(A) Except for services identified in paragraph (d)(1)(iv) of this subsection, the *contractor* will be selected for award based on other factors in addition to price or cost, with the combination of other factors at least as important as price or cost; or

(B) The contract will be awarded on a sole source basis.

(ii) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the *contractor* (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations.

(iii) The contract services are furnished at prices that are, or are based on, established catalog or market prices. As defined at 29 CFR 4.123(e)(2)(ii)(C)-

(A) An established catalog price is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the *contractor*, is either published or otherwise available for *inspection* by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(B) An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or *contractor*.

(iv) Each *service employee* who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract.

(v) The *contractor* will use the same compensation (wage and fringe benefits) plan for all *service employees* performing work under the contract as the *contractor* uses for these employees and equivalent employees servicing commercial customers.

(vi) The *contracting officer* (or *contractor* with respect to a subcontract) determines in advance before issuing the *solicitation*, based on the nature of the contract requirements and knowledge of the practices of likely *offerors*, that all or nearly all *offerors* will meet the conditions in paragraph (d)(2)(ii) through (v) of this subsection. If the services are currently being performed under contract, the *contracting officer* (or *contractor* with respect to a subcontract) *shall* consider the practices of the existing *contractor* in making a determination regarding the conditions in paragraphs (d)(2)(ii) through (v) of this subsection.

(vii)

(A) The apparent successful *offeror* certifies that the conditions in paragraphs (d)(2)(ii) through (v) will be met; and

(B) For other than sole source awards, the *contracting officer* determines that the same certification is obtained from substantially all other *offerors* that are-

(1) In the competitive range, if discussions are to be conducted (see FAR [15.306\(c\)](#)); or

(2) Considered responsive, if award is to be made without discussions (see FAR [15.306\(a\)](#)).

(3) *Contract award or resolicitation.*

(i) If the apparent successful *offeror* does not certify to the conditions, the *contracting officer shall* insert in the contract the applicable *Service Contract Labor Standards* clause(s) (see [22.1006](#)) and, if the contract will exceed \$2,500, the appropriate Department of Labor *wage determination* (see [22.1007](#)).



(ii) The *contracting officer shall* award the contract without the otherwise applicable *Service Contract Labor Standards* clause(s) if-

(A) The apparent successful *offeror* certifies to the conditions in paragraphs (d)(2)(ii) through (v) of this subsection;

(B) The *contracting officer* determines that the same certification is obtained from substantially all other *offerors* that are-

(1) In the competitive range, if discussions are to be conducted (see FAR [15.306](#)); or

(2) Considered responsive, if award is to be made without discussions (see FAR [15.306\(a\)](#)); and

(C) The *contracting officer* has no reason to doubt the certification.

(iii) If the conditions in paragraph (d)(3)(ii) of this subsection are not met, then the *contracting officer shall* resolicit, amending the *solicitation* by removing the exemption provision from the *solicitation* as prescribed at [22.1006\(e\)\(3\)](#). The contract will include the applicable *Service Contract Labor Standards* clause(s) as prescribed at [22.1006](#) and, if the contract will exceed \$2,500, the appropriate Department of Labor *wage determination* (see [22.1007](#)).

(4) *Department of Labor determination.*

(i) If the Department of Labor determines after award of the contract that any conditions for exemption at paragraph (d)(2) of this subsection have not been met, the exemption *shall* be deemed inapplicable, and the contract *shall* become subject to the *Service Contract Labor Standards* statute. In such case, the procedures at 29 CFR 4.123(e)(2)(iii) and 29 CFR [4.5\(c\)](#) *shall* be followed.

(ii) If the Department of Labor determines that any conditions in paragraph (d)(2) of this subsection have not been met with respect to a subcontract, the exemption *shall* be deemed inapplicable. The *contractor may* be responsible for ensuring that the subcontractor complies with the *Service Contract Labor Standards* statute, effective as of the date of the subcontract award.

(5) *Exceptions.* The exemption at paragraph (d)(1) of this subsection does not apply to *solicitations* and contracts (subcontracts)-

(i) Awarded under , [41 U.S.C. chapter 85](#), Committee for Purchase from People Who Are Blind or Severely Disabled (see [subpart 8.7](#)).

(ii) For the operation of a Government facility, or part of a Government facility (but *may* be applicable to subcontracts for services); or

(iii) Subject to [41 U.S.C. 6707\(c\)](#) (see [22.1002-3](#)).

## **22.1003-5 Some examples of contracts covered.**

The following examples, while not definitive or exclusive, illustrate some of the types of services that have been found to be covered by the *Service Contract Labor Standards* statute (see 29 CFR 4.130 for additional examples):

(a) Motor pool operation, parking, taxicab, and ambulance services.



- (b) Packing, crating, and storage.
- (c) Custodial, janitorial, housekeeping, and guard services.
- (d) Food service and lodging.
- (e) Laundry, dry-cleaning, linen-supply, and clothing alteration and repair services.
- (f) Snow, trash, and garbage removal.
- (g) Aerial spraying and aerial reconnaissance for fire detection.
- (h) Some support services at installations, including grounds maintenance and landscaping.
- (i) Certain specialized services requiring specific skills, such as drafting, illustrating, graphic arts, stenographic reporting, or mortuary services.
- (j) Electronic equipment maintenance and operation and engineering support services.
- (k) Maintenance and repair of all types of equipment, for example, aircraft, engines, electrical motors, vehicles, and electronic, office and related business and *construction* equipment. (But see [22.1003-4\(c\)\(1\)](#) and (d)(1)(iv).)
- (l) Operation, maintenance, or logistics support of a Federal facility.
- (m) Data collection, processing and analysis services.

