




PREVAILING WAGE SEMINARS



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR



SCA Prevailing Wage Determinations

SCA Coverage Elements

(29 C.F.R. Section 4.107, 4.108 & 4.110)

Contracts must contain the following elements:

- be entered into with the Federal Government or District of Columbia
- consist of work principally for services
- be performed in the United States or its Territories
- be performed by service employees
- meet or exceed \$2,500 to furnish services

Basic Statutory Requirement

- Sections 2(a)(1) and (2) of SCA provides that covered contracts in excess of \$2,500 contain a wage determination:
 - 2(a)(1) – Wages.
 - 2(a)(2) – Fringe Benefits.

Two Categories of Wage Determinations

- Prevailing

 - Area-wide /Standard WDs

 - Non- Standard WDs

 - Union Dominance WDs

- 4(c) Collective Bargaining Agreements

Based on the previous contractor's collective bargaining agreement (CBA).

Area-wide Wage Determination

(Example)

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REGISTER OF WAGE DETERMINATIONS UNDER
THE SERVICE CONTRACT ACT
By direction of the Secretary of Labor



Daniel W. Simms
Director

Division of
Wage Determinations

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WAGE AND HOUR DIVISION
WASHINGTON, D.C. 20210

Wage Determination No.: 2015-4281
Revision No.: 14
Date of Last Revision: 07/16/2019

← The WD No# starts with 2015

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 for calendar year 2019 applies to all contracts subject to the Service Contract Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2019. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

States: District of Columbia, Maryland, Virginia

Area: District of Columbia Statewide
Maryland Counties of Calvert, Charles, Prince George's
Virginia Counties of Alexandria, Arlington, Fairfax, Falls Church, Fauquier, Loudoun, Manassas, Manassas Park, Prince William, Stafford

← The geographically localities are close by in proximity

** Fringe Benefits Required Follow the Occupational Listing **

CODE	OCCUPATION TITLE	FOOTNOTE	RATE
01000	Administrative Support And Clerical Occupations		
01011	Accounting Clerk I		18.95
01012	Accounting Clerk II		21.28
01013	Accounting Clerk III		23.81
01020	Administrative Assistant		34.06
01035	Court Reporter		24.02
01041	Customer Service Representative I		14.94
01042	Customer Service Representative II		16.81
01043	Customer Service Representative III		18.33
01051	Data Entry Operator I		16.64
01052	Data Entry Operator II		18.16
01060	Dispatcher, Motor Vehicle		19.84
01070	Document Preparation Clerk		17.75
01090	Duplicating Machine Operator		17.75
01111	General Clerk I		14.88
01112	General Clerk II		16.24
01113	General Clerk III		18.74
01120	Housing Referral Assistant		25.29
01141	Messenger Courier		16.71
01191	Order Clerk I		15.29
01192	Order Clerk II		16.68
01261	Personnel Assistant (Employment) I		18.87
01262	Personnel Assistant (Employment) II		21.11
01263	Personnel Assistant (Employment) III		23.52
01270	Production Control Clerk		25.59

← There are over 300 occupations listed on the WD

Area-Wide Wage Determination

(Cont'd)

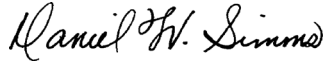
- Sequence numbers are between 2015-4000 or 2015-5000.
- approximately 400 occupations and wage rates are listed and grouped by several broad occupational categories.
- OES cross-industry survey data provided by BLS is the primary data source

Non-Standard Wage Determination

(Example)

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WASHINGTON, D.C. 20210

Wage Determination No.: 2018-0252
Revision No.: 3
Date of Last Revision: 07/16/2019

← **The WD No. does not have to start with any particular sequence number**

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 for calendar year 2019 applies to all contracts subject to the Service Contract Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2019. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

States: Indiana, Kansas, Kentucky, Louisiana, New York, North Carolina, Texas, Washington

Area: Indiana County of Bartholomew
Kansas County of Geary
Kentucky County of Bullitt
Louisiana Parish of Vernon
North Carolina County of Cumberland
New York County of Jefferson
Texas Counties of Bell, El Paso
Washington County of Pierce

