

SCA Wage Determinations

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Outline

- American Reinvestment & Recovery Act of 2009
- McNamara-O'Hara Service Contract Act
- Introduction to SCA Wage Determinations
- SCA Prevailing Wage Determinations
- SCA Conformance Procedures
- SCA Investigative Procedures
- Your Questions

TITLE

American Reinvestment & Recovery Act of 2009

Overview of ARRA

- Signed into law on February 17, 2009
- Division A of ARRA appropriates substantial funding for:
 - Construction, alteration and repair of federal buildings
 - Infrastructure projects such as roads, bridges, public transit, water systems, and housing
 - Various activities that federal agencies may contract out for service employees to perform

Labor Standards Coverage on ARRA Funded Projects

- DBA requirements apply to:
 - Federal contracts funded by ARRA
 - Most ARRA-assisted construction projects
- Reorganization Plan No. 14 of 1950 gives:
 - Federal agencies responsibility to ensure that laborers and mechanics are paid at least the prevailing rates established by DOL
 - DOL has regulatory authority and oversight responsibility and can investigate compliance

ARRA Labor Standards Implementation

- Federal agencies must:
 - Ensure that bid solicitations and resulting covered contracts contain labor standards and wage determinations in accordance with the FAR
 - Generally, require contractors and subcontractors to pay laborers and mechanics employed on covered ARRA-assisted construction at least the DBA prevailing wages

ARRA Division B

- Requires application of Davis-Bacon prevailing wage requirements to projects financed with certain tax-favored bonds
 - New clean renewable energy bonds
 - Qualified energy conservation bonds
 - Qualified zone academy bonds
 - Qualified school construction bonds
 - Recovery zone economic development bonds
- As defined in relevant Internal Revenue Code provisions
- If issued after ARRA enacted 2/17/09)

DOL ARRA Guidance

- All Agency Memorandum No. 207, dated May 29, 2009, provides DOL basic guidance on Davis-Bacon labor standards applicability to federal and federally assisted construction work funded under ARRA
- Advisory letters, such as those issued to the DoE and Department of Interior, provide further guidance

MCNAMARA-O'HARA SERVICE CONTRACT ACT

The SCA

- Took effect in January 1966
- Amended in 1972 and 1976
- Most recent of government contract labor standards laws administered by the Wage and Hour Division

SCA Legislative History & Purpose

- To “close the gap” in labor standards protection between supply and manufacturing contracts subject to PCA and construction contracts subject to DBA
- To remove wages as a bidding factor in the competition for federal service contracts

SCA Requirements (29 CFR 4.6)

- Contracts in excess of **\$2,500** must contain labor standards clauses with:
 - Minimum monetary wages and fringe benefits determined by the DOL
 - Recordkeeping and posting requirements
 - Safety and health provisions
 - Statement of rates paid to federal employees

Elements of SCA Coverage (29 CFR 4.107, 4.108 & 4.110)

- Contracts entered into by Federal Government and District of Columbia
- Contracts principally for services
- Contracts performed in the U.S.
- Contracts performed through the use of service employees

Federal Contracting Agencies (29 CFR 4.107 & 4.108)

- Agency or instrumentality (*e.g.*, DoD)
- Wholly-owned corporations of the Government (*e.g.*, U.S. Postal Service)
- Non-appropriated fund activities (*e.g.*, military exchanges)
- Contracts entered into by the District of Columbia

Contracts to Furnish Services (29 CFR 4.111 & 4.130)

- Examples of service contracts:
 - Security and guard services
 - Janitorial services
 - Cafeteria and food services
 - Support services at Federal installations

Contracts “in the US” (29 CFR 4.112)

Any portion of a contract principally for services performed in the United States including:

- 50 States
- District of Columbia
- Puerto Rico
- Virgin Islands
- Outer Continental Shelf
- American Samoa
- Guam
- Wake Island
- Johnston Island
- Northern Marianas

Use of “service employees” (29 CFR 4.113)

- Section 8(b) of SCA defines service employees as:
 - Any person engaged in performance of contract, except
 - Employees who qualify for exemption as **bona fide** executive, administrative or professional employees under the FLSA (29 CFR Part 541)
- Employee coverage does not depend on contractual relationship (29 CFR 4.155)

Contracts Not Covered by SCA (29 CFR 4.134)

