

Slide: 2

Hello my name is Zebada Brow., I am a wage and hour specialist with the Branch of Service Contract Wage Determinations. This portion of the presentation will cover wage determinations, when they apply, and how to apply them. Throughout this presentation you will hear me refer to wage determinations as WDs.

Wage determinations set forth the minimum monetary wages and fringe benefits determined by the Wage and Hour Division of the Department of Labor.

Slide 3

To determine if a contract should contain a wage determination, the following elements should be considered:

- Will the contract be entered into with the federal government or the District of Columbia?
- Will the contract consist of work principally for services?
- Will the contract be performed in the United States or its territories?
- Will the work be performed by service employees?
- And lastly, does the contract meet or exceed the \$2500 threshold to furnish services?

Slide 4

After the contracting officer has established that the contract is covered under SCA, a wage determination that classifies the prevailing wage rates and fringe benefits must be incorporated into the contract, and if necessary a copy should be supplied to the subcontractors.

Slide 5

There are two major categories of wage determinations, prevailing wage determinations and 4C collective-bargaining agreements.

Slide 6

Prevailing wage determinations are broken down into a number of subcategories, each category will be described more explicitly during this presentation. The most commonly used prevailing wage determination is the Area Wide, mainly due to them covering over 884 geographic locations.

Area Wide WDs are updated annually, typically when the wage survey data becomes available starting around May of every year. The primary data source used for developing wage rates for Area-Wide WDs is the occupational employment survey also known as OES. This survey source is published by the Bureau of Labor Statistics.

Slide 7

The following tips will assist in identifying an Area-Wide WD.

- the sequence numbers start with 2015 followed by 4000 or 5000;

- the geographic locations will be close in proximity, and;
- there will be over 300 occupational classes listed on the wage determination.

Slide 8

Moving on to another subcategory of prevailing wage determination, the non-standard.

Non-standard prevailing wage determinations will have most of the same type of information as the Area-Wide wage determinations. These types of wage determinations may or may not be updated annually since they tend to be contract specific. And here you'll find an example of a non-standard wage determination.

Slide 9

Some tips to help identify a non-standard WDS include:

- The data sources can vary by industry.
- The geographic locations can be broader; for example it can cover statewide, regional, or even nationwide locations.
- The sequence numbers start with the year in which the non-standard was created.
- In some cases, the occupations that are listed may or may not be a part of the SCA Directory of Occupations.

Slide 10

This slide contains a list of some different non-standard wage determinations.

Slide 11

Now that we have identified differences between the sub categories, let's highlight the similarities.

All of the wage determinations contain wage determination numbers, Executive Order language, localities, occupational titles, wage rates, and health and welfare/fringe benefits.

Slide 12

One of the primary functions of the Branch of Service Contract Wage Determinations is to create and issue wage determinations. The branch relies on survey data gathered from Bureau of Labor Statistics as the primary data source.

Although the data is collected from BLS, the branch of Service Contract Wage Determinations analyses the data to maintain applicable wage rate structure and occupational relationships. For instance, the more responsible and complicated the occupation is in terms of skills and duties, the higher the wage rate. Example, the Secretary level II would not receive a rate lower than the Secretary level I.

The frequency distribution that is applied from the OES data is the median. This simply means that from the survey sample half of the workers receive the same or **more** than a particular wage rate and half receive the same or **less** than a particular wage rate, and that would be the median, which is the rate that is chosen to apply to the wage determination.

Slide 13

In the absence of survey data, the slotting procedure is also adopted. Using this procedure, wage rates are derived based upon a comparison of equivalent or similar job duties and skills and characteristics between the classifications.

When exercising the slotting process, considering Federal Wage System (Wage Board) for “blue collar” workers and the General Schedule for “white collar” workers employed by the United States Government automatically applies what is considered “due consideration.”

Slide 14

Again the Occupational Employment Statistics (OES) is the primary data source.