## **22.1003-6 Repair distinguished from remanufacturing of equipment.**

(a) Contracts principally for remanufacturing of equipment which is so extensive as to be equivalent to manufacturing are subject to [41 U.S.C. chapter 65](#), rather than to the Service Contract Labor Standards statute. Remanufacturing *shall* be deemed to be manufacturing when the criteria in either paragraphs (a)(1) or (a)(2) of this section are met.

(1) Major overhaul of an item, piece of equipment, or material which is degraded or inoperable, and under which all of the following conditions exist:

- (i) The item or equipment is required to be completely or substantially torn down into individual *component* parts.
- (ii) Substantially all of the parts are reworked, rehabilitated, altered and/or replaced.
- (iii) The parts are reassembled so as to furnish a totally rebuilt item or piece of equipment.
- (iv) Manufacturing processes similar to those which were used in the manufacturing of the item or piece of equipment are utilized.
- (v) The disassembled *components*, if usable (except for situations where the number of items or pieces of equipment involved are too few to make it practicable) are commingled with existing inventory and, as such, lose their identification with respect to a particular piece of equipment.
- (vi) The items or equipment overhauled are restored to original life expectancy, or nearly so.

(vii) Such work is performed in a facility owned or operated by the *contractor*.

(2) Major modification of an item, piece of equipment, or material which is wholly or partially obsolete, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down.

(ii) Outmoded parts are replaced.

(iii) The item or equipment is rebuilt or reassembled.

(iv) The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition.

(v) The work is performed in a facility owned or operated by the *contractor*.

(b) Remanufacturing does not include the repair of damaged or broken equipment which does not require a complete teardown, overhaul, and rebuild as described in subparagraphs(a)(1) and (a)(2) of this subsection, or the periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. Such contracts typically are billed on an hourly rate (labor plus materials and parts) basis. Any contract principally for this type of work is subject to the *Service Contract Labor Standards* statute. Examples of such work include the following:

(1) Repair of an automobile, truck, or other vehicle, *construction* equipment, tractor, crane, aerospace, air conditioning and refrigeration equipment, electric motors, and ground powered industrial or vehicular equipment.

(2) Repair of typewriters and other office equipment (but see [22.1003-4\(c\)\(1\)](#) and (d)(1)(iv)).

(3) Repair of appliances, radios, television sets, calculators, and other electronic equipment.

(4) Inspecting, testing, calibration, painting, packaging, lubrication, tune-up, or replacement of internal parts of equipment listed in subparagraphs(b)(1), (b)(2), and (b)(3) of this subsection.

(5) Reupholstering, reconditioning, repair, and refinishing of furniture.

## **22.1003-7 Questions concerning applicability of the Service Contract Labor Standards statute.**

If the *contracting officer* questions the applicability of the *Service Contract Labor Standards* statute to an *acquisition*, the *contracting officer* shall request the advice of the *agency labor advisor*. Unresolved questions shall be submitted in a timely manner to the *Administrator, Wage and Hour Division*, for determination.

## **22.1004 Department of Labor responsibilities and regulations.**

Under the *Service Contract Labor Standards* statute, the Secretary of Labor is authorized and

directed to enforce the provisions of the *Service Contract* Labor Standards statute, make rules and regulations, issue orders, hold hearings, make decisions, and take other appropriate action. The Department of Labor has issued implementing regulations on such matters as-

- (a) *Service contract* labor standards provisions and procedures (29 CFR Part 4, SubpartA);
- (b) *Wage determination* procedures (29 CFR Part 4, subparts A and B);
- (c) Application of the *Service Contract* Labor Standards statute (rulings and interpretations) (29 CFR Part 4, SubpartC);
- (d) Compensation standards (29 CFR Part 4, SubpartD);
- (e) Enforcement (29 CFR Part 4, SubpartE);
- (f) Safe and sanitary working conditions (29 CFR Part 1925);
- (g) Rules of practice for administrative proceedings enforcing *service contract* labor standards (29 CFR Part 6); and
- (h) Practice before the Administrative Review Board (29 CFR Part 8).

## **22.1005 [Reserved]**

## **22.1006 Solicitation provisions and contract clauses.**

- (a)
  - (1) The *contracting officer* shall insert the clause at [52.222-41](#), *Service Contract* Labor Standards, in *solicitations* and contracts (except as provided in paragraph (a)(2) of this section) if the contract is subject to the *Service Contract* Labor Standards statute and is-
    - (i) Over \$2,500; or
    - (ii) For an indefinite dollar amount and the *contracting officer* does not know in advance that the contract amount will be \$2,500 or less.
  - (2) The *contracting officer* shall not insert the clause at [52.222-41](#) (or any of the associated *Service Contract* Labor Standards statute clauses as prescribed in this section for possible use when [52.222-41](#) applies) in the resultant contract if-
    - (i) The *solicitation* includes the provision at-
      - (A) [52.222-48](#), Exemption from Application of the *Service Contract* Labor Standards statute to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Certification;
      - (B) [52.222-52](#), Exemption from Application of the *Service Contract* Labor Standards statute to Contracts for Certain Services-Certification; or
      - (C) Either of the comparable certifications is checked as applicable in the provision at [52.204-8\(c\)\(2\)](#)

or [52.212-3\(k\)](#); and

(ii) The *contracting officer* has made the determination, in accordance with paragraphs (c)(3) or (d)(3) of subsection [22.1003-4](#), that the *Service Contract Labor Standards* statute does not apply to the contract. (In such case, insert the clause at [52.222-51](#), Exemption from Application of the *Service Contract Labor Standards* to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements, or [52.222-53](#), Exemption from Application of the *Service Contract Labor Standards* to Contracts for Certain Services-Requirements, in the contract, in accordance with the prescription at paragraph (e)(2)(ii) or (e)(4)(ii) of this subsection).

