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MEMORANDUM FOR DISTRIBUTION

Subj: DEPARTMENT OF THE NAVY DESK GUIDE FOR SERVICE CONTRACT PRICE ADJUSTMENTS

Encl: (1) Desk Guide for Service Contract Price Adjustments

FAR Clauses 52.222-43/44 provide for limited contract price adjustments on fixed-price contracts for increased (or decreased) labor costs resulting from the incorporation of new or revised Service Contract Act (SCA) wage determinations (minimum wages and fringe benefits). We have prepared a desk guide to assist contracting personnel in reviewing and responding to contractor requests for price adjustments under these clauses. The desk guide will help contracting officers make consistent determinations of contract price adjustments and minimize delays in processing the requests.

The new desk guide has been posted on the DoN Acquisition One Source homepage, at http://www.acquisition.navy.mil/navyaos. Please ensure that all contracting personnel involved in awarding and/or administering SCA-covered contracts receive notice of the new desk guide. The Navy Labor Advisor provides contract labor standards training, and I highly recommend that DoN contracting offices request training on this subject if they haven't had any recently. If you have questions, or to schedule training, please contact Diane Truman, Navy Labor Advisor, (703) 693-2939 (email: NavyLaborAdvisor@navy.mil).

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DESK GUIDE for

SERVICE CONTRACT PRICE ADJUSTMENTS

Service Contract Act

and

Fair Labor Standards Act

April 2004

INTRODUCTION

The purpose of this document is to provide guidance to Department of the Navy contracting officers for processing contract price adjustments that result from changes in wage determinations issued under the Service Contract Act, or from amendments changing the minimum wage required by the Fair Labor Standards Act. This guidance is not all-inclusive. It does not relieve the reader of the requirement to carefully review the solicitation or contract, or to follow appropriate law and regulations such as the Federal Acquisition Regulation (FAR), FAR supplements, and Department of Labor regulations related to these issues.

Questions or comments on this guidance should be directed to the Department of the Navy Labor Advisor at (703) 693-2939 or NavyLaborAdvisor@navy.mil.

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April 30, 2004

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1.0 BACKGROUND

1.1 General Requirements. Under the Service Contract Act (SCA), 41 U.S.C. §§ 351-358, Federal service contracts over $2,500 shall contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of minimum compensation, and equivalent Federal employee classifications and wage rates. See Federal Acquisition Regulation (FAR) Clause 52.222-41, at Appendix B. The U.S. Department of Labor (DOL) issues SCA wage determinations (WDs) which establish the minimum wages and fringe benefits a service contractor must pay its employees performing work on covered contracts. DOL revises these WDs from time to time to reflect the current prevailing wage and benefit rates for each locality or area. The most current SCA WD will be incorporated in each solicitation, and in the awarded contract. The most current SCA WD will also be incorporated into an existing contract at the issuance of each modification to exercise an option, to extend a contract, or to significantly change the scope of work. When this modification is issued for a fixed-price contract, the contract price may be adjusted under FAR Clause 52.222-43, Fair Labor Standards Act and Service Contract Act – Price Adjustment (Multiple Year and Option Contracts), or Clause 52.222-44, Fair Labor Standards Act and Service Contract Act – Price Adjustment (not multiple year or option contracts). See Appendix C.

1.2 Types of Wage Determinations.

1.2.1 Prevailing Wage WDs.

1.2.1.1 Standard WDs. Standard WDs are issued by DOL for specific geographical localities (often a county or group of counties), listing approximately 300 general labor classifications by occupational groups, e.g., Clerical and Administrative, Technical, Information and Arts, or Transportation. These WDs are based on surveys of wages and benefits paid in the specified locality.

1.2.1.2 Non-Standard WDs. Non-Standard WDs are issued by DOL to reflect prevailing wages and benefits in specific service industries in designated localities. Typical Non-Standard

services include elevator maintenance, laundry and dry cleaning, aerial photography, fast food restaurants, diving services, beauty and barbershops, moving and storage services.

1.2.2 WDs Based on Collective Bargaining Agreements (CBAs). Successor contractors performing on contracts for substantially the same services in the same locality must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) at least equal to those contained in a bona fide CBA entered into under the predecessor's SCA-covered contract. The WD applicable to the successor contract period will reflect the CBA between the predecessor contractor and the collective bargaining representative of the employees (labor union). (Reference Section 4(c), Title 29 CFR Part 4, Sections 4.50(b) and 4.53, and FAR 22.1002-3.) Contracting officers must know when exercising and/or negotiating at each option, extension, significant change in scope, or resolicitation, if the predecessor contractor has a CBA applicable to the workers performing work on the contract.

1.2.3 Contract-Specific or Special SCA WDs. There are a few, unique service contracts where DOL will issue contract-specific SCA WDs. An example of a contract-specific WD is a sole-source contract with a county, state or municipality where wages and benefits are already established in accordance with legislative or regulatory requirements. If a contracting officer determines that neither a Standard WD nor a Non-Standard WD is appropriate for a particular contract, the contracting officer should request an appropriate SCA WD from DOL. If the contracting officer has questions with regard to contract-specific WDs, he/she should contact the Navy Labor Advisor for assistance.

1.3 Obtaining SCA WDs.

1.3.1 For service contracts in excess of $2,500, SCA requires the contracting officer to incorporate the most current, applicable WD into the following contract actions: (a) each solicitation; (b) each modification to exercise an option, extend the contract, or significantly change the scope of work; (c) each anniversary date of multiple year contracts subject to annual appropriations; or (f)

each biennial anniversary date of multiple year contracts not subject to annual appropriations. Reference FAR 22.1007.

1.3.2 Standard and Non-Standard WDs. Prior to October 2003, contracting officers submitted an SF98/98a, "Notice of Intention to Make a Service Contract and Response to Notice" to DOL requesting WDs for any SCA-covered contract (or contract action).

In October 2003, DOL announced the implementation of the Wage Determinations OnLine (WDOL) Program, http://www.wdol.gov, which provides contracting officers access to Standard and Non-Standard WDs. The website also provides contracting officers direct access to DOL by using the "e98" link. The "e98" is used to request a WD from DOL if the contracting officer does not find an appropriate WD in the WDOL databases for Standard or Non-Standard WDs. Contracting officers must follow WDOL.gov's "User Guide" carefully in selecting their SCA WDs for contract actions. The WDOL Library also provides a number of resources for use in determining the appropriate labor standard or WD for each contract action.

The contracting officer must select the appropriate SCA WD and incorporate that WD into the solicitation or contract action. Under no circumstances shall the contracting officer direct an offeror or contractor to obtain a SCA WD from the website for use in a solicitation or contract.

Note: A FAR case has been initiated to remove the requirement to submit the SF98/98a and to implement the WDOL.gov process. For the interim period pending publication of final rules in the FAR and Title 29, CFR Part 4, "Labor Standards for Service Contracts", the DOL Administrator is expected to issue a waiver to the requirement permitting contracting officers to use WDOL.gov without submitting the SF98/98a to DOL.

1.3.3 CBA WDs. Contracting officers must inquire at each contract action (resolicitation or modification to exercise an option, extend the contract, or significantly change the scope of work) if the incumbent (predecessor) contractor has a CBA

applicable to the contract workers. Under SCA Section 4(c), the wages and monetary fringe benefits in an SCA-covered predecessor CBA prevails over any other SCA WD that might otherwise be applicable to the same employee classifications in the successor contract period. See Section 5 of this Guide for notification requirements and contract price adjustments involving CBA WDs.