The data is designated by metropolitan and non-metropolitan areas.

Slide 15

Since the survey sample is very vast, the wage rates can result in anomalies.

In such instances, SCA’s practice is to cap the surveyed rate at 10% if the survey is higher. When the survey rate comes back lower, the rate is retained to prevent employees from receiving a decrease in pay.

Slide 16

Throughout the years many data sources have been studied to potentially become the primary data source. After years of analysis, the OES data provided by BLS was the best option. Secondary data sources are non-appropriated funds, wage board surveys, and GS locality pay schedules.

Slide 17

Fringe benefit packages contain health and welfare rates, vacation pay, and holiday pay.

Slide 18

Health & Welfare rates are in addition to all legally required benefits.

There are two methods of compliance for health and welfare there's a fixed cost or the average costs the differences will be discussed further in the presentation during the Compliance Principles session.

Slide 19

Health and welfare rates are updated annually around mid-year. The data source used for the update is the Employee Cost Income Survey, which is produced by the Bureau of Labor Statistics.

Slide 20

4c collective-bargaining agreement wage determinations is the other category of wage determinations produced by the Branch of Service Contracts.

The sequence numbers are generated based on the year of issuance. In the example, this wage determination was initially issued 2017.

The locality will be based on the information from the collective bargaining agreement. The occupational class section is replaced with the name of the contracting company, the contracting agency and the union's information. In the next section, William will explain in more detail about 4c wage determinations and how they're applied.

Slide 22

Obtaining an SCA Wage Determination

Slide 23

Process of obtaining wage determinations:

An updated WD must be incorporated at least once every two years. There are some exceptions to this rule. If the contract is subject to annual appropriation, the WD must be updated annually on the anniversary of the contract. In the event of exercising an option or exercising extension, the updated WD must be incorporated even if the length of the contract or the extension period is less than one year.

Slide 23

The site www.wdol.gov has been replaced by www.beta.sam.gov. This is important because when obtaining a wage determination you will no longer seek assistance from wdol, you will refer to www.beta.sam.gov.

There are two ways to obtain a WD. The first way would be to access the WD directly from the site and add it into the contract. The second way is to electronically submit an E 98 form which is located on beta.sam.gov.

If a contracting officer is new or unfamiliar with beta.sam.gov, it is highly recommended to submit a e98 request.

Slide 24

Now we're going to conduct true or false exercises about the agencies' obligations.

Slide 25

True or false: Agencies must obtain a SCA WD or request a WD for any contract in excess of \$2,500.

Slide 26

True

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

Slide 27

True or false: Wage and Hour Division will issue a SCA WD for any contract that may involve fewer than five service employees.

Slide 28

There is a common misconception among contracting officers that they need not obtain and include a WD into a covered service contract, if there is five or fewer service employees performing on the contract. This has never been the case. Only Department of Labor Wage and Hour Division has the option to not issue a WD for a contract with five or fewer service employees.

Slide 29

Question: what wage rate should a contacting agency pay employees when:

- 1) there is not a WD required for contracts with five or fewer service employees, or;
- 2) When wage and Hour Division has elected not to issue a wage determination?

Slide 30

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. If the contract involves more than five service employees, the contract must contain a WD.

Slide 31

Hello everyone, my name is William Brooks, Senior Policy Advisor with the Division of Government Contracts Enforcement of the Wage and Hour Division. I'm going to be discussing the second type of SCA wage determination which is Section 4(c). Section 4 (c) wage determinations require a successor contractor to apply the wage rates and fringe benefits, including accrued and prospective increases, contained in a Collective Bargaining Agreement that applied to the service employees who performed on the predecessor contract in the same locality.

