

SCA

CONFORMANCE PROCESS

CONTRACT CLAUSE -- 29 C.F.R. § 4.6(b)(2)
See also FAR 48 C.F.R. § 52.222-41(b)(2)

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4.6 Labor standards clauses for Federal service contracts exceeding \$2,500.

The clauses set forth in the following paragraphs shall be included in full by the contracting agency in every contract

. . . .

[(b)](2)(i) If there is . . . [an SCA] wage determination attached to this contract, the contracting officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. . . .

(ii) Such conforming procedure shall be initiated by the contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved, or where there is no authorized representative, the employees themselves, shall be submitted by the contractor to the contracting officer no later than 30 days after such unlisted class of employees performs any contract work. The contracting officer shall review the proposed action and promptly submit a report of the action, together with the agency's recommendation and all pertinent information including the position of the contractor and the employees, to Wage and Hour Division, . . . the U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the contracting officer who shall promptly notify the contractor of the action taken. Each affected employee shall be furnished by the contractor with a written copy of the determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option or extension of an existing contract, or in any other case where a contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (*i.e.* adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the contractor shall advise the contracting officer of the action taken but the other procedures in paragraph (b)(2)(ii) of this section need not be followed.

SCA CONFORMANCE PROCEDURES

Introduction

- ◇ The SCA conformance process is a method by which a contractor may propose job titles and wage rates to legally employ workers engaged in work on a contract in occupations that are not listed in the applicable SCA wage determination.
- ◇◇ When an applicable contract wage determination does not list an occupation in which covered workers will be or are employed, the conformance process allows contractors to conform the unlisted occupation at a wage rate that is reasonable in relationship to the wage rates of listed occupations in the applicable wage determination that have comparable skills and duties.
- ◇◇ It should be emphasized that “the conformance process of establishing wage rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula.” 29 C.F.R. § 4.6(b)(2)(iv)(A). The fringe benefits for such conformed occupations will be those already contained in the applicable wage determinations.
- ◇◇ *See* 29 C.F.R. § 4.6(b)(2) and 4.152(b) and, in the FAR, 48 C.F.R. §§ 22.1019 and 52.222-41(b)(2).

Contractor initiates the conformance action

- ◇ The contractor must forward the conformance request to the contracting agency no later than 30 days after employment of workers has begun in the occupation to be conformed.
- ◇ For contractor bids or offers to approximate actual costs, contractors may wish to develop the conformance proposals for their own use prior to responding to requests for proposals or invitations for bids. Such estimates may be submitted to the contracting officer only, not to DOL.
- ◇ Standard Form (SF) 1444 “Request for Authorization of Additional Classification and Rate” –
 - ◇◇ Although DOL does not require use of the SF-1444, contracting officers may request that contractors use the SF-1444 for conformances.
 - ◇◇ Instructions on how to complete the form are pre-printed on the form.

- ◇◇ The SF-1444 is in the FAR at 48 C.F.R. § 53.301-1444, and on the Government Services Administration (GSA) website. In addition, there is a link to the form in the WDOL “Library” (<http://www.wdol.gov/library.aspx>). Please note that the SF-1444 is not an SCA required form and DOL does not keep SF-1444 forms in stock for distribution.

- ◇ Upon receipt of a conformance request after award of the contract, the contracting officer will review the conformance proposal and make a recommendation of approving, modifying or disapproving the proposed action, and will submit the proposal to the WHD’s Branch of Service Contract Wage Determinations for final approval at scaconformance@dol.gov.

- ◇ The WHD reviews the conformance request package and approves, disapproves, or establishes the rate for the subject occupation. The Branch of Service Contract Wage Determinations should respond within 30 days of receipt.

- ◇ If the contractor does not initiate a conformance action for any unlisted occupation performing contract work and an investigation by the WHD discloses this fact, the WHD will conform the class as warranted. In these situations, the information obtained through the investigation is used as the basis for determining what the minimum wage rates and fringe benefits should be for each occupational class that must be conformed. The “Investigation Process under SCA/CWHSSA/FLSA” chapter of this resource book provides additional information.

Conformance principles

- ◇ An occupation may be conformed only if the work covered by that occupation is not covered by another occupation included in the governing wage determination.

- ◇ Conformed wage rates must bear a reasonable relationship to those listed in the applicable wage determination, maintaining pay relationships between job classifications based on the skills required and the duties performed.

- ◇ A conformance may not be used to artificially split or subdivide classifications listed in wage determinations.