1.3.3.1 If the CBA has been timely received by the contracting agency, the contracting officer must prepare a CBA WD using WDOL. The contracting officer incorporates the CBA WD, along with a complete copy of the CBA, into the successor contract (or contract period). WDOL's "Selecting an SCA WD" menu includes the form to be completed by the contracting officer in preparing a CBA WD. Follow the guidance in the "WDOL User's Guide".

1.4 **Timeliness**. New or revised SCA WDs, and new or revised SCA-covered CBAs, must be received by the contracting agency in a timely manner in order to be applicable to a contract action. Reference FAR 22.1012. If the contracting officer is using the WDOL Program, "receipt" date of a new or revised Standard or Non-Standard WD is the first date the WD is published in the online database.

1.4.1 Sealed Bidding. A new or revised SCA WD or CBA will generally not be effective if received by the contracting agency less than 10 days before the opening of bids, and the contracting officer finds that there is not reasonable time to incorporate the revision in the solicitation.

1.4.2 Contractual Actions Other Than Sealed Bidding. A new or revised SCA WD or CBA will generally not be effective if received after award (or after the date of modification to exercise the option, extend the contract, or significantly change the scope of work), provided that performance starts within 30 days. If performance does not start within 30 days from award (or modification) date, a new or revised WD or CBA will not be effective if received less than 10 days prior to start of performance.

1.4.3 Caution. Timeliness of new or revised CBAs for SCA-covered contract actions is predicated on the contracting officer's written notification to the interested parties of the pending action. See Section 5 of this Guide for further detail. Questions regarding the timeliness of new or revised SCA WDs or CBAs should be referred to the Navy Labor Advisor.

2.0 REQUESTS FOR CONTRACT PRICE ADJUSTMENT. In a fixed-price contract containing the clause at FAR 52.222-43 or FAR 52.222-44, a contractor may request a contract price adjustment if the contracting officer modifies the contract to incorporate a new or revised SCA WD, or SCA-covered CBA. A contract price adjustment may also be requested under these clauses if the Fair Labor Standards Act (FLSA) is amended by Congress to increase the national minimum wage rate (as of April 2004, the minimum is $5.15 per hour). See Section 8 of this Guide on adjustments involving FLSA increases. The contracting officer must determine the allowability of these requests, and make the appropriate contract price adjustments. This Guide provides information to assist in making that determination.

3.0 HELP AND GUIDANCE. The Navy Labor Advisor is available to provide assistance concerning the application of contract labor standards, the applicability of SCA WDs or CBAs, contractor labor-management relations matters, and the computation and allowability of contract price adjustments. Contracting officers should review each WD and CBA received for incorporation into a contract action. The contracting officer should immediately notify the Navy Labor Advisor if a WD or CBA contains wage or benefit rates significantly at variance with rates known to prevail in the locality, or if a WD or CBA contains significant errors or omissions. Reference FAR 22.1013.

3.1 Use of the *SCA Price Adjustment Desk Guide*. The guidance provided in this document does not substitute for full and careful review of all applicable laws, Federal acquisition regulations and supplements. Questions concerning the applicability of the various contract labor standards, including SCA, should be referred to the Navy Labor Advisor.

4.0 SCA PRICE ADJUSTMENTS - GENERAL

4.1 WD Applicability. The contracting officer must select the appropriate SCA WD and incorporate it into the contract. The minimum wages, fringe benefits, and other provisions of SCA apply only to the hours worked by the covered labor classifications that perform the work of the contract as required in the Statement of Work.

4.2 Computations Based on Projected or Actual Labor Costs. Generally, a contractor's price adjustment request is submitted shortly after the contracting officer incorporates the new SCA WD, at the beginning of the new contract period. The computation of the adjustment will be based upon the projected impact of the new SCA WD. The projection uses hours worked by service employees in the prior contract period, factoring in any expected changes to contract scope or workforce that will occur in the next contract period. This method is known as the Forward Pricing Adjustment Method (FPAM). If the price adjustment request has been significantly delayed (six months or more) by either an approved extension to the required filing date (see FAR 52.222-43(f) or FAR 52.222-44(e)), or by a delay in completing the contract modification, the contractor should use the actual pay and hours worked records from the new contract period as the basis of the computation. This method is known as the Actual Cost Adjustment Method (ACAM).

4.3 SCA Price Adjustments on Indefinite Delivery Service Contracts. Contracting officers are required to incorporate the most current SCA WD into SCA-covered indefinite delivery service contracts at each option, extension, or significant change in scope of work. (Note: Generally, if performance has already begun on a task order issued in the preceding option period, the new SCA WD will not be applicable to that task order. The old SCA WD applicable in the preceding option will be applicable through completion of task orders issued during that option.) If the indefinite delivery contract is fixed price, the clause at FAR 52.222-43 will also be incorporated into the contract, and the "contract unit price labor rates" (paragraph (d) of the clause) must be adjusted to reflect the contractor's actual cost incurred to comply with the new SCA requirements. The same principles in this guide apply to the price adjustments computed for these contracts.

Where the contract unit price involves the effort of multiple employee classifications (e.g., a contract for ambulance services might be priced on a "per call" basis, and each call would involve the use of a

driver, driver's helper, and emergency medical technicians), the price adjustment will be more complex. An example of a price adjustment computed for such a contract unit price may be found at FAR 52.222-32, "Davis-Bacon Act – Price Adjustment (Actual Method)".

4.4 Documentation Required.

4.4.1 General. The contractor must provide documentation to establish the amount paid to the workers in the preceding contract period for comparison with the requirements for the following contract period. There are four types of documentation needed from the contractor to process an adjustment request:

- Actual or Projected Pay (Wage) Records
- Actual or Projected Contract Work Hours
- Documents Supporting Accompanying Costs (payroll taxes)
- Documents Supporting Impact on Fringe Benefit Costs

4.4.2 Documentation Period. Using FPAM, the contractor's request for adjustment would be based on the hours worked and the wages and benefits paid to the employees in the preceding contract period. The data will normally cover a 12-month period, but may be for a shorter period if less than 12 months have elapsed on the contract. However, if the workload fluctuates by month or season, a shorter time period used for comparison purposes may not produce an accurate forecast. Example: If you use an installation maintenance contractor's pay records from the calendar year's first quarter to project hours worked for the entire next year, you may overstate the hours to be worked in the next year at snow removal, and understate the hours to be worked at grounds maintenance or swimming pool maintenance. See Section 4.4 of this Guide concerning the projection of contract work hours based on prorated payroll information. In adjusting a contract price for an extension period (generally three months or less), the contractor should utilize only the corresponding months from the prior contract year if the workload is subject to seasonal fluctuations.