← **The localities can be contract specific, regional or nationwide**

** Fringe Benefits Required Follow the Occupational Listing **

CODE	OCCUPATION TITLE	FOOTNOTE	RATE
	Certified Athletic Trainer:		
	Bartholomew County, IN		24.63
	Counties: Bullitt, KY, Vernon, LA, Jefferson, NY		24.44
	Bell, El Paso, TX		
	Cumberland County, NC		25.32
	Geary County, KS		24.60
	Pierce County, WA		26.51
	Registered Dietitian:		
	Bartholomew County, IN		40.14
	Counties: Bullitt, KY, Vernon, LA, Jefferson, NY		39.85
	Bell, El Paso, TX		
	Cumberland County, NC		41.28
	Geary County, KS		40.10
	Pierce County, WA		43.21

← **The occupations are contract specific**

Non-Standard Prevailing WDs

- Usually based on different data sources.
- Data sources may be industry specific.
- Often cover broader geographic areas.
- May or may not cover occupations listed in the SCA Directory of Occupations.

Examples of Non-Standard WDs

- Union Dominance
- Food & Lodging
- Halfway House
- Nursing Home
- Moving & Storage
- Fast Food
- Forestry
- Forest Firefighting
- Elevator Maintenance
- Maritime
- Mail hauling
- Debt Collection
- Barber & Beautician
- Diving services

What does a SCA Prevailing WD contain?

- WD Number and Revision
- Executive Order Language
- Localities
- Occupational Titles
- Wage rates
- Health & Welfare/ Fringe Benefits (H&W)

Developing SCA Prevailing Wage Rates

- Wage rates are based on survey data.
- Rates must reflect a consistent wage and salary structure.
- The measure of central tendency is median (midpoint in distribution)

Additional Practices for developing rates

(29 C.F.R. §§ 4.51(c)-(d))

- Regulations also authorize “slotting” to determine rate for occupation:
 - Insufficient survey data.
 - Based on similarity of duties and skills of occupations with sufficient data.
- Due Consideration.

Survey Data Source

- Occupational Employment Statistics (OES) is the primary data source
- Surveys every metropolitan and non-metropolitan area in US.
- Samples 400,000 establishments annually for a three-year total of 1.2 million establishments.

SCA Practices for developing WDs

- Surveys produce estimates with resulting anomalies in the data.
- Wage increases are capped at 10% annually.
- SCA wage rates are retained when the survey data is below the current SCA WD rate.

Basis for Prevailing Wage Rates

- The best available data – usually Bureau of Labor Statistics (BLS) OES data.
- Wage rates may also be based on:
 - Non-appropriated Fund (NAF) surveys;
 - Wage Board surveys and rates; or
 - GS locality pay schedules.

What is included in the Fringe Benefit Package?

- Health & Welfare (H&W) rates
- Vacation pay
- Holiday pay

What is Health & Welfare?

- H&W rate is the total:
 - Of all benefits not legally required;
 - Except vacation & holiday.
- H&W rate - two different methods of compliance:
 - “Fixed cost” per employee; or
 - “Average cost” (Discussed in Compliance Principles session).

H&W Fringe Benefits

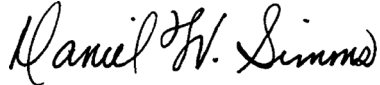
(on most prevailing SCA WDs)

- Health & Welfare (H&W) Benefits:
 - 1996 Rulemaking -- Variance to permit nationwide benefits.
 - Typically updated in June.
 - Based on:
 - BLS Employer Costs for Employee Compensation.
 - Use data for all workers in Private Industry.

4c Collective Bargaining Agreement (CBA)

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Wage Determination No.: 2017-0871
Revision No.: 3
Date of Last Revision: 12/26/2018

← **The WD No. does not have to start with any particular sequence number**

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.60 for calendar year 2019 applies to all contracts subject to the Service Contract Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.60 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2019. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.

