U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210

October 12, 1972

See Paragraph #4

MEMORANDUM #108

TO: All Government Contracting Agencies
of the Federal Government and
the District of Columbia

SUBJECT: AMENDMENT OF THE SERVICE CONTRACT ACT OF 1965

On October 9, 1972, the President signed into law H.R. 15376 which amends the Service Contract Act of 1965. A copy of the amendments is attached. As you will note, the amendments contain no prospective effective date; consequently, they became effective upon the approval of the President.

The Department of Labor is reviewing the amendments, preparing interpretative materials, and drafting necessary amendments to the Regulations in 29 CFR Parts 4 and 6, which will be published in the Federal Register very shortly. These amendments to the Regulations will be in effect on an interim basis pending receipt of comments from interested parties (including contracting agencies) and the formulation and promulgation of the amended Regulations in final form.

Particular attention is directed to the amendments to sections 2(a)(1) and 2(a)(2) of the Service Contract Act with respect to use by the Secretary of Labor in wage determinations of the wage rates and fringe benefits provided in collective bargaining agreements covering service employees. Under these amendments to sections 2(a)(1) and 2(a)(2), the Secretary must include such collectively bargained wage rates and fringe benefits (including prospective increases) in a wage determination except where he concludes that they were not bargained at "arms-length" or after it has been found upon hearing that they are "substantially at variance with those that prevail for services of a similar character in the locality."

It is therefore essential that contracting agencies, in submitting notice of intention to make a service contract (SF-98), secure and attach copies of any current collective bargaining agreements between any incumbent contractor and representatives of his service employees working on a contract for such services at the same location. This will avoid delays in processing the necessary wage determinations. If a notice of intention to make a service contract is received without the pertinent collective bargaining agreements attached (assuming any apply), it will be returned for further action by the agency.

Section 4(c) provides generally that a successor contractor must pay at least the wage rates and fringe benefits paid pursuant to a collective bargaining agreement by his predecessor and must place in effect any prospective increases called for by the agreement. Section 4(c) also contains a proviso under which the Secretary of Labor may upon a hearing disallow collectively bargained wage rates and fringe benefits which are substantially at variance with those prevailing in the locality. This proviso will be used in all appropriate cases and the Department of Labor will develop a speedy and efficient hearing procedure. Agencies are requested to give the Secretary of Labor a timely notice of any situation requiring such a hearing.

A further problem is posed for the contracting agencies by section 2(a)(5). This requires the agency to include in the service contract: "A statement of the rates that would be paid by the Federal agency to the various classes of service employees if section 5341 of Title 5, United States Code, were applicable to them." Accordingly, the contracting agency must prepare for each such contract a statement (1) identifying those classes of service employees that are expected to be employed in the performance of the contract and that would be subject to 5 U.S.C. 5341 if they were direct hires, that is, the so-called "wage board" or "blue collar" classes of employees not included in the General Schedule category, and (2) showing the wage rate and fringe benefits that would be paid to each class so listed, if section 5341 were applicable. Such a statement is mandatory.

A further provision of section 2(a)(5) provides that the Secretary of Labor shall give "due consideration" to such rates in making "the wage and fringe benefit determinations" required by the Act. Accordingly, in order that the Secretary of Labor can give "due consideration" as required, the agency "statement" must be prepared in advance and a copy attached to the notice of intention to make a service contract (SF-98). Any notice of intention that does not include such a statement, or includes an incomplete statement, will be returned to the agency for further action. Agencies must give prompt and careful attention to this new provision of law so that the procurement process will not be delayed.

Section 10 of the amendments requires the Secretary of Labor, for the fiscal year ending June 30, 1973, to issue a wage determination for all contracts under which more than twenty-five service employees are to be employed. Information must be included on the SF-98 as to the number of service employees expected to be employed in performance of the proposed contract. The Department of Labor will return for further action any SF-98 which does not include a specific figure or a statement that not more than twenty-five service employees will be employed.

The changes made by the amendments in the wage determination process are effective upon the date of enactment. Accordingly, in cases where a notice of intention to award a service contract (SF-98) has been submitted by the contracting agency and no response has been received from the Department of Labor prior to the effective date of the amendments, the Department will take no action until a new notice with the necessary attachments has been submitted which will enable it to comply with the requirements imposed by the amendments. The Department of Labor will not on its own motion reopen cases, however, where a notice (SF-98) has been received and acted upon prior to the effective date of the amendments.

With respect to governmental action on procurements already in process on the effective date of the amendments, the Department of Labor has concluded that it is not the intent

of the amendments to apply the new procedures in those cases where, as of October 9, 1972, negotiations for a proposed service contract have been concluded, or bids for such a contract have been opened, or competitive proposals solicited by the agency for such a contract have been received and were being considered. Consequently in such cases it will not be necessary for the contracting agency to submit a new notice of intention to award a service contract (SF-98) with copies of any applicable collective bargaining agreements and of the agency's statement of wage board rates to the Department of Labor for use in determining wage rates and fringe benefits applicable to the contract.