4.4.3 Content. The contractor is obligated to provide sufficient, credible documentation to substantiate its request for a contract

price adjustment. The documentation should include actual weekly or biweekly payrolls that list each contract worker, their classification, and the hourly wage rate actually paid to each employee in the prior contract period. In addition to hourly wage rates, documentation concerning any additional payments made to the employees, such as performance-based merit bonuses or commissions should be provided. These payments must be considered in determining the total actual wages paid to employees. If a request for contract price adjustment is based on an increase in the SCA fringe benefits (such as the Health and Welfare (H&W) rate), the contracting officer should require documentation to establish the amount of actual premiums paid by the contractor directly to the worker or to a benefit provider in the preceding contract period. An adjustment for increases in fringe benefits is always computed on the differential between the total benefits paid in the preceding contract period, and the total benefits required under SCA in the following contract period. The contractor's request for an adjustment for SCA benefits should include proper documentation for each benefit provided in the preceding period (see Section 4.9 below). The request should also include documentation that verifies the allowable accompanying costs, such as state and Federal documents establishing an employer's specific unemployment tax rate or workers' compensation insurance rate.

4.4.4 Consistent and Timely Response. Contracting officers should establish procedures to evaluate contractor price adjustment requests in a timely and consistent manner. Documentation presented by the contractor in support of an adjustment request should be clear and readily understandable. Computerized payrolls should include explanations of acronyms, codes, and computations. If the supporting documentation is vague, non-substantive, or in any way questionable, the request should be returned to the contractor for correction and resubmission. Delays in processing contractor price adjustments often result in confusion, animosity, the contractor's failure to comply with wage and benefit increases, and labor disputes that might affect contract performance. The contracting officer should respond promptly to the contractor's request for adjustment. Questions pertaining to the contractor's computations and documentation should be addressed promptly.

4.5 Applicable Contract Work Hours.

4.5.1 Exclude Exempt Employees. No adjustment in contract price is permitted for employees who are exempt from SCA and FLSA. (For details of the professional, administrative and executive exemption, reference Title 29, CFR Part 541.) The contractor must exclude exempt employees from the payroll documentation before calculating adjustments. Typical exempt classifications are degreed engineers, doctors, project managers, directors, contract management officials, and corporate officers. Any questions concerning the allowability of a particular classification should be directed to the Navy Labor Advisor.

4.5.2 Adjust for Changed Work Conditions. Adjustments to the historical payroll data should be made to account for any anticipated change in scope of work such as scheduled reductions or increases in services provided, equipment changes, or unusual levels of effort experienced in the preceding contract period.

> *Example: In the base year and first option, a janitorial contractor cleaned 15 buildings. If the statement of work lists five additional buildings to be cleaned in the second option, the contractor may adjust (increase) the number of hours projected to be worked in the second option to reflect the additional work to be performed.*

> *Example: In the winter months of the base year of a grounds maintenance contract, there was a major blizzard not typically expected but once every decade or more. The contractor's projection of snow removal hours for the first option year, based on actual hours worked in the base year, might need to be adjusted (decreased) to reflect the unusual level of effort in the base year that is not expected to be repeated in the next contract period.*

4.5.3 Prorated Periods. When using FPAM, the contractor may have less than 12 months of historical payroll data to use as a basis for projecting the hours to be expended in the next contract period. The historical data may be prorated to apply an adjustment across the 12 months of the next period, provided the

work is not subject to seasonal or other significant fluctuations. To prorate the available data for the next 12-month contract period, calculate the average monthly hours worked for each labor category and multiply by 12. (If the work is subject to fluctuation, it may be necessary to negotiate a reasonable estimate of hours expected to be worked in the next period.)

Example: The contractor provided four months of payroll data for employees in several labor categories. After eliminating exempt employees, the records indicate one labor classification worked a total of 12,000 hours and the other labor classification worked a total of 16,440 hours. The prorated hours are calculated by dividing the hours worked (12,000 and 16,440) by 4 (the number of months of data) to establish the monthly average by labor category (3,000 and 4,110 respectively), and then multiplying by 12. The applicable hours for the next 12-month contract period would be 36,000 for the first classification and 49,320 for the other labor classification.

4.5.4 Non-Work Hours. Productive as well as non-productive hours are adjusted for SCA wage increases (and decreases). Paid non-work hours, such as SCA-required vacation, sick leave, holidays, and other specified leave benefits are included in the applicable hours. Contractors must pay the new SCA wage rate on leave hours taken in the new contract period. Reference Sections 4.10 and 5.4 on adjustments for fringe benefits involving increases in the number of holidays or vacation days specified by the WD.

4.6 **Wage Adjustment Computation.** To determine the amount of the wage adjustment, the following factors must be considered for each labor classification:

- **the SCA WD minimum wage rate for the new contract period,**

less:

- **the actual wage rate paid in the previous contract period,**

plus:

- **specified allowable payroll taxes applicable to this differential,**

excluding:

- **general and administrative expenses (G&A), overhead, and profit**

4.6.1 Calculating the Actual Wage Rate Paid. The actual hourly rate paid in the previous period is the total of the hourly rate paid plus other monetary compensations (bonuses, commissions, etc.) converted to an hourly rate. The other compensations must be prorated over the hours worked in the period for which they are paid. To do this, divide the total other compensations by the number of hours they cover. A yearly bonus would be divided by 2080 hours to convert it to an average hourly rate for the standard work hours in one year. The regular hourly wage rate paid each pay period and the hourly rate reflecting the other monetary compensation are then added together to determine the total actual hourly wage rate paid in the previous period.

> *Example: The contractor paid a regular hourly rate of $7.10 per hour to an employee working on the contract. The contractor also paid a year-end performance bonus of $350 to each worker. The bonus payment would apply to the entire year of 2080 hours, and thus represent an additional $0.17 per hour wages ($350 divided by 2080 hours). The total actual wage rate paid to the employee is $7.27 per hour for the year.*

4.6.2 Calculating a Change in the SCA Wage Requirement.

4.6.2.1 *Increases.* The amount of adjustment is limited to the difference between the new wage rate applicable to the contract and the wage rate actually paid by the contractor to the employees in the previous contract period.

> *Example: The WD applicable to the base period required a minimum wage rate of $7.10 per hour. The contractor actually paid employees $7.27 per hour. The WD*

applicable to the next contract period now requires a minimum wage rate of $7.50 per hour. The allowable hourly wage adjustment under the clause is limited to $0.23 per hour ($7.50 less the actual wages paid of $7.27). No adjustment would be due if the contractor had paid wage rates equal to or greater than the new minimum rate applicable to the next contract period.

4.6.2.2 *Decreases.* When a WD is issued reflecting decreases in wage or benefit rates issued previously, a contract price decrease is only warranted when the contractor voluntarily decreases the wages or benefits paid or provided to the employees. WDs list minimum wage and benefit rates, and a contractor is not required to decrease the wage or benefits of the employees in order to comply with a new WD. If the contractor makes a voluntary decrease in the workers wages (to the new, lower minimum wage), follow the same guidelines as for an increase and reduce the contract price. The contracting officer should never encourage a contractor to reduce employee wages or benefits to meet the new, decreased minimums under SCA.

4.6.3 Maximum Adjustment. An adjustment must never exceed the differential in wage and fringe benefit rates (and allowable payroll taxes) between the "old" WD and the "new" WD. An adjustment for an increase in the FLSA minimum rate should never exceed the difference between the "old" minimum wage rate and the "new" minimum wage rate. Any adjustment greater than these differentials would indicate that the contractor was previously paying less than the minimum rates required under SCA or FLSA, or the contractor is requesting price adjustment for wage or benefit rates in excess of the new SCA requirement.