Slide 32

Section 4(c) was added to the SCA in 1972 in response to "wage busting" at the Cape Kennedy complex in Florida following the re-competition of several major support contracts. Several of these contracts had been held by contractors who had negotiated CBAs with their employees. Prospective successor contractors who were not obligated to pay the collective bargaining rates underbid the predecessor contractor because of lower labor costs and won the contract awards. The workers were then offered jobs with the successful bidders at substantially lower wages (up to 50% less) for the same work they had performed for the predecessor contractor.

Congress felt that the situation violated national labor policy, which was to encourage collective bargaining. It also violated the spirit and intent of the SCA, which was to remove wages as a factor in the competition for federal contracts. Accordingly, Congress enacted section 4(c) to protect such service employees. 4(c) thus required when a new contractor is awarded a contract that succeeds a contract for the same or similar services in the same locality where the previous contractor had a CBA, the new contractor must adhere to the previous contractor's CBA for the first contracting period. 4(c) is a statutory requirement. It does not depend on us issuing a wage determination. When we issue a wage determination, we issue a short form wage determination that contains the geographical scope, the parties to the collective bargaining agreement, and the type of work being performed. The short form WD does not list wages. You have to have a copy of the CBA to see the wages and the fringe benefits.

As I stated earlier, it's based on the incumbent's CBA and it may contain any accrued or prospective increases. A contractor may be its own successor.

Slide 33

Now we're going to focus on the application of 4(c).

The CBA must be applicable for work being performed on the predecessor contract in order to have application. The successor contract must be for substantially the same services and located in the same locality. So if you move the work from one location to another, the CBA may not be covered.

Slide 34

The successor contractor is obligated to pay its employees the wages and fringes in the predecessor's CBA for which they would have been entitled if employed by the predecessor.

This obligation exists whether or not the employees of the predecessor contractor are hired by the successor contractor.

It also exists even if the successor contractor is signatory to its own CBA or chooses to sign or not sign the same CBA held by the predecessor contractor.

The obligation of Section 4(c) is self-executing and failure to include the CBA rates in the wage determination issued for the successor contract does not relieve a successor contractor of the statutory requirements to comply with the CBA rates. For example, if the contracting agency applied in error a prevailing WD for a particular contract rather than a WD based upon the predecessor's CBA, the new contractor is still obligated to pay the CBA rates.

Any interpretation of the economic terms of the CBA where its provisions are unclear, must be based upon the intent of the parties' signatory to the CBA provided that such interpretation is not in violation of any law.

Slide 35

Now there are certain limitations to Section 4(c) in regards to the CBA. We only enforce the economic terms of the CBA, meaning the wages and fringe benefits. Therefore, we only focus on the wages and fringe benefits that are identified in the CBA that are applicable to the SCA employees. We do not enforce the other provisions of the CBA, such as seniority rules, grievance procedures, work rules, or overtime.

Slide 36

The SCA limits the self-executing application of section 4(c) by requiring the parties to the CBA to meet certain agency notification deadlines in order for the CBA to be accepted as the wage determination rates. These notification deadlines are tied to the bid opening and award dates of the respective contracts. However, the agency's written notice must be given at least 30 days in advance of the earliest applicable acquisition date in order for the limitation to apply.

If the contracting agency provides written notification to the signatory parties, the CBA must be provided to the contracting officer within these timeframes in order for it to apply to the successor contract:

For advertised procurement – 10 days before the date set for bid opening

For negotiated procurement – before the award date if start of performance is within 30 days, or 10 days before commencement of the contract if start is beyond 30 days.

However, if notice is not provided or is not provided timely to both parties, then receipt by the contracting officer of a new CBA before completion of the predecessor contract term would be timely for application to the successor contract.

Slide 37

Now let's discuss some of the exceptions to 4(c). The only exception to paying 4(c) rates is if an administrative law judge or the Administrative Review Board finds after a hearing that the CBA

rates are substantially at variance with those that prevail for the same type of services in the locality, or that the CBA was not arrived at through “arm’s length” bargaining.

The successor contractor is required to pay the wage rates and fringe benefits contained in the predecessor contractor’s collective bargaining agreement.