← **The localities are directly determined by the CBA provided by the contracting agency**

State: District of Columbia

Area: District of Columbia Statewide

Employed on Department of Treasury contract for facilities maintenance services:

Collective Bargaining Agreement between [REDACTED] and The International Union of Operating Engineers Local 99-99A, AFL-CIO, effective October 1, 2015 through September 30, 2020.

← **Instead of occupations, the contracting company, contracting agency and Union information is listed.**

In accordance with Sections 2(a) and 4(c) of the Service Contract Act, as amended, employees employed by the contractor(s) in performing services covered by the Collective Bargaining Agreement(s) are to be paid wage rates and fringe benefits set forth in the current collective bargaining agreement and modified extension agreement(s).

Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors, applies to all contracts subject to the Service Contract Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is the victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at www.dol.gov/whd/govcontracts.



Obtaining an SCA Wage Determination

Obtaining WDs Time frames

(29 C.F.R. §§ 4.143 – 4.145)

- Agencies must obtain a new WD at least once every two years.
- A new WD may be required each year if:
 - The contract is subject to annual appropriations; or
 - An annual contract option being exercised.
- Most contract extensions, even if shorter than one year, require a new WD.

Obtaining an SCA WD

(29 C.F.R. § 4.4)

www.beta.sam.gov is the new DOL online presence to obtain WDs.

- Agencies can download a WD directly from the website
- Submit an e98 request via the web site.



Agency Obligation Quiz

True or False

Federal agencies must obtain a SCA WD or request a WD (by e98) for any contract in excess of \$2,500.

Answer

True

Section 10 of the SCA requires the Department of Labor (DOL) to issue a wage determination for every service contract exceeding \$2,500 and employing more than five service employees.

True or False

WHD will issue a SCA WD for any contract that may involve fewer than five service employees.

Answer

True

There is a common misconception among contracting officers that they need not obtain and include a WD into a covered service contract if there will be five or fewer service employees performing on the contract. This has never been the case. Only DOL's WHD has the option to not issue a WD for a contract with five or fewer service employees.


Question

What wage rate should a contacting Agency pay employees when:

- 1) there is not a WD required for contracts with fewer than five service employees
- 2) WHD has elected not to issue a WD

Answer

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 206(a)(1) of the Fair Labor Standards Act (FLSA). If the contract involves more than five service employees, the contract must contain a WD.



SCA
Section 4(c)
Wage Determinations

Section 4(c) WDS Incumbent CBA

- Part of 1972 Amendments to SCA.
- Statutory requirement.
- Does not depend on issuance of a WD.
 - Short-form WD should be issued.
 - Based on incumbent CBA.
 - Includes accrued, as well as prospective, wages and fringe benefits.
- A contractor may be its own successor.

Application

- The CBA must be applicable to work performed on the predecessor contract in order to have application to the successor contract.
- The successor contract must be for substantially the same services being provided in the same contract locations.

Provisions

- Successor contractor must pay CBA rates:
 - whether or not predecessor employees are hired;
 - whether or not signatory to the CBA.
- Obligations of Section 4(c) are self-executing.
- Interpretation of CBA is based on the intent of the parties signatory to CBA.

Limitations of Section 4(c)

- Section 4(c) does not extend to other CBA provisions such as:
 - Seniority;
 - Grievance procedures;
 - Work rules; or
 - Overtime.

Limitation on Self-Executing Application of 4(c)

- Applies if the contracting officer (CO) provides the contractor and union with written notice of key procurement dates:
 - IFB – CBA must be received by CO not less than 10 days before bid opening.
 - RFP (Request for Proposal) – CBA must be received before award if start is within 30 days; **or**
 - RFP – Not less than 10 days before start if award is beyond 30 days.

Exception to the Application of Section 4(c) Requirement

- The successor contractor is statutorily obligated to pay the CBA rates until such time as the CBA is determined to be:
 - “Substantially at variance” with locally prevailing rates (29 C.F.R. § 4.10); or
 - Not reached as a result of “arm’s-length” negotiations (29 C.F.R. § 4.11).