(b) The *contracting officer* shall insert the clause at [52.222-42](#), Statement of Equivalent Rates for Federal Hires, in *solicitations* and contracts if the contract amount is expected to be over \$2,500 and the *Service Contract Labor Standards* statute is applicable. (See [22.1016](#).)

(c)

(1) The *contracting officer* shall insert the clause at [52.222-43](#), Fair Labor Standards Act and *Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts)*, or another clause which accomplishes the same purpose, in *solicitations* and contracts if the contract is expected to be a fixed-price, time-and-materials, or labor-hour *service contract* containing the clause at [52.222-41](#), *Service Contract Labor Standards*, and is a multiple year contract or is a contract with *options* to renew which exceeds the *simplified acquisition threshold*. The clause *may* be used in contracts that do not exceed the *simplified acquisition threshold*. The clause at [52.222-43](#), Fair Labor Standards Act and *Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts)*, applies to both contracts subject to area prevailing *wage determinations* and contracts subject to the incumbent *contractor's* collective bargaining agreement in effect during this contract's preceding contract period (see [22.1002-2](#) and [22.1002-3](#)). *Contracting officers* shall ensure that contract prices or contract unit price labor rates are adjusted only to the extent that a *contractor's* increases or decreases in applicable wages and fringe benefits are made to comply with the requirements set forth in the clauses at [52.222-43](#) (subparagraphs(d)(1), (2) and (3)), or [52.222-44](#) (subparagraphs(b)(1) and (2)). (For example, the prior year *wage determination* required a minimum wage rate of \$4.00 per hour. The *contractor* actually paid \$4.10. The new *wage determination* increases the minimum rate to \$4.50. The *contractor* increases the rate actually paid to \$4.75 per hour. The allowable price adjustment is \$.40 per hour.)

(2) The *contracting officer* shall insert the clause at [52.222-44](#), Fair Labor Standards Act and *Service Contract Labor Standards-Price Adjustment*, in *solicitations* and contracts if the contract is expected to be a fixed-price, time-and-materials, or labor-hour *service contract* containing the clause at [52.222-41](#), *Service Contract Labor Standards*, exceeds the *simplified acquisition threshold*, and is not a multiple year contract or is not a contract with *options* to renew. The clause *may* be used in contracts that do not exceed the *simplified acquisition threshold*. The clause at [52.222-44](#), Fair Labor Standards Act and *Service Contract Labor Standards-Price Adjustment*, applies to both contracts subject to area prevailing *wage determinations* and contracts subject to *contractor* collective bargaining agreements (see [22.1002-2](#) and [22.1002-3](#)).

(3) The clauses prescribed in paragraph [22.1006\(c\)\(1\)](#) cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a *wage determination* in connection with (i) exercise of a contract *option* or (ii) extension of a multiple year contract into a new program year. If a clause prescribed in [16.203-4\(d\)](#) is used, it *must* not conflict with, or duplicate payment under, the clauses prescribed in this paragraph [22.1006\(c\)](#).

(d) [Reserved]

(e)

(1) The *contracting officer shall* insert the provision at [52.222-48](#), Exemption from Application of the *Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Certification*, in *solicitations* that-

(i) Include the clause at [52.222-41](#), *Service Contract Labor Standards*; and

(ii) The contract *may* be exempt from the *Service Contract Labor Standards* statute in accordance with [22.1003-4\(c\)](#).

(2) The *contracting officer shall* insert the clause at [52.222-51](#), Exemption from Application of the *Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements*-

(i) In *solicitations* that include the provision at [52.222-48](#), or the comparable provision is checked as applicable in the clause at [52.204-8\(c\)\(2\)\(iii\)](#) or [52.212-3\(k\)\(1\)](#); and

(ii) In resulting contracts in which the *contracting officer* has determined, in accordance with [22.1003-4\(c\)\(3\)](#), that the *Service Contract Labor Standards* statute does not apply.

(3)

(i) Except as provided in paragraph (e)(3)(ii) of this section, the *contracting officer shall* insert the provision at [52.222-52](#), Exemption from Application of the *Service Contract Labor Standards to Contracts for Certain Services--Certification*, in *solicitations* that-

(A) Include the clause at [52.222-41](#), *Service Contract Labor Standards*, and

(B) The contract *may* be exempt from the *Service Contract Labor Standards* statute in accordance with [22.1003-4\(d\)](#).

(ii) When resoliciting in accordance with [22.1003-4\(d\)\(3\)\(iii\)](#), amend the *solicitation* by removing the provision at [52.222-52](#) from the *solicitation*.

(4) The *contracting officer shall* insert the clause at [52.222-53](#), Exemption from Application of the *Service Contract Labor Standards to Contracts for Certain Services-Requirements*-

(i) In *solicitations* that include the provision at [52.222-52](#), or the comparable provision is checked as applicable in [52.204-8\(c\)\(2\)](#) or [52.212-3\(k\)\(2\)](#); and

(ii) In resulting contracts in which the *contracting officer* has determined, in accordance with [22.1003-4\(d\)\(3\)](#), that the *Service Contract Labor Standards* statute does not apply.

(f) The *contracting officer shall* insert the clause at [52.222-49](#), *Service Contract Labor Standards-Place of Performance Unknown*, if using the procedures prescribed in [22.1009-4](#).

## **22.1007 Requirement to obtain wage determinations.**

The *contracting officer* shall obtain *wage determinations* for the following *service contracts*:

- (a) Each new *solicitation* and contract in excess of \$2,500.
- (b) Each *contract modification* which brings the contract above \$2,500 and-
  - (1) Extends the existing contract pursuant to an *option* clause or otherwise; or
  - (2) Changes the scope of the contract whereby labor requirements are affected significantly.
- (c) Each multiple year contract in excess of \$2,500 upon-
  - (1) Annual anniversary date if the contract is subject to annual appropriations; or
  - (2) Biennial anniversary date if the contract is not subject to annual appropriations and its proposed term exceeds 2 years-unless otherwise advised by the *Wage and Hour Division*.