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.

The implementing regulations are at 29 C.F.R. 4.10 – 4.11 addresses the procedures for filing a substantial variance request or lacks of arm’s length negotiations hearing request.

A finding that a 4(c) “substantial variance” exists at a hearing before an Administrative Law Judge, 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.

The SCA does not define the term “substantial variance.” However, the plain meaning of the term requires that a considerable disparity in rates must exist before the successorship obligation may be avoided. Furthermore, 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.

A request for a hearing must contain information and analysis concerning the differences between the collectively bargained rates issued and the rates contained in:

Corresponding federal wage board rates and surveys.

Relevant survey data and the comparable SCA area wage determination and 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.

You also could look at other collectively bargained wages and benefits.

It is expected that a request for a hearing will address all relevant issues.

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 Wage and Hour Division must respond to the request within 30 days of receipt.

If a “substantial variance” is found to exist, a new WD 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.

Now let’s discuss the second exceptions, “Arm’s-Length Negotiations”

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 provision 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 a 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.

The primary example of these types of agreements involves contingent CBA provisions that attempt to limit the contractor's obligations by such means as requiring issuance of a wage determination by the Wage Hour Division, requiring the contracting agency to include the wage determination in the contract, or requiring the contracting agency to adequately reimburse the contractor. Such contingent arrangements are evidence of an intent to take advantage of the wage determination process under the SCA and, generally, reflect a lack of "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 Wage Hour Division, 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 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.

Slide 38

Contract Reconfigurations. As a result of changing priorities, mission requirements, or other considerations, contracting agencies may decide to restructure their support contracts. Thus, specific contract requirements from one contract may be broken out and placed in a new contract or combined with requirements from other contracts into a consolidated contract. The protections afforded service employees under section 4(c) are not lost or negated because of such contract reconfigurations, and the predecessor contractor's collectively bargained rates follow identifiable contract work requirements into new or consolidated contract, provided that the new or consolidated contract is for services which were furnished in the same locality under a predecessor contract. However, where there is more than one predecessor contract to the new or consolidated contract, and where the predecessor contracts involve the same or similar functions of work, using substantially the same job classifications, the predecessor contract which covers the greater portion of the work in such functions shall be deemed to be the predecessor contract for purposes of section 4(c), and the collectively bargained wages and fringe benefits under that contract, if any, shall be applicable to such functions.

Slide 39

Let's take a look at this next slide which provides an illustration of an example of a reconfigured contract.

In this situation, you have ABC Company and XYZ Company, as you can see we are very creative with our names. On the left hand side, you have ABC Company, which is a cleaning contractor that provides janitorial services. They have 15 employees and the contract value is \$500,000. The WD applicable to their contract is a prevailing WD.

On the right hand side, XYZ Company is also a cleaning contractor that provides janitorial services. They have 20 employees and the contract value is \$750,000. The WD applicable to their contract is a 4(c) WD.

Now based on what we learned in the previous slide, if this contract was reconfigured into one, what wage determination would be controlling? Drum roll please, the answer is XYZ Company, because they cover the greater portion of work.

Slide 40

Interruption of Contract Services. Typically, a successor contract begins immediately or shortly after completion of a predecessor contract.

However, there is no requirement that the successor contract commence immediately after the completion or termination of the predecessor contract and an interruption of contract services does not negate the application of section 4(c).

Because a temporary interim contract, which allows a contracting agency sufficient time to solicit bids for a full term contract merely interrupts contract services, such a temporary interim contract does not negate the application of section 4(c) to a full term successor contract.

Instead, the temporary interim contract functions as a bridge between one full term contract and another without extinguishing the section 4(c) predecessor/successor contract relationship between the full term contracts.

Slide 41

This next slides focuses on how the application of 4(c) applies.