Contract Reconfigurations (29 CFR 4.163 (g))

- Section 4(c) provisions will follow identifiable contract work on consolidated or reconfigured contracts in the same locality
- If more than one predecessor performing the same functions with substantially the same job classifications, the predecessor contract covering the greater percentage of work is deemed to be the predecessor contract for Section 4(c) purposes

Reconfigured Contracts - Award to Contract with Greater Portion of Work in Same Functions

- ABC Co.
 - ✓ Contract 1 – Cleaning
 - ✓ Class – Janitors
 - ✓ Number of Workers = 15
 - ✓ Value of Contract = \$500,000
 - ✓ WD – Prevailing
- XYZ Co.
 - ✓ Contract 2 – Cleaning
 - ✓ Class – Janitors
 - ✓ Number of Workers = 20
 - ✓ Value of Contract = \$750,000
 - ✓ WD – § 4(c) CBA with JWC Union

Interruption of Contract Services (29 CFR 4.163(h))

- Section 4(c) is not negated because the contracting authority may change and the successor contract is awarded by a different contracting agency
- “Bridge” or short-term interim contracts due to bid protest, default by the predecessor contractor, temporary closing of facility, etc., are not predecessor contracts for Section 4(c) purposes as successorship provisions of Section 4(c) apply to full-term successor contracts

Example of 4(c) application

FY'15-----

ABC Co.

FY'16-----

XYZ Co.

FY'17-----

XYZ Co.

If ABC Co. performed under a CBA during the FY'15 contract, Section 4(c) requirements would apply to the successor FY'16 contract. If XYZ Co. negotiates a CBA during the FY'16 contract, then a Section 4(c) will apply to the succeeding FY'17 contract

Example II of 4(c) Application

II. FY'15-----FY'16-----CY'16-----CY'17


ABC Co. DOD XYZ Co. XYZ Co

FY'15 - ABC Co. performed under a CBA

FY'16 - DOD temporarily suspends contract for renovations. (Short-term interim contract)

CY'16 - DOD awards full-term contract to XYZ Co. Section 4(c) WD applies as ABC Co. is the predecessor contractor as it is a full-term contracts

CY-17 - If XYZ fails to negotiate a CBA during CY-16, a prevailing WD would apply

- 
- Administrative Hearings
 - Regarding Application of Section 4(c)
 - “Substantial Variance” & “Arm’s-Length” Negotiations

Introduction to Section 4(c) Administrative Hearings

- There are two types of hearing appeals under the SCA concerning section 4(c) wage determinations:
 - An appeal based on “substantial variance” issues; or
 - An appeal based on issues concerning “arm’s-length negotiations.”

Introduction to “Section 4(c)” Administrative Hearings

- Whenever a section 4(c) wage determination is issued:
 - The successor contractor is required to pay the wage rates and fringe benefits contained in the predecessor contractor’s collective bargaining agreement (CBA).
 - These rates are to be paid unless there is found to be a “substantial variance” between the collectively bargained rates and those prevailing in the locality, and/or the lack of “arm’s-length negotiations” in arriving at the collectively bargained rates.
- *See* 29 C.F.R. §§ 4.10 – 4.11, AAM No. 166 and AAM No. 159.

“Substantial Variance” Hearings

29 C.F.R. § 4.10

- A finding that a 4(c) “substantial variance” exists, at a hearing before an Administrative Law Judge (ALJ), requires that such wage rates and/or fringe benefits in the CBA are found to vary substantially from those that would otherwise prevail for services of a similar character in the locality.

“Substantial Variance”

- The SCA does not define the term “substantial variance.”
 - Plain meaning of the term requires that a considerable disparity in rates exist before the successorship obligation may be avoided.
 - No discrete comparison rate is conclusive.
 - Collectively bargained rates often can be expected to exceed service industry “prevailing rates,” and where some variance should be the norm, a finding of “substantial variance” would require a collectively bargained rate clearly to fall out of line when compared to a comprehensive mix of rates.