- ◇ Helpers, trainees, and occupations below the lowest level of established job classification families may not be conformed. Note, however, that helpers in skilled maintenance trades, whose **duties are separate and distinct**, may be used if listed on the applicable wage determination.

- ◇◇ Apprentices are permitted to work at less than predetermined rates when registered with a State apprenticeship agency that is recognized by DOL, or if no such recognized agency exists in a State, under a program registered with DOL's Employment Training Administration's Office of Apprenticeship.
- ◇ Leaders are conformed when their duties are significant enough to distinguish them from the related journey occupation listed on the applicable wage determination to create a new occupation. Note that leaders typically receive higher compensation than the related journey occupation.
- ◇ Agreement or disagreement of the employees involved, or their authorized representative, should be obtained in good faith and included in the conformance proposal.
- ◇ Adherence to these principles helps to ensure that an appropriate conformance action is developed. While applying these principles, contractors may use different techniques to develop proposed rates, in each case based on the skills and responsibilities of the proposed classification compared to those of the classifications listed in the applicable wage determination. Reliance may be placed on the information below to develop a conformable wage rate:
 - ◇◇ Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other factors;
 - ◇◇ The way different jobs are weighted under Federal pay systems (Federal Wage Board Pay System and the General Schedule); and
 - ◇◇ Other wage determinations issued in the same locality.

Developing and processing an SCA conformance request

- ◇ While the SCA conformance principles set forth above provide guidance that follows regulatory intent, participants often require assistance in determining how these principles may be translated into specific action. The following information describes one way that this may occur:
 - ◇◇ When a contractor receives a solicitation or proposed contract modification, the contractor determines if the work to be performed by employees is covered by any of the classifications listed on the wage determination. (The work covered by most occupational titles listed in SCA wage determinations may be identified in the *SCA Directory of Occupations*, available online at a link on the WDOL website (<http://www.wdol.gov/>) "Library.")

- ◇◇ If all the work to be performed on the contract is included in job descriptions for the occupations listed in the applicable wage determination, a conformance will not be needed.
- ◇◇ If all the work to be performed on the contract is not included in job descriptions for the occupations listed in the applicable wage determination, the contractor needs to identify the work not included to be conformed.
- ◇◇ Once the work to be conformed is identified, the contractor needs to develop a job title and description of work for the occupation to be conformed.
- ◇◇ The contractor determines the wage rates for the proposed occupations. The proposed wage rate should bear a reasonable relationship to the wage rates listed in the applicable wage determination for occupations with similar skills and work duties.
 - ◇◇◇ The *SCA Directory of Occupations* includes information that the contractor may use to reflect the degree of complexity or difficulty of the skills required and duties performed by workers in the occupation to be conformed. In particular, skills and work duties shown for Federal Grade Equivalency (FGE) levels for listed occupations can be compared with similar skills and work duties to establish a conformed wage rate based on a reasonable relationship with the wage rates listed in the applicable wage determination for comparable occupations.
 - ◇◇◇ By using this information, the contractor will ensure that the conformed occupation and wage rate are in keeping with the salary and wage structure of the applicable wage determination.
 - ◇◇◇ The contractor may request assistance from the contracting officer with regard to obtaining an FGE for the proposed occupation.
 - ◇◇◇ The *SCA Directory of Occupations* and its use is discussed in detail in the “SCA Wage Determinations” chapter of this resource book.
- ◇ The contractor must present the proposed conformance action to the affected employees or their representative. Information regarding their agreement or disagreement must be included in the request.

- ◇ Approved wage rates and fringe benefits must be paid to all employees in the conformed occupation retroactive to the date such workers started work on the SCA-covered contract.

Indexing procedures for previously conformed wage rates

- ◇ When a contract, whether an option or extension period or a new contract, succeeds a contract under which a class was previously conformed, the contractor can use the indexing procedure to determine a new wage rate for the conformed class.
 - ◇◇ To index, the contractor calculates the overall percent change between the previously issued rates listed on the applicable wage determination for those occupations utilized on the contract and the rates for those occupations issued in the new wage determination for the new contract period. The resulting percentage increase (if any) is then applied to the wage rate of the conformed class. The new conformance rate need not be sent to the WHD, but must be provided to the contracting officer. Alternatively, the contractor may, instead of an indexing action, request a new conformance for the unlisted occupation to the new wage determination. 29 C.F.R. § 4.6(iv)(B), reiterated in the FAR at 48 C.F.R. § 52.222-41(b)(2)(iv)(B).