Here you see, ABC performed under a CBA during FY 15. That contract ended and for FY16, the contract was awarded to XYZ. Therefore, Section 4(c) requirements would apply to XYZ for FY16. XYZ would be required to pay the wages and fringe benefits in ABC's CBA for the FY16 contract period. Now XYZ, during FY16, has the opportunity to negotiate their own CBA, and in this case they did. Therefore, in FY17, XYZ CBA is the applicable WD. However, let's suppose XYZ failed to negotiate their own CBA in FY16. Then in FY17, the applicable WD would revert to the area-wide prevailing WD.

Slide 42

This slide provides an example of the application of 4(c) when you have a temporary suspension and interim contract.

As you see, during FY15 ABC performed under a CBA. During FY16 the contracting agency temporarily suspends the contract for renovations and then they issue a short term interim contract.

During CY16, the agency awards a full term contract to XYZ and Section 4(c) applies, as ABC is the predecessor contractor, as it is a full term contract.

For CY17, if XYZ fails to negotiate their own CBA in CY16, then a prevailing WD would apply.

Keep in mind when you have an interim or bridge contract, 4(c) would apply to the interim/bridge contract and the full term successor contract. During the full term successor contract, the contractor has the opportunity to negotiate their CBA and then that would apply for the next contracting period, but if they fail to do so, then a prevailing WD would apply.

Before we move forward, let's recap the application of Section 4(c). A CBA is a form of a wage determination. It's when a union and a contractor negotiates their own wages and fringe benefits. 4(c) has a successorship provision that requires a contractor who succeeds a contract for the same or similar service at the same location that had a CBA in place to pay the previous contractor's CBA wages and fringe benefits for the first contracting period. During the initial contracting period, when the successor contractor takes over, they have the opportunity to negotiate their own CBA. If they negotiate their own CBA, it has to be in effect before the start of the next contracting period. If it is, then the successor contractor's CBA will be applicable going forward. However, if they fail to negotiate their own CBA during that initial contracting period when they take over the contract, the applicable WD would revert to the prevailing WD for the next contracting period. We hope now that you have more insight on the application of Section 4(c) and how CBAs work under the SCA. Now, I'm going to turn it over to my colleague, Zebada Brown, who will go over the wage determination online process. Thanks.

Slide 43

The www.beta.sam.gov provides a single location for federal contracting officers to use in obtaining appropriate Davis-Bacon and Service Contract wage determinations for official contract actions.

Slide 44

In 2019, beta.sam.gov replaced WDOL and is now the official U.S. Government website for people who make, receive, and manage federal government awards.

Slide 45

Creating a user account is highly recommended. It will cut back on the time when using the site. Usefully, it will also save the user's searches and provide an alert when a wage determination that the user accessed has a revision.

Slide 46

Access to this site is available to the public for informational purposes only. Content accessed is not guaranteed to be applicable to the user's inquiries.

The Department of Labor Wage and Hour Division is always available to assist if at any time questions about content accessed on the site is necessary.

Slide 47

Beta.sam.gov provides active SCA and Davis Bacon WDs and also archived copies.

Slide 48

Here is a list of available resources on the site.

Agency labor board advisers contact list are available, Department of Labor and FARS regulatory sites are available by links, and there's also a user guide.

A very important function is the All Agency Memorandum. Earlier in the presentation I mentioned that health and welfare rate are updated annually. Once the rates are updated, an all agency memorandum is published. Those memoranda are found on this site. This is useful for contract officers that are seeking to verify the most current health and welfare rate.

Slide 49

SCA Directory of Occupations is a list of commonly used occupational titles that may or may not be listed on some SCA wage determinations.

This list contains federal grade equivalencies. It also contains job descriptions of each occupational slot.

This tool is useful for creating non-standard WDS and also assists when submitting conformance requests.

Slide 50

Hello Everyone. My name is Darlene Lancaster, I'm a Senior Wage and Hour Specialist with Branch of Service Contracts, Wage Determinations, and I'll be presenting a brief overview of the Conformance Process.