## **22.1008 Procedures for obtaining wage determinations.**

### **22.1008-1 Obtaining wage determinations.**

- (a) *Contracting officers* may obtain most prevailing *wage determinations* using the *Wage Determinations* at *SAM.gov* website. *Contracting officers* may also use the Department of Labor's *e98* electronic process, located on the *Wage Determinations* at *SAM.gov* website, to request a *wage determination* directly from the Department of Labor. If the *Wage Determinations* at *SAM.gov* database does not contain the applicable prevailing *wage determination* for a contract action, the *contracting officer* must use the *e98* process to request a *wage determination* from the Department of Labor.
- (b) In using the *e98* process to obtain prevailing *wage determinations*, *contracting officers* shall provide as complete and accurate information on the *e98* as possible. *Contracting officers* shall ensure that the email address submitted on an *e98* request is accurate.
- (c) The *contracting officer* must anticipate the amount of time required to gather the information necessary to obtain a *wage determination*, including sufficient time, if necessary, to contact the Department of Labor to request *wage determinations* that are not available through use of the *Wage Determinations* at *SAM.gov* .
- (d) Although the *Wage Determinations* at *SAM.gov* website provides assistance to the *contracting* agency to select the correct *wage determination*, the *contracting* agency remains responsible for the *wage determination* selected. If the *contracting* agency has used the *e98* process, the Department of Labor will respond to the *contracting* agency based on the information provided on the *e98*. The *contracting* agency may rely upon the Department of Labor response as the correct *wage determination* for the contract.
- (e) To obtain the applicable *wage determination* for each contract action, the *contracting officer* shall determine the following information concerning the *service employees* expected to be

employed by the *contractor* and any subcontractors in performing the contract:

(1) Determine the classes of *service employees* to be utilized in performance of the contract using the *Wage and Hour Division's Service Contract Act Directory of Occupations* (Directory). The Directory can be found on *Wage Determinations* at *SAM.gov* Library Page, and is for sale by the Superintendent of Documents, U.S. Government Publishing Office.

(2) Determine the locality where the services will be performed (see [22.1009](#)).

(3) Determine whether [41 U.S.C. 6707\(c\)](#) applies (see [22.1008-2](#), [22.1010](#) and [22.1002-2](#)).

(4) Determine the wage rate that would be paid each class if employed by the agency and subject to the wage provisions of [5 U.S.C. 5341](#) and/or 5332 (see [22.1016](#)).

(f) If the *contracting officer* has questions regarding the procedures for obtaining a *wage determination*, or questions regarding the selection of a *wage determination*, the *contracting officer* should request assistance from the *agency labor advisor*.

## **22.1008-2 Successorship with incumbent contractor collective bargaining agreement.**

(a) Early in the *acquisition* cycle, the *contracting officer* shall determine whether [41 U.S.C. 6707\(c\)](#) affects the new *acquisition*. The *contracting officer* shall determine whether there is a predecessor contract covered by the *Service Contract* Labor Standards statute and, if so, whether the incumbent prime *contractor* or its subcontractors and any of their employees have a collective bargaining agreement.

(b) [41 U.S.C. 6707\(c\)](#) provides that a successor *contractor* must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) to *service employees* at least equal to those agreed upon by a predecessor *contractor* under the following conditions:

(1) The services to be furnished under the proposed contract will be substantially the same as services being furnished by an incumbent *contractor* whose contract the proposed contract will succeed.

(2) The services will be performed in the same locality.

(3) The incumbent prime *contractor* or subcontractor is furnishing such services through the use of *service employees* whose wages and fringe benefits are the subject of one or more collective bargaining agreements.

(c) The application of [41 U.S.C. 6707\(c\)](#) is subject to the following limitations:

(1) [41 U.S.C. 6707\(c\)](#) will not apply if the incumbent *contractor* enters into a collective bargaining agreement for the first time and the agreement does not become effective until after the expiration of the incumbent's contract.

(2) If the incumbent *contractor* enters into a new or revised collective bargaining agreement during the period of the incumbent's performance on the current contract, the terms of the new or revised agreement shall not be effective for the purposes of [41 U.S.C. 6707\(c\)](#) under the following conditions:



(i)

(A) In sealed bidding, the *contracting* agency receives notice of the terms of the collective bargaining agreement less than 10 days before bid opening and finds that there is not reasonable time still available to notify bidders (see [22.1012-2\(a\)](#)); or

(B) For contractual actions other than sealed bidding, the *contracting* agency receives notice of the terms of the collective bargaining agreement after award, provided that the start of performance is within 30 days of award (see [22.1012-2\(b\)](#)); and

(ii) The *contracting officer* has given both the incumbent *contractor* and its employees' collective bargaining agent timely written notification of the applicable *acquisition* dates (see [22.1010](#)).

(d)

(1) If [41 U.S.C. 6707\(c\)](#) applies, the *contracting officer* shall obtain a copy of any collective bargaining agreement between an incumbent *contractor* or subcontractor and its employees. Obtaining a copy of an incumbent *contractor's* collective bargaining agreement may involve coordination with the administrative *contracting officer* responsible for administering the predecessor contract. (Paragraph (m) of the clause at [52.222-41](#), *Service Contract Labor Standards*, requires the incumbent prime *contractor* to furnish the *contracting officer* a copy of each collective bargaining agreement.)