4.7 Payroll Taxes Applicable to the Adjustment. The contract price adjustment clauses (FAR 52.222-43(e) and 52.222-44(d)) state "Any adjustment will be limited to increases or decreases in wages and fringe benefits as described . . . and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance . . .". These specific payroll taxes are allowable add-ons to an SCA or FLSA increase (or decrease). Other payroll costs incurred due to the SCA or FLSA wage or benefit change, including other taxes, are not allowable.

Employer payroll taxes that are calculated as a percentage of wages paid are included in the wage differential calculation to the extent that these taxes apply to the actual wage adjustment, and to the extent that the particular tax is allowable under this clause. Allowable taxes are the Social Security taxes (Federal Insurance Contributions Act, or FICA), Federal unemployment taxes (Federal Unemployment Tax Act, or FUTA) and state unemployment taxes (state unemployment tax acts, or SUTA), and workers' compensation insurance (WCI)). Only the employer's share of taxes is allowable. No adjustment is allowed under these clauses solely for tax rate increases. However, the tax rate applicable to the contractor for the period being adjusted should be used in computing the payroll tax portion of the adjustment.

4.7.1 FICA (Social Security taxes). If the FICA rate is scheduled to change during the period for which adjustment is made, the new tax rate is applicable only to the wage differential and only for the contract hours projected after the effective date of the tax increase. Again, there is no adjustment under these clauses solely for a tax rate increase.

4.7.2 Unemployment Taxes. Not many contractors incur additional unemployment taxes on an SCA or FLSA increase because of the manner in which these taxes are applied. For example, most employers pay unemployment taxes on an employee's wages up to a capped amount; the employer will not be taxed on an employee's earnings above that amount. The current (January 2004) FUTA rate of 0.8% is paid only on wages up to $7,000. If an employee earns an SCA minimum rate of $10.00 per hour in the preceding contract period, or $20,800 per year, an SCA increase to $11.00 per hour will not incur additional FUTA tax liability for the employer. Therefore, FUTA taxes would not be allowable because the cost will not be incurred.

SUTA tax rates may vary by state and by employer or industry unemployment levels. Many SUTA tax rates are capped as is the FUTA tax rate and therefore a contractor's increase in SCA or FLSA rate may not result in an additional SUTA tax cost. However, if the SUTA tax rate cap is substantially higher than the FUTA cap, an SCA wage increase could result in an allowable SUTA tax cost. The contracting officer may verify the applicable

SUTA tax rate by requesting documentation from the contractor (i.e., state-issued tax notices), or by contacting the contractor's state employment tax office. There is no adjustment under these clauses solely for an increase in the FUTA or SUTA tax rate rates. SUTA tax rates for each state may be found at the website: http://www.ows.doleta.gov/ unemploy/statetax03.asp.

4.7.3 Workers' Compensation Insurance (WCI). WCI rates vary by state and by employer according to the nature of their business, their compensation claims history, and employee classifications. There is usually no ceiling or cap on the wages subject to the tax. WCI is an allowable add-on to the contract price adjustment request, to the extent that the WCI tax is incurred due to the SCA or FLSA wage increase. In some few states, WCI is expressed as an hourly rate, not as a percentage of wages. In this instance, an amount for WCI would not be allowable since the SCA or FLSA wage increase would not cause a related increase in the contractor's WCI cost. Again, the contracting officer verifies the applicable WCI rates by requesting state-issued documentation from the contractor, or by contacting the state workers' compensation tax office.

4.7.3.1 *WCI and General Liability Insurance Plans.* Many employers meet their statutory obligation to provide workers' compensation insurance for their workers by purchasing an insurance policy from a private insurer-provider. Such a policy often has a premium established as a percentage of total payroll cost. The policy often includes coverage for other liabilities such as general liability insurance, life insurance for key management personnel, automobile and equipment liability, as well as the WCI tax requirement. Regardless of the fact that the premium is based on total payroll cost, the only allowable portion of the premium is that amount designated as the WCI tax requirement, applicable to the SCA or FLSA wage increase. Therefore, the contracting officer should request documentation to confirm the specific WCI rate for the employer -- that is, the state's taxing document -- and should not accept or use the insurance policy's premium rate which covers more than the WCI requirement.

4.7.4 Taxes Applicable to Fringe Benefits. Generally, cash payments made by contractors in lieu of fringe benefit plans are

subject to the various payroll taxes (including FICA, FUTA, SUTA, and WCI). However, employer payments into bona fide fringe benefit plans are not subject to payroll taxes. Typically, bona fide fringe benefit plans include insurance programs for health and welfare benefits, pension, retirement, or life insurance. If the revised SCA WD increases the health and welfare requirement, and the contractor elects to provide this increase in premiums paid to a bona fide plan, the contract price adjustment for this benefit increase should not include payroll taxes. The employer will not incur a tax liability if the payment is made into a bona fide plan. However, if the contractor pays the SCA-required fringe benefit increase directly to the employees in the form of cash payments in lieu of a fringe benefit plan, such payments are subject to payroll taxes. The accompanying payroll taxes on such a payment (to meet an increase in the SCA fringe benefits) would be allowable in the contract price adjustment request. In determining the allowability of a contract price adjustment request for increases in SCA fringe benefits, the contracting officer should also request sufficient documentation to establish the allowability of any accompanying payroll taxes.

4.8 **General and Administrative (G&A) Expenses, Overhead, and Profit**. G&A expenses, overhead, and profit are specifically not allowable as part of the SCA contract price adjustment. The clause specifically allows an adjustment to include costs incurred for FICA, FUTA, SUTA, and WCI (see Section 4.7). Other payroll costs are not allowable, including (but not limited to) general liability or other insurance premiums; bonding costs; increases in management or supervisory wage rates to maintain equity with SCA-covered wage levels; increases in state or other labor standards requirements; state disability insurance; and state general excise taxes (i.e., Hawaii or New Mexico general excise taxes).

4.9 **Employee Reimbursements for Business Expenses**. Payments made by the employer to the employee for fuel, mileage, meals, lodging, or uniforms and uniform maintenance are the employer's cost of doing business (G&A expenses or overhead) and are not considered wages or benefits of the employee (even if such payments are included in and required by a CBA). Therefore, such payments (or increases in such payments) are not allowable as part of the contract price adjustment requested under the clause.

4.10 Fringe Benefit Adjustments.

4.10.1 Required Fringe Benefits: The fringe benefit requirements listed on Standard and Non-Standard WDs most often consist of:

- an hourly rate for health and welfare plans (health and/or life insurance, pension benefits, retirement, etc.);
- a specified number of holidays; and
- a specified number of vacation weeks (including the requirements for eligibility and accrual of vacation benefits).

The allowable adjustment for an increase (or decrease) in fringe benefits is the difference between the new fringe benefit requirements expressed in terms of an hourly rate, and the total benefits actually provided by the contractor during the preceding contract period, expressed in terms of an hourly rate. The computation should combine all benefits newly required and all bona fide benefits actually provided by the contractor in the preceding contract period.

Contractors may comply with SCA fringe benefit requirements by paying cash in an amount equivalent to the hourly amount of benefits listed on the WD (or any portion of the total benefits). However, compliance requires that the contractor designate in his pay records that he is paying a specific sum of cash equivalent to the required benefits (or a portion of the benefits). If the contractor does not separately state a sum of cash as an equivalent benefit, the extra cash paid is simply a part of the employee's wage rate and not creditable toward the employer's benefit requirement. If a contractor regularly pays higher wages than the minimum wage rates listed on the SCA WD, the wages in excess of the minimum cannot be claimed toward any requirement for fringe benefits. Therefore, if the SCA WD increases the benefit requirements for a contractor that pays higher wages than the minimum, the contractor will still have to increase the employee's fringe benefits to comply with the new SCA WD. The cost incurred by the contractor to comply with the new SCA benefit requirement will be allowable under the clause.