Substantial Variance” Hearings (cont’d)

- A request for a hearing must contain information and analysis concerning the differences between the collectively bargained rates issued and the rates contained in:
 - (a) Corresponding federal wage board rates and surveys. While it is not necessary that the challenged rate be higher than the corresponding federal rate, this is an important factor.
 - (b) Relevant Bureau of Labor Statistics survey data and the comparable SCA area wage determination.
 - (c) Other relevant wage data. For example, rates paid in local hospitals would be appropriate for comparison on contracts for hospital aseptic services, while the rates paid in local schools could be of value in comparison for janitorial or food service workers.
 - (d) Other collectively bargained wages and benefits.

Substantial Variance” Hearings (cont’d)

- A request for a hearing is expected to address all relevant issues.
 - However, it is recognized that a petitioner may not be able to submit complete data at the time the hearing request is made.
 - Where efforts to obtain supporting evidence are in progress, information must be provided concerning the approximate time necessary to complete the gathering of additional data.
 - Merely providing a statement that data are not available is not sufficient. The request must adequately demonstrate the effort made to obtain or develop such information.

Substantial Variance” Hearings (cont’d)

- The WHD Administrator can grant or deny the “substantial variance hearing” request. A request is granted only if the review results in a determination that a “substantial variance” may exist. The WHD must respond to the request within 30 days of receipt.
- If a “substantial variance” is found to exist, a new wage determination must be issued which reflects prevailing rates for the locality rather than those found in the predecessor contractor’s CBA.
- The collectively bargained rates in the 4(c) wage determination apply until a final decision from the ALJ or ARB.

“Arm’s-Length Negotiations”

29 C.F.R. § 4.11 and AAM No. 159

- To have effect under section 4(c), the wages and fringe benefits provided in the predecessor’s CBA must be reached “as a result of arm’s-length negotiations.”
- This precludes arrangements by parties to a CBA who either separately or together, act with an intent to take advantage of the wage determination process.
 - In short, it addresses the “Sweetheart Agreement,” between contractor and union, which includes making a CBA contingent upon the issuance of a supporting wage determination requiring reimbursement of the contractor by the funding agency.

SCA Determinations Concerning “Arm’s-Length Negotiations”

- The determination as to whether the CBA has application for section 4(c) purposes must be made pursuant to the SCA and its implementing regulations by the WHD, not by the contracting agency.
- As a result of a section 4(c) “arm’s-length” hearing, investigation or otherwise pursuant to the SCA, if it is found that the CBA itself or any of the wage rates or fringe benefits contained therein were not established through “arm’s-length negotiations,” the CBA wage rates and fringe benefits cannot be issued for wage determination purposes.
- If a lack of “arm’s-length negotiations” is found to exist, a new wage determination must be issued that reflects the prevailing rates for the locality rather than those found in the predecessor contractor’s CBA.


Two-step Process to Address “Arm’s-Length Negotiations” Issues

- For “arm’s-length negotiations” issues a two-step process may be needed.
 - The WHD Administrator must first issue findings before a hearing can be initiated.
 - Such findings may result in the Administrator’s referral of the case to an ALJ or ARB hearing.
 - If the Administrator’s determination does not include referral of the case for a hearing, an interested party may then request a hearing.


“Section 4(c)” Administrative Hearings Request Procedures & Time Frames

“Substantial Variance” Hearing and “Arm’s-Length” Determination Requests


- Either request can be submitted by any affected interested party:
 - including, but not limited to, contracting agencies, incumbent contractors, prospective contractors, contractor and employer associations, employees or their representatives, or other interested government agencies.
- The interested party submits a written request for the “substantial variance” hearing or “arm’s-length” determination to the WHD Administrator.
- The request must contain information as specified in the regulations at 29 C.F.R. § 4.10(b)(1)(i) for “substantial variance” proceedings, and at 29 C.F.R. § 4.11(b)(1) for “arm’s-length” determinations, including the following information: (see next slides)

- 
- The number of all wage determinations at issue, name of the contracting agency involved, and a brief description of the services to be performed under the contract (“substantial variance” request only).
 - A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contract award, or commencement date of the contract or its follow-up option period.
 - That the applicable CBA wage rates and fringe benefits contained therein were not reached as a result of “arm’s-length negotiations,” or that the CBA rates substantially vary from those prevailing in the locality.