(2) If the *contracting officer* has timely received the collective bargaining agreement, the *contracting officer* may use the *Wage Determinations* at *SAM.gov* website to prepare a *wage determination* referencing the agreement and incorporate that *wage determination*, attached to a complete copy of the collective bargaining agreement, into the successor contract action. In using the *Wage Determinations* at *SAM.gov* process, it is not necessary to submit a copy of the collective bargaining agreement to the Department of Labor unless requested to do so.

(3) The *contracting officer* may also use the *e98* process on *Wage Determinations* at *SAM.gov* to request that the Department of Labor prepare the cover *wage determination*. The Department of Labor's response to the *e98* may include a request for the *contracting officer* to submit a complete copy of the collective bargaining agreement. Any questions regarding the applicability of the *Service Contract Labor Standards* statute to a collective bargaining agreement should be directed to the *agency labor advisor*.

(e)

(1) [41 U.S.C. 6707\(c\)](#) will not apply if the Secretary of Labor determines (i) after a hearing, that the wages and fringe benefits in the predecessor *contractor's* collective bargaining agreement are substantially at variance with those which prevail for services of a similar character in the locality, or (ii) that the wages and fringe benefits in the predecessor *contractor's* collective bargaining agreement are not the result of arm's length negotiations (see [22.1013](#) and [22.1021](#)). The Department of Labor (DOL) has concluded that contingent collective bargaining agreement provisions that attempt to limit a *contractor's* obligations by means such as requiring issuance of a *wage determination* by the DOL, requiring inclusion of the *wage determination* in the contract, or requiring the Government to adequately reimburse the *contractor*, generally reflect a lack of arm's length negotiations.

(2) If the *contracting officer's* review (see [22.1013](#)) indicates that monetary provisions of the

collective bargaining agreement *may* be substantially at variance or *may* not have been reached as a result of arm's length bargaining, the *contracting officer shall* immediately contact the *agency labor advisor* to consider if further action is warranted.

(f) If the services are being furnished at more than one location and the collectively bargained wage rates and fringe benefits are different at different locations or do not apply to one or more locations, the *contracting officer shall* identify the locations to which the agreements apply.

(g) If the collective bargaining agreement does not apply to all *service employees* under the contract, the *contracting officer shall* access *Wage Determinations* at *SAM.gov* to obtain the prevailing *wage determination* for those *service employee* classifications that are not covered by the collective bargaining agreement. The *contracting officer shall* separately list in the *solicitation* and contract the *service employee* classifications-

(1) Subject to the collective bargaining agreement; and

(2) Not subject to any collective bargaining agreement.

## **22.1009 Place of performance unknown.**

### **22.1009-1 General.**

If the place of performance is unknown, the *contracting officer may* use the procedures in this section. The *contracting officer should* first attempt to identify the specific places or geographical areas where the services might be performed (see [22.1009-2](#)) and then *may* follow the procedures either in [22.1009-3](#) or in [22.1009-4](#).

### **22.1009-2 Attempt to identify possible places of performance.**

The *contracting officer should* attempt to identify the specific places or geographical areas where the services might be performed. The following *may* indicate possible places of performance:

(a) Locations of previous *contractors* and their competitors.

(b) Databases available via the Internet for lists of prospective *offerors* and *contractors*.

(c) Responses to a presolicitation notice (see [5.204](#)).

### **22.1009-3 All possible places of performance identified.**

(a) If the *contracting officer* can identify all the possible places or areas of performance (even though the actual place of performance will not be known until the successful *offeror* is chosen), the *contracting officer shall* obtain a *wage determination* for each locality where services *may* be performed (see [22.1008](#)).

(b) If the *contracting officer* subsequently learns of any potential *offerors* in previously unidentified places before the closing date for submission of *offers*, the *contracting officer shall*-

(1) Obtain *wage determinations* for the additional places of performance and amend the *solicitation* to include all *wage determinations*. If necessary, the *contracting officer* shall extend the time for submission of final *offers*; and

(2) Follow the procedures in [22.1009-4](#).

#### **22.1009-4 All possible places of performance not identified.**

If the *contracting officer* believes that there *may* be *offerors* interested in performing in unidentified places or areas, the *contracting officer* may use the following procedures:

(a) Include the following information in the synopsis and *solicitation*:

(1) That the place of performance is unknown.

(2) The possible places or areas of performance that the *contracting officer* has already identified.

(3) That the *contracting officer* will obtain *wage determinations* for additional possible places of performance if asked to do so *in writing*.

(4) The time and date by which *offerors* must notify the *contracting officer* of additional places of performance.

(b) Include the information required by paragraphs (a)(2) and (a)(4) of this section in the clause at [52.222-49](#), *Service Contract Labor Standards-Place of Performance Unknown* (see [22.1006\(f\)](#)). The closing date for receipt of *offerors'* requests for *wage determinations* for additional possible places of performance *should* allow reasonable time for potential *offerors* to review the *solicitation* and determine their interest in competing. Generally, 10 to 15 days from the date of issuance of the *solicitation* may be considered a reasonable period of time.

(c) The procedures in [14.304](#) shall apply to late receipt of *offerors'* requests for *wage determinations* for additional places of performance. However, late receipt of an *offeror's* request for a *wage determination* for additional places of performance does not preclude the *offeror's* competing for the proposed *acquisition*.

(d) If the *contracting officer* receives any timely requests for *wage determinations* for additional places of performance the *contracting officer* shall-

(1) Obtain *wage determinations* for the additional places of performance; and

(2) Amend the *solicitation* to include all *wage determinations* and, if necessary, extend the time for submission of final *offers*.

(e) If the successful *offeror* did not make a timely request for a *wage determination* and will perform in a place of performance for which the *contracting officer* therefore did not request a *wage determination*, the *contracting officer* shall-

(1) Award the contract;

(2) Obtain a *wage determination*; and

(3) Incorporate the *wage determination* in the contract, retroactive to the date of contract award and

with no adjustment in contract price, pursuant to the clause at 52.222-49, *Service Contract Labor Standards-Place of Performance Unknown*.