Example: Contractor A is working under a contract that contains an SCA WD requiring $10.00/hour wages and $2.02/hour fringe benefits. He pays all of his workers $12.00/hour in wages and provides exactly $2.02/hour in benefits. The new WD requires a wage rate of $11.00/hour, and a new benefit rate of $2.12/hour. The contractor is not entitled to an adjustment in contract price for the wage increase (he is already paying in excess of the minimum). However he would be entitled to an adjustment for the $.10/hour he must pay to comply with the new benefit rate of $2.12/hour.

Example: Contractor B works under the same SCA WDs as noted above. However, he pays his workers only the SCA minimum wage rate of $10.00/hour and the $2.02/hour in cash equivalent for fringe benefits. This contractor would be entitled to an adjustment in contract price for the increases in both the wage rate and the H&W benefit.

4.10.2 Health and Welfare (H&W) Rates. For a number of years, the Department of Labor (DOL) issued two Standard Wage Determinations (WDs) for each locality – the wage rates are the same, but one WD lists a higher-level H&W rate ($2.56/hour) than the other WD.[1] At present (March 2004), the low rate is $2.36/hour and the high rate is $2.56/hour. Contracting officers should take particular care to determine which of these Standard WDs are appropriate for each contract action. If necessary, contact the Navy Labor Advisor for guidance. Note: The WDOL.gov menu for selecting Standard SCA WDs incorporates these questions into the selection process, and should, if answered carefully, lead the user to the correct SCA WD.

4.10.2.1 *Selecting the Correct H&W Rate on Standard WDs.* The following guidelines should be used in selecting the H&W level applicable to each contract action.

- If the services were previously performed at the same locality under a contract (or option) covered by SCA provisions containing a Standard WD listing the high

[1] See Addendum E regarding H&W rates issued by DOL over the past several years.

H&W rate of $2.56, select the Standard WD containing the same H&W rate of $2.56 for all following contract periods and follow-on contracts for these services at this locality.

- If the services were previously performed at the locality under a contract covered by SCA provisions containing an SCA Standard WD with an H&W rate less than $2.56, select the Standard WD containing the low H&W rate.

- If the services were not previously performed under contract, select the Standard WD containing the low H&W rate.

4.10.2.2 *Compliance with the High H&W Rate.* If the Standard WD incorporated into the contract contains the $2.56 H&W rate, the contractor must provide equivalent fringe benefits at a cost that is no less than the average of $2.56/hour for all hours worked, including hours worked in excess of 40 per week, but not including paid, non-work hours such as holiday or vacation time.

4.10.2.3 *Compliance with the Low H&W Rate.* If the Standard WD incorporated into the contract contains the low H&W rate, the rate applies to each hour paid by the contractor to the employee, up to a maximum of 40 hours per week, including paid, non-work hours such as holiday or vacation time.

4.10.3 SCA H&W Rates Applicable in Hawaii. DOL issues two Standard WDs for Hawaii, as it does for the localities in other states, one WD noting a lower H&W rate than the other WD. However, both H&W rates issued by DOL for Hawaii are significantly lower than the rates listed on WDs applicable to contracts performed in other states. This is because DOL has taken into consideration that state's requirement that employers provide health care insurance for their workers under the Hawaii Prepaid Health Care Act (HI-PHCA).[2] Contracting officers will

[2] See Addendum E regarding Hawaii H&W rates issued by DOL.

select the H&W levels in Hawaii Standard WDs on the same basis used for other Standard WDs (see Subsection 4.9.2.1).

4.10.4 Holidays. When the new WD increases the number of required holidays, the contractor may claim an adjustment for the increased cost. The allowable adjustment is the SCA minimum wage rate for each classification working on the contract, times the number of added holiday hours (a holiday under SCA is equal to the regular daily work hours for each classification). However, if, in the preceding period, the contractor provided more holidays or other leave time (or any total combination of leave time and other bona fide fringe benefits) than required by the new WD, an adjustment for the increase in SCA-required holidays is not due. The adjustment is limited to the difference between the total benefits required by the new WD and the total benefits provided in the preceding contract period.

4.10.5 Vacation. Standard and Non-Standard WDs usually list vacation benefits as a specified number of weeks earned per total years of service. Total years of service include continuous employment on predecessor contracts.[3] Unless the WD states otherwise, vacation benefits become vested on the employee's anniversary date. The anniversary date is the day the employee was first employed on the contract. A contract price adjustment is only applicable under the clause if the new WD changes the vacation benefit or entitlement criteria required by the WD in the preceding contract period. No adjustment is permitted merely because an individual employee continues to work throughout contract performance and reaches the number of years of service eligible for the next level of vacation benefits already established in the old WD.

> *Example: The original WD required one week vacation after one year of service, two weeks vacation after three years, and three weeks vacation after five years. The new WD changes the vacation requirement to: two weeks*

[3] Continuous employment may include employment with more than one predecessor contractor if each performed essentially the same services in the same location, with essentially no break in service. Continuous employment also includes prior years of uninterrupted service with the current contractor, on or off government contracts.

vacation after one year, and three weeks vacation after five years (the one-year entitlement was increased, and the three-year entitlement was dropped). An adjustment equal to one week of vacation at the new WD wage rate may be claimed for each employee who will reach their one-year or two-year anniversary date during the next contract period. No adjustment is required for employees reaching their third or greater anniversary date during the next contract period because there was no change in their benefits or entitlement criteria.

4.10.6 Part-time Employees. Part-time employees are entitled to fringe benefits unless specifically excluded by the WD. Therefore, the contractor is allowed to claim appropriate adjustments for these employees as well as full-time employees. The amount of holiday and vacation adjustment is prorated based on their normal schedule of hours worked.

Example: An employee who regularly works 20 hours per week (4 hours for each of 5 workdays) on the contract is entitled to 4 hours for each holiday and 20 hours for a vacation week if he works through his anniversary date. If the new WD requires an additional holiday, the contractor would request an adjustment for that employee equal to the new WD wage rate multiplied by 4 hours.

Note: Eligibility for annual vacation benefits still requires that the employee reach an anniversary date. Therefore, if a part-time employee is a casual hire, or temporary worker, employed for only a short duration with a break in service prior to reaching an anniversary date, the employee would not be due any vacation benefits, including prorated.

Note: Part-time employees are entitled to the full H&W requirement listed on the WD, for each hour worked. Therefore, if the new WD increases the H&W rate, the contractor will be entitled to an adjustment for the increase on the hours worked by all part-time employees (casual and regular), as well as full-time workers (assuming the contractor has not provided benefits in the preceding

contract period greater than the benefits required under the old WD).

5.0 WAGE DETERMINATIONS BASED ON COLLECTIVE BARGAINING AGREEMENTS (CBAs)

5.1 SCA Coverage of CBAs. The wage rates and monetary fringe benefits in an incumbent contractor's CBA, provided by the contractor to the contracting agency in a timely manner (reference FAR 22.1012), will become applicable as SCA minimum compensation for the following option, extension, significant change in scope, or for a resolicitation (applicable to the successor's contract base period). This requirement is statutory (the Act, Section 4(c), 41 U.S.C. 353(c)), and becomes effective whether or not the new or revised CBA is incorporated into the contract.