Slide 51

What is a Conformance?

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

Slide 52

One of the most important components of the conformance process is developing a proposed wage rate. It must bear a reasonable relationship to those listed on the WD, specifically, the WD that is incorporated into their contract. There is no single formula, no specific analytical process to determine conformable rates. However, you must review other comparable classes on the wage determination.

Slide 53

There are some guidelines of when the conformance process cannot be used.

Conformance may not be used to:

- Artificially subdivide classes listed on the WD
- Combine two or more classes to create a new class
- Establishing a job level lower than the lowest level listed on the WD
- Establishing helper and trainee classes

Slide 54

How the Conformance process is started is about two steps. We're going to look at step one

The Contractor prepares the conformance request, or the SF-1444 or other format, another format that they can use:

- By proposing a class of work to include a job title and job description
- They propose an Hourly wage rate and rationale
- Submit the request to the contracting agency no later than 30 days after the worker begins performing on the contract.

Slide 55

Step 2: The contracting agency reviews the conformance request, makes a recommendation, signs the 1444, then submits this form to the Wage and Hour office here at the Department of Labor for the final action. And although it says through wdol, it's through www.beta.sam.gov, which was formerly or replaces the wdol.gov website.

Our office should respond within 30 days.

Slide 56

Another option that is open to contractors has to do with updating previously conformed rates.

Two methods may be used. You can submit a new conformance request, or you can follow the process called indexing.

Slide 57

The indexing process involves calculating the overall percentage change between rates in a previous and a new wage determination for classes used on the contract.

The overall percentage change is applied to the conformed rate to obtain an updated rate.

The contracting agency must be advised, but the Wage and Hour office of DOL does not have to be.

Slide 58

Now in this next slide we'll see an example of indexing. If you look, there are two wage determinations, Revision 8 and Revision 9, and it's showing the percentage differences between Secretary I, with a wage rate of \$10.00 on wage determination Revision 8, and on Revision 9, it has an \$0.80 increase, so the percentage difference between the two is 0.08. Then looking at the Accounting Clerk I, Revision 8, is \$10.50, and it had an increase to \$10.71, so for an overall of 0.02. So if you look at the combination of the two, it's 0.10, and it's divided by 2, you're going to do an average, and so you get 5%. So if you look at the previously conformed class, you can see the example of how the percentage difference has been applied.

Slide 59

Now Review and Reconsideration of Service Contracts wage determinations and conformances, this is the process in which an SCA prevailing WD or conformance decision can be re-evaluated on behalf of the contracting agency or other interested parties.

Slide 60

The review and reconsideration must be submitted timely. It has to be prior to the opening of bids or an invitation for bids, an IFB, no later than 10 days before the start of a negotiated contract, or the exercise of a contract option or extension.

Slide 61

Also, other things that must be considered, you must provide supporting data that includes:

- Current survey of contract location, where that work is being performed, and contested occupation;
- Based on statistical sample of population;
- And that identifies who conducted the survey and the statistical methods utilized.

Slide 62

Now the Administrative Review Board, which was referenced by William earlier regarding the 4(c)s, is the same independent review body to which any final ruling of the Administrator of the Wage and Hour Division or decision of an Administrative Law Judge may be appealed.

Decision of the ARB, Administrative Review Board, is a final administrative action.

Slide 63

And this concludes my portion of the presentation, and we always have to include the disclaimer.

This presentation is intended as general information only and does not carry the force of legal opinion.

The Department of Labor is providing this information as a public service. This information and related materials are presented to give the public access to information on Department of Labor programs. You should be aware that, while we try to keep the information timely and accurate, there will often be a delay between official publications of the materials and the modification of these pages. Therefore, we make no express or implied guarantees. The *Federal Register* and the *Code of Federal Regulations* remain the official source for regulatory information published by the Department of Labor. We will make every effort to keep this information current and to correct errors brought to our attention.