However, since the SCA amendments are effective upon signature of the President, the obligations imposed on successor contractors by section 4(c) of the amendments appear plainly applicable to any such contractor under a contract subject to the Act awarded after such effective date, irrespective of whether wage determinations applicable to such contract require payment of the collectively bargained wage rates and fringe benefits to which service employees employed on the contract work would be entitled if they were employed under the predecessor contract. It is important that contractors understand this obligation.

It is recognized that there are provisions of the amendments which will require study before a definite position can be taken. It is not the intent of this memorandum to interpret the amendments beyond the necessities for immediate agency action. Arrangements will be made at an early date for a meeting in Washington of representatives of the principal contracting agencies to review mutual problems and to consider any matters of interest arising from these amendments.

The Department of Labor will keep the agencies fully informed of important developments and decisions. Your cooperation and assistance is sought in working out practical answers to problems.

Warren D. Landis
Assistant Administrator

Attachment

H.R. 15376

An Act

To amend the Service Contract Act of 1965 to revise the method of computing wage rates under such Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 2 (a) (1) of the Service Contract Act of 1965 is amended by striking out all after "locality," and inserting in lieu thereof the following: "or, where a collective-bargaining agreement covers any such service employees, in accordance with the rates for such employees provided for in such agreement, including prospective wage increases provided for in such agreement as a result of arm's-length negotiations. In no case shall such wages be lower than the minimum specified in subsection (b)".

(b) Section 2(a)(2) of such Act is amended by striking out the period after "locality" and inserting in lieu thereof the following: ", or, where a collective-bargaining agreement covers any such service employees, to be provided for in such agreement, including prospective fringe benefit increases provided for in such agreement as a result of arm's-length negotiations."

SEC. 2. Section 2(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(5) A statement of the rates that would be paid by the Federal agency to the various classes of service employees if section 5341 of title 5, United States Code, were applicable to them. The Secretary shall give due consideration to such rates in making the wage and fringe benefit determinations specified in this section."

SEC. 3. (a) Section 4(b) of such Act is amended by striking out all after "Act" and inserting in lieu thereof the following: "(other than section 10), but only in special circumstances where he determines that such limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of government business, and is in accord with the remedial purpose of this Act to protect prevailing labor standards."

(b) Section 4 of such Act is amended by adding at the end thereof the following new subsections:

"(c) No contractor or subcontractor under a contract, which succeeds a contract subject to this Act and under which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits, including accrued wages and fringe benefits, and any prospective increases in wages and fringe benefits provided for in a collective-bargaining agreement as a result of arm's-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract: *Provided*, That in any of the foregoing circumstances such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality.

"(d) Subject to limitations in annual appropriation Acts but notwithstanding any other provision of law, contracts to which this Act applies may, if authorized by the Secretary, be for any term of years not exceeding five, if each such contract provides for the periodic adjustment of wages and fringe benefits pursuant to future determinations, issued in the manner prescribed in section 2 of this Act no less often than once every two years during the term of the contract, covering the various classes of service employees."

SEC. 4. Section 5(a) of such Act is amended by inserting before the first comma of the second sentence the words "because of unusual circumstances" and by adding at the end of such section 5(a) the following: "Where the Secretary does not otherwise recommend because of unusual circumstances, he shall, not later than ninety days after a hearing examiner has made a finding of a violation of this Act, forward to the Comptroller General the name of the individual or firm found to have violated the provisions of this Act."

SEC. 5. Such Act is amended by adding at the end thereof the following new section:

"SEC. 10. It is the intent of the Congress that determinations of minimum monetary wages and fringe benefits for the various classes of service employees under the provisions of paragraphs (1) and (2) of section 2 should be made with respect to all contracts subject to this Act, as soon as it is administratively feasible to do so. In any event, the Secretary shall make such determinations with respect to at least the following contracts subject to this Act which are entered into during the applicable fiscal year:

"(1) For the fiscal year ending June 30, 1973, all contracts under which more than twenty-five service employees are to be employed.

"(2) For the fiscal year ending June 30, 1974, all contracts under which more than twenty service employees are to be employed.

"(3) For the fiscal year ending June 30, 1975, all contracts under which more than fifteen service employees are to be employed.

"(4) For the fiscal year ending June 30, 1976, all contracts under which more than ten service employees are to be employed.

"(5) For the fiscal year ending June 30, 1977, and for each fiscal year thereafter, all contracts under which more than five service employees are to be employed."