5.1.1 Written Notification to Union and to Contractor. If the contracting officer is aware that a union represents the contractor employees as the collective bargaining agent, the contracting officer must provide written notification to the union and to the contractor of the pending contract action. The notification must be issued no less than 30 days prior to issuance of a resolicitation or issuance of a modification to exercise an option, extend the contract, or significantly change the scope of work. Reference FAR 22.1010. A sample notification letter is provided at Appendix D.

Contracting officers should anticipate the dates for issuing each resolicitation or modification to exercise an option or extension, and set up a reminder that provides sufficient time to prepare and issue each written notification. The reminder should occur no less than 60 days prior to each contract action to provide sufficient time for the contracting officer to contact the contractor to inquire if any of workers are represented by a union (or if any subcontractor workers are represented by a union), and to provide sufficient time for receipt of the information necessary for written notification (i.e., union representative's name and address).

5.1.2 Timeliness. The contractor is obligated to submit a new or revised CBA to the contracting agency in a timely manner in

accordance with the paragraph (m) of FAR 52.222-41. A CBA must be received timely in accordance with FAR 22.1012-3 in order to be incorporated under SCA into the contract for the following contract period. See Section 1.4 of this Guide for timeliness requirements. Note: Timely receipt of a CBA from a contractor is predicated on the contracting officer's timely notification under FAR 22.1010 (see previous section).

If the CBA is not received timely by the contracting agency, it should not be incorporated into the following contract period. Any questions regarding the timeliness of notification and receipt of new or revised CBAs should be referred to the Navy Labor Advisor.

5.2 Effective and Expiration Dates of CBAs.

5.2.1 Effective Dates of CBAs. If the monetary provisions (wages and monetary benefits) of a new CBA are made effective only after the start of the next contract period, the CBA is not covered by the SCA successor provisions for that next period. The contracting officer should not incorporate the CBA into the new contract period. For SCA purposes, the CBA must include monetary provisions that are effective in the preceding contract period. Increases to those monetary provisions of the CBA may be made effective during the next contract period, and contractors should address these prospective increases in their proposals or requests for price adjustments for options or extensions. If the incumbent contractor signs a CBA that is first applicable during the middle of an existing contract period, that CBA is not incorporated into the contract until the next option or extension period, and no adjustment is provided for any increases in wage or benefit rates during that earlier period.

5.2.2 Expiration Dates of CBAs. If the expiration date of the CBA between the predecessor contractor and union occurs prior to the end of the contract period, the provisions of the CBA will no longer be applicable under SCA to the following contract period. An SCA Standard WD may be applicable instead of the CBA WD. Review the CBA to determine if there is a provision that automatically renews the CBA at the expiration date (generally providing such automatic renewal for one year unless

one party or the other provides written notice of an intent to renegotiate the agreement). If there are questions regarding effective and expiration dates, contact the Navy Labor Advisor.

5.2.3 Effective Dates of CBA Wage and Benefit Increases. The effective dates of CBA wage and benefit increases do not always coincide with the start of a contract period. In such cases, the contractor is only reimbursed for that portion of the contract period affected by the increase.

> *Example: The monetary provisions of a contractor's new CBA is effective August 1, 2004, and requires only the wage and benefit rates already paid by the contractor for that contract period. The CBA provides for wage increases to occur on January 1, 2005. The contractor's next option period begins October 1, 2004. The SCA price adjustment is limited to the period of January through September of the FY2005 option.*

5.2.4 CBA Applicability. Contract price adjustments resulting from new or revised CBAs are limited to those employee classifications subject to such CBA provisions that are performing contract work. Non-exempt classifications performing contract work but who are not represented by a union would be subject to the provisions of a Standard or Non-Standard WD.

5.3 **Obtaining a CBA WD**. Prior to October 2003, the contracting officer was responsible for submitting a timely-received CBA to DOL, attached to an SF 98/98a for each contract period. DOL would issue a WD referencing the CBA and the contracting officer would incorporate both the full copy of the CBA and the CBA WD into the solicitation or contract.

Since October 2003, the WDOL.gov program allows contracting officers to prepare a CBA WD as a cover page for the new or revised CBA. Access the website and complete the menu questions under "Selecting an SCA WD" to obtain a CBA WD. If you have questions pertaining to the process, read the "WDOL User's Guide" or contact the Navy Labor Advisor.

5.4 CBA Provisions Subject **to Adjustments**. Wage and benefit provisions found in a CBA (or WD based on a CBA) are adjusted in the same manner as those found in Standard or Non-Standard WDs. However, CBA provisions are often more varied and complex. The subsections below provide guidance on typical (though not all) wage and benefit provisions found in CBAs.

5.4.1 Shift Differentials. This is an additional wage rate specified for hours worked at different time schedules than usual work hours (e.g., an additional $0.05 per hour for the shifts worked between 4:00 p.m. and midnight, and $0.08 per hour for the hours worked between midnight and 4:00 a.m.). These are not considered "overtime" provisions, but additional SCA-required minimum wage rates for employee classifications that do not work during the regular day, but work during regularly scheduled shifts at evening or night. As such, they are covered by SCA and subject to adjustment under the clause.

5.4.2 Vacations. Typical Standard WDs provide for a week (or more) of vacation after reaching an anniversary date. CBAs often specify an accrual period of less than one year, such as weekly or monthly. After working each week or month, the employee earns (accrues) a specific number of vacation hours (e.g., accruals of 4 hours every 2 weeks worked). Price adjustments for increases in vacation benefits should be computed with the same application of accrual criteria, particularly for adjustments applicable to short contract extension periods.

Example: If a CBA increased vacation benefits from four hours every two weeks to five hours every two weeks, the adjustment would be computed on each employee for each two-week period within the extension.

Example: A CBA provides vacation benefits of one week for one year of service, and two weeks for two years of service. A revision to the CBA increases the initial vacation eligibility to two weeks for one year of service (no other change). The adjustment for the option period would be limited to those employees who would reach their one-year anniversary date within that option period.

5.4.3 Sick Leave, Jury Duty, or Bereavement Leave. If such leave is a CBA requirement, an increase in these benefits (or an increase caused by revision of eligibility criteria) would be an allowable adjustment similar to holiday or vacation leave benefits. The adjustment is limited, however, to the extent that the benefit is expected to be used (based on historical data provided by the contractor). (If the contractor pays at the end of the year for all unused sick leave, an adjustment is made for all sick leave hours accrued because it is paid regardless of scheduled use.) The contractor should provide supporting documentation from previous contract periods for any claim involving more than a minimal number of hours to be adjusted for these benefits.

5.4.4 Retirement, Pension, and Health or Life Insurance Plans. If such plans are a CBA requirement, the adjustment should be based upon the difference between the new requirement and the amount actually paid by the contractor in the prior contract period. If a CBA contains a provision for a health and life benefit plan, but it contains no monetary minimum rate required for the contractor to pay, contact the Navy Labor Advisor for guidance. With regard to benefit plans that include provisions for employees to share the premium costs, SCA adjustments should consider only the contractor's costs. New or revised CBAs which reduce the contractor's previously-required costs for benefits should be considered a reduction in SCA-required benefits and adjusted accordingly.