## **22.1010 Notification to interested parties under collective bargaining agreements.**

(a) The *contracting officer* should determine whether the incumbent prime *contractor's* or its subcontractors' *service employees* performing on the current contract are represented by a collective bargaining agent. If there is a collective bargaining agent, the *contracting officer* shall give both the incumbent *contractor* and its employees' collective bargaining agent written notification of-

(1) The forthcoming successor contract and the applicable *acquisition* dates (issuance of *solicitation*, opening of bids, commencement of negotiations, award of contract, or start of performance, as the case *may be*); or

(2) The forthcoming *contract modification* and applicable *acquisition* dates (exercise of *option*, extension of contract, change in scope, or start of performance, as the case *may be*); or

(3) The forthcoming multiple year contract anniversary date (annual anniversary date or biennial date, as the case *may be*).

(b) This written notification *must* be given at least 30 days in advance of the earliest applicable *acquisition* date or the applicable annual or biennial anniversary date in order for the time-of-receipt limitations in paragraphs 22.1012-2(a) and (b) to apply. The *contracting officer* shall retain a copy of the notification in the contract file.

## **22.1011 [Reserved]**

## **22.1012 Applicability of revisions to wage determinations.**

### **22.1012-1 Prevailing wage determinations.**

(a)

(1) The Wage and Hour *Administrator* may issue revisions to prevailing *wage determinations* periodically. The need for inclusion of a revised prevailing *wage determination* in a *solicitation*, contract or *contract modification* (see 22.1007) is determined by the date of receipt of the revised prevailing *wage determination* by the *contracting* agency. (Note the distinction between receipt by the agency and receipt by the *contracting officer* which *may* occur later.)

(i) For purposes of using *Wage Determinations* at *SAM.gov*, the time of receipt by the *contracting* agency *shall* be the first *day* of publication of the revised prevailing *wage determination* on the website.

(ii) For purposes of using the *e98* process, the time of receipt by the *contracting* agency shall be the date the agency receives actual notice of a new or revised prevailing *wage determination* from the Department of Labor as an *e98* response.

(2) In selecting a prevailing *wage determination* from the *Wage Determinations* at SAM.gov website for use in a *solicitation* or other contract action, the *contracting officer* shall monitor the *Wage Determinations* at SAM.gov website to determine whether the applicable *wage determination* has been revised. Revisions published on the *Wage Determinations* at SAM.gov website or otherwise communicated to the *contracting officer* within the timeframes prescribed at [22.1012-1\(b\)](#) and (c) are effective and *must* be included in the resulting contract. Monitoring can be accomplished by use of the *Wage Determinations* at SAM.gov website's "Alert Service".

(b) The following shall apply when *contracting* by sealed bidding: a revised prevailing *wage determination* shall not be effective if it is received by the *contracting* agency less than 10 days before the opening of bids, and the *contracting officer* finds that there is not reasonable time to incorporate the revision in the *solicitation*.

(c) For contractual actions other than sealed bidding, a revised prevailing *wage determination* received by the *contracting* agency after award of a new contract or a modification as specified in [22.1007\(b\)](#) shall not be effective provided that the start of performance is within 30 days of the award or the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award or the specified modification, and if contract performance does not commence within 30 days of the award or the specified modification, any revision received by the *contracting* agency not less than 10 days before commencement of the work shall be effective.

(d) If the *contracting officer* has submitted an *e98* to the Department of Labor requesting a prevailing *wage determination* and has not received a response within 10 days, the *contracting officer* shall contact the *Wage and Hour Division* by telephone to determine when the *wage determination* can be expected. (The telephone number is provided on the *e98* website.)

## **22.1012-2 Wage determinations based on collective bargaining agreements.**

(a) In sealed bidding, a new or changed collective bargaining agreement shall not be effective under [41 U.S.C. 6707\(c\)](#) if the *contracting* agency has received notice of the terms of the new or changed collective bargaining agreement less than 10 days before bid opening and the *contracting officer* determines that there is not reasonable time to incorporate the new or changed terms of the collective bargaining agreement in the *solicitation*.

(b) For contractual actions other than sealed bidding, a new or changed collective bargaining agreement shall not be effective under [41 U.S.C. 6707\(c\)](#) if notice of the terms of the new or changed collective bargaining agreement is received by the *contracting* agency after award of a successor contract or a modification as specified in [22.1007\(b\)](#), provided that the contract start of performance is within 30 days of the award of the contract or of the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award of the contract or of the specified modification, or if contract performance does not commence within 30 days of the award of the contract or of the specified modification, any notice of the terms of a new or changed collective bargaining agreement received by the agency not less than 10 days before commencement of the work shall be effective for purposes of the successor contract under [41 U.S.C. 6707\(c\)](#).

(c) The limitations in paragraphs (a) and (b) of this subsection shall apply only if timely notification

required in [22.1010](#) has been given.

(d) If the *contracting officer* has submitted an *e98* to Department of Labor requesting a *wage determination* based on a collective bargaining agreement and has not received a response from the Department of Labor within 10 days, the *contracting officer shall* contact the *Wage and Hour Division* by telephone to determine when the *wage determination* can be expected. (The telephone number is provided on the *e98* website.) If the Department of Labor is unable to provide the *wage determination* by the latest date needed to maintain the *acquisition* schedule, the *contracting officer shall* incorporate the collective bargaining agreement itself in a *solicitation* or other contract action (e.g., exercise of *option*) and include a *wage determination* referencing that collective bargaining agreement created by use of the *Wage Determinations* at *SAM.gov* website (see [22.1008-1\(d\)\(2\)](#)).