- Contracts primarily for something other than services (e.g., construction)
- Contracts for leasing of space
- Contracts for professional services
- Federally-assisted contracts for services entered into by state governments (e.g., Medicaid and Medicare programs)
- Contracts excluded by statutory exemptions
- Contracts excluded by regulatory exemptions

INTRODUCTION TO SCA WAGE DETERMINATIONS

Basic Statutory Requirement

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

Applying Wage Determinations

(29 CFR 4.143–4.145)

- Agencies must obtain new WD at least once every two years
- New WD may be required each year if:
 - Contract subject to annual appropriations
 - Annual contract option being exercised
- Most contract extensions, even if shorter than 1 year, require a new WD

Obtaining an SCA WD (29 CFR 4.4)

- Regulations no longer require agencies to submit Standard Form (SF-98) or an electronic form (e98)
- Agencies have option to download WD directly from website, or submitting an e98 to DOL, at www.wdol.gov
 - ❑ Other approaches no longer utilized include the blanket WD program, memorandums of understanding with agencies
 - ❑ SF-98 and -98a removed from the FAR

2 Types of Wage Determinations

- Prevailing — includes union dominance wage determinations
- 4(c) — based on the previous contractor's collective bargaining agreement

SCA PREVAILING WAGE DETERMINATIONS

SCA Prevailing WD Principles

- WDs must be based on data
- WDs must reflect a consistent wage and salary structure

Basis for Prevailing WDs

- The best available data — usually BLS surveys
- WDs may also be based on:
 - Non-appropriated fund surveys
 - Wage Board surveys and rates
 - General Service locality pay schedules

BLS Surveys

- National Compensation survey
- Occupational Employment Statistics survey

How are BLS Data Used for SCA WDs?

- NCS is the primary data source
- OES is used to supplement NCS, or is primary data source for those areas not surveyed by NCS

SCA Directory of Occupations

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

Obtain SCA WDs on WDOL.gov

- Wage determinations on-line
- On WDOL homepage click on “Selecting SCA Wage Determinations”
- Respond to each logic question
- Two “Standard” prevailing WDs for each locality
 - Odd-Numbered WD
 - Even-Numbered WD

SCA CONFORMANCE PROCEDURES

SCA Regulations
29 CFR 4.6(b)(2)

Conformance (Adding Missing Class of Work to WD)

- Work not performed by a class on WD
- 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

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 (e.g., Computer Operator I through V)
- Establish helper and trainee classes

Conformance Request Preparation

- Contractor prepares conformance request (SF 1444) or other format
- Request:
 - Proposes class of worker and job description
 - Proposes hourly rate and rationale
 - Submitted to contracting agency no later than 30 days after employee performance
 - SF 1444 available on WDOL.gov

SCA INVESTIGATIVE PROCEDURES

Preliminary Steps in Conducting Investigations

- Obtain the following information:
 - Copy of labor standards clauses in contract
 - Copy of WD in contract, including any instructions for multiple schedules
 - Copies of time records & check register
 - Employer identification number

The Investigation Process

- Initiate contact with employer
- Examine time records
- Examine payroll journal or check register
- Check for compliance with apprenticeship and/or trainee requirements
- Determine if a conformance is necessary

Employee Interviews

- Are essential to the investigation
- Information provided is confidential
- Interview statements should contain:
 - Place and date of interview
 - Name and address of employer/employee
 - Employment status and classification
 - Alleged violations

Determining Compliance

- Determine compliance with prevailing wages, including FBs
- Determine compliance with CWHSSA
- Compute any back wages and liquidated damages

Conclusion of Investigation

- Final Conference Procedure
 - Inform contractor of investigation findings
 - Detail steps to eliminate violations
 - Consider additional evidence that may impact on findings (*e.g.*, conformance)
 - Request payment of back wages and any liquidated damages under CWHSSA

- Submit for Debarment if no agreement

Withholding of Funds

- In refusal-to-pay cases, contracting agency can withhold funds to cover back wages
- Contracting agency can withhold funds from other contracts which have same prime contractor (cross-withholding)
- Contracting agency should immediately notify WHD if contractor may be filing for bankruptcy

Your Questions



This presentation will be available on the NCMA San Diego Chapter web site in the near future!