5.4.5 Overtime. Many CBAs provide a variety of overtime compensation – a premium paid for hours worked in excess of an employee's regular schedule (i.e., time-and-one-half rates for hours worked over eight hours per day, or double-time pay for Sunday or holiday work). Overtime pay is not considered a fringe benefit under SCA. While all hours worked on the contract by covered workers are subject to an SCA adjustment for changes in minimum wages and benefits, including hours worked over 40 per week, such hourly rate adjustment would not include an additional half (or other premium) for the hours over 40 per week.

5.4.6 Other CBA Payments. Payments made by an employer for various CBA provisions related to work conditions or work rules are not enforceable under SCA, and are therefore not subject to adjustment under the clause.

Example: If the CBA requires an employee to be paid a minimum of four hours wages if called to work on their day off (Show-up or Call-in payment), the employee may work only one hour, but is paid four hours. The three non-work hours are not considered work time or a benefit under SCA, and therefore would not be included in the hours adjusted for wage increases.

Example: The CBA may require an employer to provide a paid 30-minute break in mornings or afternoons. Breaks are not required by SCA and payment for them is not subject to adjustment under the clause.

Example: Contractors often offer workers a bonus payment if the proposed collective bargaining agreement is ratified (accepted by voting workers). The offer of a ratification bonus encourages acceptance of the contractor's proposed agreement. Payment of a ratification bonus is not a part of wages or benefits. Therefore, it is not covered by SCA, and not subject to adjustment under the clause.

5.4.6 Decreases in CBA Wages and Benefits. If a successor contractor does not negotiate a follow-on CBA with a union and deliver it timely to the contracting officer, it may be necessary to incorporate a Standard or Non-Standard WD into the next contract period. The wages and benefits of these general WDs are often lower than the wages or benefits in a CBA. Infrequently, successor contractors and unions may negotiate a decrease in wages or benefits for the follow-on CBA. In either instance, it may be necessary for the contracting officer to consider a decrease in contract price adjustment under the clause if the contractor voluntarily (or by CBA provision) decreases wages or benefits established under SCA. Reference Subsection 4.5.2.2 regarding such decreases.

6.0 EQUIVALENT FRINGE BENEFITS. As stated previously, adjustments are limited to the difference between the new benefits required on the WD or CBA, and the actual benefits provided by the contractor in the prior contract period. A contractor may furnish any combination of bona fide fringe benefits to their employees to meet the requirement of the WD.

> *Example: The WD requires H&W benefits of $1.39 per hour and $0.50 per hour in pension benefits. The contractor provided a health plan costing $1.89 per hour and met the requirement for both benefits. If the total SCA benefit requirement increases in the next contract period, the contractor may claim an adjustment for that amount. However, if the contractor had paid $2.00 per hour for a plan providing health benefits, any price adjustment claim for an increase in either benefit would be offset by the payment made in excess of the former minimum benefits.*

7.0 UNLISTED CLASSIFICATIONS

7.1 Unlisted Classifications. When the WD incorporated in a contract does not include all SCA non-exempt labor classifications necessary for performance of the contract, the awarded contractor must obtain authorization from DOL for the wage and benefit rates he has proposed to pay such unlisted classifications. The contractor initiates the process by preparing an SF-1444, Request for Authorization of Additional Classification and Rate, in accordance with FAR 22.1019 and 52.222-41(c)(2), to establish enforceable SCA wages and benefits for the unlisted classifications. The contractor's proposed rates must reasonably "conform" to the wage and benefit rates listed on the WD for similar classifications – the process is often called "conforming". The Library Page on WDOL.gov (www.wdol.gov) has both the form and guidance for the "conformance" process. If DOL rejects the contractor's proposal, and directs the contractor to increase the proposed wage or benefit rates, the increase required by DOL in the initial response is not subject to contract price adjustment under the clause.

7.2 Indexing Conformed Wage Rates. Frequently, the classifications that were conformed (approved by DOL) in the first contract period will continue to be missing from subsequent WDs issued by DOL for following contract periods (options) or follow-on contracts. The contractor may establish a new SCA-enforceable rate for the unlisted

classification in the next contract period by applying an "index" amount to the rate authorized by DOL for the unlisted classification employed in the earlier contract period. The "index" is a computation based on the changes DOL made to the wage rates, from one WD to the next WD, of the classifications listed on the WD that perform work on the contract. The "indexing" method is as follows:

- **Determine the percentage of change from the rates listed on the old WD to the rates listed on the new WD, for only those classifications used on the contract;**

- **Compute the average of these percentages to determine the "index" rate by dividing the total of percentage changes by the total number of classifications used on the contract;**

- **Apply this average percentage change to the wage rate that was conformed in the previous contract period. This indexed amount is an allowable adjustment under the clause.**

Example: The old WD listed seven classifications, five of which were used on the contract (A, B, C, F and G). The contractor also employed Classification X, which did not appear on DOL's WD. A conformance was submitted for Classification X and DOL had approved a rate of $10.00 per hour. At the first option period, DOL issued a WD that changed the listed classifications in the following manner:

A = +3%	*B = +3.5%*	*C = -2%*
F = no change	*G = +2.5%*	

The total of these changes is 7%; divide by 5 to obtain the average change for listed classifications, which is 1.4% increase. This index rate is applied to the conformed Classification X ($10.00 times 1.4%) to provide the SCA-enforceable new wage rate of $10.14 per hour. The increase of $0.14 per hour is an allowable adjustment under the clause.

7.3 <u>Follow-On Contracts</u>. If a labor classification was conformed in the previous contract, and that classification still does not appear on the WD incorporated into the solicitation for a follow-on contract, the

conformance process may begin anew, with the successor contractor initiating a new request, after award, to DOL for authorization (SF-1444), or the offerors may request information from the procuring contracting officer regarding the conformance process in the preceding contract. Requests for copies of the predecessor's SF-1444 and DOL's original authorization (response) should be expedited and included in the solicitation for all offerors to consider.

8.0 FAIR LABOR STANDARDS ACT (FLSA) ADJUSTMENTS. The policies and procedures described above for SCA adjustments also apply to revisions of the FLSA minimum wage. No contract adjustment is made for FLSA minimum wage increases that are enacted (by amendment to FLSA) prior to issuance of a solicitation, even though the effective date of the increase is after award. Given public notice of the change in the FLSA minimum, offerors should have anticipated the increase when developing their bid or proposal.

ACRONYMS

CBA	Collective Bargaining Agreement
DBA	Davis-Bacon Act
DFARS	Defense Federal Acquisition Regulation Supplement
DOL	U. S. Department of Labor
FAR	Federal Acquisition Regulation
FLSA	Fair Labor Standards Act
FICA	Federal Insurance Contributions Act
FUTA	Federal Unemployment Tax Act
G&A	General and Administrative
H&W	Health and Welfare
OH	Overhead
SCA	Service Contract Act
SUTA	State Unemployment Tax Acts
WDOL.gov	Wage Determinations On-Line Program
WDs	Wage Determinations
WCI	Workers' Compensation Insurance

APPENDIX A

52.222-41 -- Service Contract Act of 1965, as Amended.
As prescribed in 22.1006(a), insert the following clause:

SERVICE CONTRACT ACT OF 1965, AS AMENDED (MAY 1989)

(a) *Definitions.* "Act," as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351, et seq.).