## **22.1013 Review of wage determination.**

(a) *Based on incumbent collective bargaining agreement.* (1) If wages, fringe benefits, or periodic increases provided for in a collective bargaining agreement vary substantially from those prevailing for similar services in the locality, the *contracting officer shall* immediately contact the *agency labor advisor* to consider instituting the procedures in [22.1021](#).

(1) If the *contracting officer* believes that an incumbent or predecessor *contractor's* agreement was not the result of arm's length negotiations, the *contracting officer shall* contact the *agency labor advisor* to determine appropriate action.

(b) *Based on other than incumbent collective bargaining agreement.* Upon receiving a *wage determination* not predicated upon a collective bargaining agreement, the *contracting officer shall* ascertain-

(1) If the *wage determination* does not conform with wages and fringe benefits prevailing for similar services in the locality; or

(2) If the *wage determination* contains significant errors or omissions. If either subparagraph (b)(1) or (b)(2) of this section is evident, the *contracting officer shall* contact the *agency labor advisor* to determine appropriate action.

## **22.1014 Delay over 60 days in bid opening or commencement of work.**

If a *wage determination* was obtained through the *e98* process, and bid opening, or commencement of work under a negotiated contract has been delayed, for whatever reason, more than 60 days from the date indicated on the previously submitted *e98*, the *contracting officer shall* submit a new *e98*. Any revision of a *wage determination* received by the *contracting agency* as a result of that communication *shall* supersede the earlier response as the *wage determination* applicable to the particular *acquisition* subject to the time frames in [22.1012-1\(b\)](#) and (c).



## **22.1015 Discovery of errors by the Department of Labor.**

If the Department of Labor discovers and determines, whether before or after a contract award, that a *contracting officer* made an erroneous determination that the *Service Contract* Labor Standards statute did not apply to a particular *acquisition* or failed to include an appropriate *wage determination* in a covered contract, the *contracting officer*, within 30 days of notification by the Department of Labor, *shall* include in the contract the clause at [52.222-41](#) and any applicable *wage determination* issued by the *Administrator*. If the contract is subject to [41 U.S.C. 6707\(c\)](#), the *Administrator* may require retroactive application of that *wage determination*. The *contracting officer* *shall* equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating a *wage determination* or revision.

## **22.1016 Statement of equivalent rates for Federal hires.**

(a) The statement required under the clause at [52.222-42](#), Statement of Equivalent Rates for Federal Hires, (see [22.1006\(b\)](#)) *shall* set forth those wage rates and fringe benefits that would be paid by the *contracting activity* to the various classes of *service employees* expected to be utilized under the contract if [5 U.S.C.5332](#) (General Schedule-white collar) and/or [5 U.S.C.5341](#) (Wage Board-blue collar) were applicable.

(b) Procedures for computation of these rates are as follows:

(1) Wages paid blue collar employees *shall* be the basic hourly rate for each class. The rate *shall* be Wage Board pay schedule step two for nonsupervisory *service employees* and step three for supervisory *service employees*.

(2) Wages paid white collar employees *shall* be an hourly rate for each class. The rate *shall* be obtained by dividing the general pay schedule step one biweekly rate by 80.

(3) Local civilian personnel offices can assist in determining and providing grade and salary data.

## **22.1017 [Reserved]**

## **22.1018 Notification to contractors and employees.**

The *contracting officer* *shall* take the following steps to ensure that *service employees* are notified of minimum wages and fringe benefits.

(a) As soon as possible after contract award, inform the *contractor* of the labor standards requirements of the contract relating to the *Service Contract* Labor Standards statute and of the *contractor's* responsibilities under these requirements, unless it is clear that the *contractor* is fully informed.

(b) At the time of award, furnish the *contractor* Department of Labor Publication WH-1313, Notice to Employees Working on Government Contracts, for posting at a prominent and accessible place at the worksite before contract performance begins. The publication advises employees of the



compensation (wages and fringe benefits) required to be paid or furnished under the *Service Contract Labor Standards* statute and satisfies the notice requirements in paragraph (g) of the clause at [52.222-41](#), *Service Contract Labor Standards*.

(c) Attach any applicable *wage determination* to Publication WH-1313.

## **22.1019 Additional classes of service employees.**

(a) If the *contracting officer* is aware that contract performance involves classes of *service employees* not included in the *wage determination*, the *contracting officer* shall require the *contractor* to classify the unlisted classes so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between the unlisted classifications and the classifications listed in the determination (see paragraph (c) of the clause at [52.222-41](#), *Service Contract Labor Standards*). The *contractor* shall initiate the conforming procedure before unlisted classes of employees perform contract work. The *contractor* shall submit [Standard Form \(SF\) 1444](#), Request For Authorization of Additional Classification and Rate. The *contracting officer* shall review the proposed classification and rate and promptly submit the completed [SF 1444](#) (which *must* include information regarding the agreement or disagreement of the employees' representative or the employees themselves together with the agency recommendation) and all other pertinent information to the *Wage and Hour Division*. Within 30 days of receipt of the request, the *Wage and Hour Division* will (1) approve, modify, or disapprove the request when the parties are in agreement or (2) render a final determination in the event of disagreement among the parties. If the *Wage and Hour Division* will require more than 30 days to take action, it will notify the *contracting officer* within 30 days of receipt of the request that additional time is necessary.

(b) Some *wage determinations* will list a series of classes within a job classification family, for example, Computer Operators, level I, II, and III, or Electronic Technicians, level I, II, and III, or Clerk Typist, level I and II. Generally, level I is the lowest level. It is the entry level, and establishment of a lower level through conformance is not permissible. Further, trainee classifications *may* not be conformed. Helpers in skilled maintenance trades (for example, electricians, machinists, and automobile mechanics) whose duties constitute, in fact, separate and distinct jobs *may* also be used if listed on the *wage determination*, but *may* not be conformed. Conformance *may* not be used to artificially split or subdivide classifications listed in the *wage determination*. However, conforming procedures *may* be used if the work which an employee performs under the contract is not within the scope of any classification listed on the *wage determination*, regardless of job title. (See 29 CFR 4.152.)