(Continues next slide)

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- (Note: Supportive evidence such as data concerning wages and/or fringe benefits prevailing in the locality or information concerning “arm’s-length negotiations” should be included. If the only information submitted concerning a “substantial variance” of fringe benefits is an SCA wage determination, it is insufficient, and the party requesting the hearing will be so advised.)
 - Names and addresses (to the extent known) of any interested parties.

(Continues next slide)

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- For either type of request, information must be submitted as follows (according to 29 C.F.R. § 4.10(b)(3) for “substantial variance” hearing requests; and 29 C.F.R. § 4.11(b)(2) for “arm’s-length” determinations):
 - Prior to 10 days before contract award of an advertised contract; or
 - Prior to the contract or option period start date, if a negotiated contract, or existing contract with an option extension period.

“Section 4(c)” Administrative Hearings Request Procedures & Time Frames Administrator’s “Arm’s-Length” Ruling

- The WHD Administrator, on his or her own motion or after receipt of a request for a determination, may make a finding on the issue of arm’s-length negotiations.
- For “arm’s-length” determination requests, the WHD Administrator issues findings as to whether the wages and fringe benefits at issue were reached as a result of “arm’s-length negotiations” or that such negotiations did not take place, or a finding that there is insufficient evidence to make a determination, and the Administrator may refer the case to an ALJ hearing.

“Section 4(c)” Administrative Hearings
Request Procedures & Time Frames
Administrator’s “Arm’s-Length” Ruling (cont’d)

- If the Administrator determines that there may not have been arm’s-length negotiations, but finds that there is insufficient evidence to render a final decision, the Administrator may refer the case to an ALJ hearing.
- The regulations do not state a required response time frame for the Administrator’s decision.

“Section 4(c)” Administrative Hearings Request Procedures & Time Frames “Arm’s-Length” Hearing Requests

- For those cases not referred by the WHD Administrator for a hearing before an ALJ, any interested party may subsequently request a hearing, as follows:
 - Submit a written request for a hearing to the Administrator within 20 days of the Administrator’s ruling.
 - Include in the request a detailed statement of the following:
 - Reasons why the Administrator’s finding is incorrect.
 - Facts alleged to be disputed.

“Section 4(c)” Administrative Hearings Request Procedures & Time Frames “Arm’s-Length” Hearing Requests

- If no hearing is requested within the time limit, the Administrator’s ruling stands.
- If an arm’s-length hearing is requested, the Administrator refers the request:
 - If the Administrator finds facts to be in dispute, to the Chief ALJ for designation of an ALJ to conduct a hearing; or
 - To the ARB if the Administrator determines that no material facts are in dispute.

“Section 4(c)” Administrative Hearings Request Procedures & Time Frames ALJ Hearing Granted

- Once a hearing is granted by the Administrator, an Order of Reference with supporting documentation attached is submitted by the Administrator to the Chief ALJ and served on all interested parties. Hearings are conducted by a designated ALJ in accordance with procedures outlined in 29 C.F.R. Part 6.
- Within 20 days of the Order of Reference mailing date as indicated by the Certificate of Service, interested parties wishing to participate in the hearing must submit a hearing response to the Chief ALJ.
- The Chief ALJ appoints an ALJ to hear the case who will then notify all interested parties of the time and place for the prehearing conference and subsequent hearing. These must be scheduled within 60 days from the mailing date of the Order of Reference.

Appeal to the Administrative Review Board

- An appeal of an ALJ decision may be submitted to the ARB pursuant to the procedures in 29 C.F.R. Part 8: “Practice before the Administrative Review Board with regard to Federal Service Contracts.”
- Where material facts are not in dispute, the request shall be referred to the ARB.
- “Substantial variance” or “arm’s-length” hearing requests denied by the WHD Administrator, where material facts are in dispute, shall be referred to the Chief ALJ.