2009 Prevailing Wage Conferences

- Most of the material for this presentation is taken from the 2009 Prevailing Wage Conferences conducted by the DOL
- This 1-hour topical presentation was condensed from that material to provide information on specific SCA topics

Acronyms — A–D

- AAM—All Agency Memorandum
- ARRA—American Reinvestment & Recovery Act of 2009
- BLS—Bureau of Labor Statistics
- CFR—Code of Federal Regulations
- CWHSSA—Contract Work Hours and Safety Standards Act
- DBA—Davis-Bacon Act
- DoD—Department of Defense
- DoE—Department of Energy
- DOL—Department of Labor

Acronyms — E–O

- e98—Online request form
- ETA—DOL Employment and Training Administration
- FAR—Federal Acquisition Regulation
- FB—Federal Employees' Compensation Act Bulletin
- FLSA—Fair Labor Standards Act
- GSA—General Services Administration
- MSA—Metropolitan statistical area
- NCS—National Compensation Survey
- OES—Occupational Employment Statistics
- OMB—Office of Management and Budget

Acronyms — P–W

- PCA—Public Contract Act
- SCA—Service Contract Act
- WD—Wage determination
- WDOL—Wage Determinations Online
- WHD—DOL Wage and Hour Division

And for any other acronym used in WD, go to

[http://www.dol.gov/whd/recovery/pwrb/Tab1Acronyms
Links.pdf](http://www.dol.gov/whd/recovery/pwrb/Tab1AcronymsLinks.pdf)

On-line Help

- Wage Determinations — <http://www.wdol.gov>
- Wage and Hour Division — <http://www.dol.gov/esa/whd>
- Office of the Administrative Law Judges Law Library — <http://www.oalj.dol.gov>
- Administrative Review Board — <http://www.dol.gov/arb>
- Debarred Bidders List — <http://www.epls.gov>
- Wage Determinations On-Line (WDOL) — <http://www.wdol.gov>
- SF1444, Request for Authorization of Additional Classification and Rate — <http://www.wdol.gov/docs/sf1444.pdf>
- e98 — <http://www.wdol.gov/e98.aspx>

WDOL.gov

- Created by an inter-agency task force including DOL, DoD, OMB, GSA, DoE, and the National Technical Information Systems
- The purpose was 2-fold, to:
 - Meet the presidential initiative for e-government
 - Enhance the public's ability to obtain WDs

WDOL.gov Features

- The system is menu driven
- Reduces WD processing time
- Ensures consistent application of labor standards
- Provides an “alert” service to notify users of the latest updates

WDOL.gov Provides Access

- SCA WDs
- DBA Wage Decisions
- Archived SCA and DBA WDs
 - 5th Edition of the Service Contract Directory of Occupations
 - e98
 - Agency Labor Advisors
 - DOL and FAR regulation cites
 - User's guide
 - AAMs

ARRA Website & HUD Clarification

- Wage and Hour Division ARRA website—AAM No. 207, important links, and other relevant information is posted:
www.dol.gov/esa/whd/recovery
- The scope of Davis-Bacon applicability to certain specific HUD programs is affected by a provision in the Supplemental Appropriations Act of 2009, enacted on June 24, 2009 (Pub. L. 111-32)
- Related ARRA information
<http://www.dol.gov/whd/recovery/index.htm>

Code of Federal Regulations

29 CFR Part

- 1 - Procedures for Predetermination of Wage Rates under the Davis-Bacon Act
- 3 - Payment & Reporting of Wages on Federal Construction Contracts
- 4 - Federal Service Contracts
- 5 - Labor Standards Provisions Applicable to Federal Construction Contracts
- 6 - Rules of Practice for Administrative Proceeding

Code of Federal Regulations

29 CFR—Part

7 & 8 - Rules for DBA/SCA appeals before the ARB

525 - FLSA (Workers with Disabilities)

531 - FLSA (Credit for tips, meals, & lodging)

541 - FLSA (Exempt - Salaried employees)

778 - FLSA (Overtime)

785 - FLSA (Hours Worked)

Labor Standards Statutes

The Davis-Bacon Act (DBA)

Davis-Bacon and Related Acts (DBRA)

Contract Work Hours and Safety Standards Act
(CWHSSA)

Copeland “Anti-Kickback” Act (CA)

Walsh-Healey Public Contracts Act (PCA)

McNamara-O’Hara Service Contract Act (SCA)

Disclaimer

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