"Contractor," as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee," as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify 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) 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. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs

any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(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 such 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 paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the 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 subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) *Adjustment of compensation.* If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to furnish fringe benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) *Minimum wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor contracts.* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same

locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor

(Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) *Safe and sanitary working conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records.* (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act --

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

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(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) *Withholding of payments and termination of contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) *Collective bargaining agreements applicable to service employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period

of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority list.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings and interpretations.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) *Contractor's certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) *Variations, tolerances, and exemptions involving employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub.L.92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

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(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than $30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed $1.34 per hour beginning January 1, 1981. To use this provision --

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee

receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) *Disputes concerning labor standards.* The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of Clause)

APPENDIX B

52.222-43 Fair Labor Standards Act and Service Contract Act -- Price Adjustment (Multiple Year and Option Contracts).

As prescribed in 22.1006(c)(1), insert the following clause:

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT – PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (MAY 1989)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

(d) The contract price or contract unit price labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of $4.00 per hour. The Contractor chose to pay $4.10. The new wage determination increases the minimum rate to $4.50 per hour. Even if the Contractor voluntarily increases the rate to $4.75 per hour, the allowable price adjustment is $.40 per hour;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

(End of Clause)

APPENDIX C

52.222-44 -- Fair Labor Standards Act and Service Contract Act -- Price Adjustment.

As prescribed in 22.1006(c)(2), insert the following clause:

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT -- PRICE ADJUSTMENT (FEB 2002)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to Contractor collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with --

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of Clause)

APPENDIX C

Sample Notification Letter
for
FAR Section 22.1010

Mr. John Jones, President
ABC Janitorial Services, Inc.
123 Main Street
Washington DC 20374 and

Mr. Harry Smith, Business Representative
Laborers Union Local #10
456 Front Street
Washington DC 20374

Subject: Contract N12345-01-D-1234, Janitorial Services at Naval Facilities, Washington DC

Dear Sirs:

This letter will serve as notice to you under Federal Acquisition Regulation Section 22.1010 that the Government is considering . . .

[issuing a resolicitation of]
[issuing a modification to significantly change the scope of work on]
[issuing a modification to exercise the First Option [Second, etc] on],

the subject contract. The [modification, solicitation] may be issued on or after [date].

If you have any questions, please contact me at (123) 456-7890.

Sincerely,

Ms. April Showers
Contracting Officer

APPENDIX D

Service Contract Act (SCA)

Health & Welfare (H&W) Benefit Rates

Background:

For a number of years, the Department of Labor (DOL) has issued two Standard Wage Determinations (WDs) for each locality – the wage rates are the same, but one WD lists a higher-level H&W rate ($2.56/hour) than the other WD. (Generally, the two WDs for each locality have consecutive numbers, i.e., WD No. 1994-2021 and WD No. 1994-2022.) DOL used different statistical methodologies to determine each rate. Contractors were permitted to comply with the higher H&W rate by providing a H&W plan at a minimum average cost of $2.56 per hour computed on the basis of all hours worked by service employees employed on the contract. (Such plans usually consisted of a combination of benefits such as life, accident, and health insurance plans, sick leave, pension plans, civic and personal leave, severance pay, and savings and thrift plans.) The lower H&W rate required employers to pay the H&W rate for each hour paid (hours worked on the contract plus paid leave hours - vacation, holiday, sick leave), up to a maximum of 40 hours per week per employee.

In 1997, DOL initiated a new methodology to determine an appropriate, single SCA H&W benefit rate for all Standard WDs. The new methodology would be based on data contained in DOL's Employment Cost Index (ECI). The initial implementation was accomplished by increasing the lower H&W rate incrementally over four years to meet the new ECI-based rate. (Each increase will be published annually on June 1st). For all states excluding Hawaii, DOL issued lower-level H&W rates as follows:

- On June 1, 1997, the lower H&W rate was increased from $.90/hour to $1.16/hour.
- On June 1, 1998, the rate increased to $1.39/hour.
- On June 1, 1999, the rate increased to $1.63/hour.
- On June 1, 2000, the rate increased to $1.92/hour.

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After the initial four-year implementation of the new methodology, DOL began publishing the new ECI-based H&W rate on June 1st of each year.

- On June 1, 2001, the lower H&W rate was $2.02/hour.
- On June 1, 2002, the rate was $2.15/hour.
- On June 1, 2003, the rate was $2.36/hour.

DOL has continued to publish the higher-level Standard WDs listing the H&W rate of $2.56/hour because this rate will continue to be applicable to certain contract actions, in accordance with DOL's "All Agency Memorandum #188" published May 22, 1997 (based on the final regulatory rule published in the Federal Register on December 30, 1996, reference page 68647). It is expected that the lower-level H&W rate will eventually be increased by application of the ECI to meet or exceed $2.56/hour. At that time, there will be only one Standard WD issued for each locality.

Selecting the Appropriate H&W Rate:

See Section 4.10.2 of this Desk Guide, and the "WDOL.gov User's Guide" for information concerning the selection of a WD containing the appropriate H&W rate for each contract action.

H&W Rates Applicable in Hawaii:

In Hawaii, most employers are required by law to provide health insurance coverage for their employees. Therefore, employer contributions that are made to satisfy the employer's obligations under the State of Hawaii's Prepaid Health Care Act (HI-PHCA) may not be credited toward meeting the contractor's obligations under SCA. Prior to June 1, 1999, DOL addressed this situation by issuing SCA Standard WD H&W rates that excluded a factor representing the health insurance portion. The two H&W rates issued prior to June 1, 1997, were $.055/per hour for the low H&W, and $1.64/hour for the high H&W.

In 1997, DOL began publishing the new ECI-based H&W rates in the Hawaii WDs. The lower H&W rate increased as noted below:

- On June 1, 1997, the lower rate was decreased from $.055/hour to $.28/hour.
- On June 1, 1998, the lower rate was increased to $.48/hour.

In 1999, it came to DOL's attention that employers in Hawaii could exclude certain employees from the employer's HI-PHCA contributions. On May 24, 1999, DOL issued "All Agency Memorandum No. 192" which revised the procedures for determining the appropriate SCA WD H&W rate for contractors performing service contracts in Hawaii. DOL determined that contractors who employed workers excluded from the state requirement for health insurance should be required to pay the full ECI-based lower H&W rate (as issued for states other than Hawaii) for those workers. The following increases in the H&W rate, based on the application of ECI, were thereafter issued by DOL for the Hawaii Standard WDs:

- On June 1, 1999, the lower rate was increased to $.68/hour for employees participating in HI-PHCA, and to $1.63/hour for employees not participating in HI-PHCA.
- On June 1, 2000, the lower rate was increased to $.70/hour for employees in HI-PHCA, and to $1.92/hour for employees not in HI-PHCA.
- On June 1, 2001, the lower rate was increased to $.93/hour for employees in HI-PHCA, and to $2.02/hour for employees not in HI-PHCA.
- On June 1, 2002, the lower rate was increased to $.99/hour for employees in HI-PHCA, and to $2.15/hour for employees not in HI-PHCA.
- On June 1, 2003, the lower rate was increased to $1.01/hour for employees in HI-PHCA, and to $2.36/hour for employees not in HI-PHCA.

APPENDIX E