Beta.sam.gov

<http://www.beta.sam.gov>

(An E-Government Initiative)

Launching of beta.sam.gov

Beta.sam.gov has replaced WDOL, and is now the official U.S. government website for people who make, receive, and manage federal government awards.

Registering on the website

Creating a user account allows:

- Data entry for Assistance Listings
- Save searches
- Follow records and workspace

FYI

- Beta.sam.gov is available to the general public for informational purposes only.
- Information found on the website is not guaranteed to be applicable to the contract in which information is being requested.
- If at any time there is additional assistance needed it is recommended to contact the DOL.

Beta.sam.gov

- Provides access to:
 - SCA Wage Determinations (WDs);
 - Davis-Bacon Act (DBA) Wage Decisions;
 - Archived SCA and DBA WDs;

Available Information on Website

- Directory of Occupations
- *E98*
- Agency Labor Advisors
- DOL and FAR regulation cites
- Users guide
- AAMs.

SCA Directory of Occupations

- Contains standard position descriptions for most SCA occupations listed on prevailing WDs.
- Contains Federal Grade equivalencies.
- If a WD occupation is not listed in the Directory, the position description may be included on WD.



SCA Conformance Process

SCA Regulations
29 C.F.R. § 4.6(b)(2)

What is a conformance?

Conformance is the process used to add additional occupational classes to a contract after it has been awarded.

Developing Wage Rate for conformance

- Proposed rate must bear a reasonable relationship to those listed on WD:
 - No single formula;
 - Look at comparable classes on WD;
 - No specific analytical process to determine conformable rate.

When not to use the Conformance process

- Conformances may not be used to:
 - Artificially subdivide classes listed in WD;
 - Combine two or more classes listed in WD to create a new class;
 - Establish a job level lower than lowest level listed in WD for a job classification family (Computer Operator I through V); or
 - Establish helper and trainee classifications.

Conformance process (Step 1)

- The contractor prepares the conformance request (SF 1444) or other format:
 - Proposes a class of worker and job description;
 - Proposes an hourly wage rate and rationale;
and
 - Submits the request to the contracting agency no later than 30 days after the employee begins performing work on the contract.

Conformance Process (Step 2)

- The contracting agency reviews the conformance request:
 - Makes a recommendation;
 - Sign the 1444
 - Submits the request form (SF 1444) to DOL for final action through WDOL.gov.
- DOL should respond within 30 days.

Updating Conformed Rates

(29 C.F.R. § 4.6(b)(iv)(B))

Two methods may be used:

- Submit a new conformance request; or
- Indexing

Indexing Process

- Calculate overall percent change between rates in previous and new WD for classes used on contract.
- Overall percent change is applied to conformed rate to obtain an updated rate.
- Contracting agency must be advised, not DOL

EXAMPLE OF INDEXING

	<u>WD Rev. 8</u>	<u>WD Rev. 9</u>	<u>%</u>
Secretary I	\$10.00	\$10.80	.08
Accting Clk I	\$10.50	\$10.71	.0 <u>2</u>
			.10/2
			= 5%

Previously conformed class:

Account Collector \$12.50 + 5% =

New indexed rate of \$13.13



Review and Reconsideration of SCA WDs and Conformances

Review and Reconsideration of SCA WDs and Conformances

- Must be timely submitted:
 - Prior to the Opening of Bids for an Invitation for Bids (IFB).
 - No later than 10 days before:
 - Commencement of a negotiated contract;
 - Exercise of contract option; or
 - Extension.
- Administrator within 30 days will issue a decision or notify that more time is needed.

Review and Reconsideration of SCA WDs

- Must provide supporting data that includes:
 - Current survey of contract location and contested occupation;
 - Based on statistical sample of population;
 - Identifies who conducted the survey and the statistical methods utilized.
- Administrator ruling may be appealed to ARB.

Administrative Review Board (ARB)

- Independent review body to which any final ruling of the Administrator of the Wage and Hour Division or decision of an Administrative Law Judge (ALJ) may be appealed.
- Decision of the ARB is a final administrative action.
- Title 29 C.F.R. Part 8 provides timeframes and procedures for ARB SCA appeals.

Disclaimer

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