(c) Subminimum rates for apprentices, student learners, and disabled workers are permissible in accordance with paragraph (q) of the clause at [52.222-41](#), *Service Contract Labor Standards*.

## **22.1020 Seniority lists.**

If a contract is performed at a Federal facility where employees *may* be hired/retained by a succeeding *contractor*, the incumbent prime *contractor* is required to furnish a certified list of all *service employees* on the *contractor's* or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment, to the *contracting officer* no later than 10 days before contract completion. (See paragraph (n) of the clause at [52.222-41](#), *Service Contract Labor Standards*.) At the commencement of the succeeding contract, the *contracting officer* shall

provide a copy of the list to the successor *contractor* for determining employee eligibility for vacation or other fringe benefits which are based upon length of service, including service with predecessor *contractors* if such benefit is required by an applicable *wage determination*.

## **22.1021 Request for hearing.**

(a) A *contracting* agency or other interested party *may* request a hearing on an issue presented in 22.1013(a). To obtain a hearing for the *contracting* agency, the *contracting officer shall* submit a written request through appropriate channels (ordinarily the *agency labor advisor*) to—

*Administrator, Wage and Hour Division*

U.S. Department of Labor

Washington, DC 20210

(b) A request for a substantial variance hearing *shall* include sufficient data to show that the rates at issue vary substantially from those prevailing for similar services in the locality. The request *shall* also include-

- (1) The number of the *wage determinations* at issue;
- (2) The name of the *contracting* agency whose contract is involved;
- (3) A brief description of the services to be performed under the contract;
- (4) The status of the *procurement* and any estimated *procurement* dates, such as bid opening, contract award, and commencement date of the contract or its follow-up *option* period;
- (5) A statement of the applicant's case, setting forth in detail the reasons why the applicant believes that a substantial variance exists with respect to some or all of the wages and/or fringe benefits;
- (6) Names and addresses (to the extent known) of interested parties; and
- (7) Any other data required by the *Administrator*.

(c) A request for an arm's length hearing *shall* include-

- (1) A statement of the applicant's case, setting forth in detail the reasons why the applicant believes that the wages and fringe benefits contained in the collective bargaining agreement were not reached as a result of arm's length negotiations;
- (2) A statement regarding the status of the *procurement* and any estimated *procurement* dates, such as bid opening, contract award, and commencement date of the contract or its follow-up *option* period; and
- (3) Names and addresses (to the extent known) of interested parties.

(d) Unless the *Administrator* determines that extraordinary circumstances exist, the *Administrator* will not consider requests for a hearing unless received as follows:

- (1) For sealed bid contracts, more than 10 days before the award of the contract; or

(2) For negotiated contracts and for contracts with provisions exceeding the initial term by *option*, before the commencement date of the contract or the follow-up *option* period.

## **22.1022 Withholding of contract payments.**

Any violations of the clause at 52.222-41, *Service Contract Labor Standards*, as amended, renders the responsible *contractor* liable for the amount of any deductions, rebates, refunds, or underpayments (which includes nonpayment) of compensation due employees performing the contract. The *contracting officer* may withhold-or, upon written request of the Department of Labor from a level no lower than that of Deputy Regional Administrator, Wage and Hour Division, Department of Labor, shall withhold-the amount needed to pay such underpaid employees from accrued payments due the *contractor* on the contract, or on any other prime contract (whether subject to the *Service Contract Labor Standards* statute or not) with the *contractor*. The agency shall place the amount withheld in a deposit fund. Such withheld funds shall be transferred to the Department of Labor for disbursement to the underpaid employees on order of the Secretary (or authorized representatives), and Administrative Law Judge, or the Administrative Review Board. In addition, the Department of Labor has given blanket approval to forward withheld funds pending completion of an investigation or other administrative proceeding when disposition of withheld funds remains the final action necessary to close out a contract.

## **22.1023 Termination for default.**

As provided by the *Service Contract Labor Standards* statute, any *contractor* failure to comply with the requirements of the *contract clauses* related to the *Service Contract Labor Standards* statute may be grounds for *termination for default* (see paragraph (k) of the clause at 52.222-41, *Service Contract Labor Standards*).

## **22.1024 Cooperation with the Department of Labor.**

The *contracting officer* shall cooperate with Department of Labor representatives in the examination of records, interviews with *service employees*, and all other aspects of investigations undertaken by the Department. When asked, agencies shall furnish the Wage and Hour Administrator or a designee, any available information on *contractors*, subcontractors, their contracts, and the nature of the contract services. The *contracting officer* shall promptly refer, in writing to the appropriate regional office of the Department, apparent violations and complaints received. Employee complaints shall not be disclosed to the employer.

## **22.1025 Ineligibility of violators.**

Persons or firms found to be in violation of the *Service Contract Labor Standards* statute will have an active exclusion record contained in the *System for Award Management* (see 9.404). No Government contract may be awarded to any violator so listed because of a violation of the *Service Contract Labor Standards* statute, or to any firm, corporation, partnership, or association in which

the violator has a substantial interest, without the approval of the Secretary of Labor. This prohibition against award to an *ineligible contractor* applies to both prime and subcontracts.

## **22.1026 Disputes concerning labor standards.**

Disputes concerning labor standards requirements of the contract are handled under paragraph (t) of the *contract clause* at [52.222-41](#), *Service Contract Labor Standards*, and not under the clause at [52.233-1](#), *Disputes*.