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AUTHORITY: 41 U.S.C. 351 *et seq.*; 41 U.S.C. 38 and 39; 5 U.S.C. 301.

SOURCE: 48 FR 49762, Oct. 27, 1983, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 4 appear at 61 FR 19984, May 3, 1996.

## **Subpart A—Service Contract Labor Standards Provisions and Procedures**

**§ 4.1 Purpose and scope.**

This part contains the Department of Labor’s rules relating to the administration of the McNamara-O’Hara Service Contract Act of 1965, as amended, referred to hereinafter as the Act. Rules of practice for administrative

proceedings under the Act and for the review of wage determinations are contained in parts 6 and 8 of this chapter. See part 1925 of this title for the safety and health standards applicable under the Service Contract Act.

**§ 4.1a Definitions and use of terms.**

As used in this part, unless otherwise indicated by the context—

(a) *Act*, *Service Contract Act*, *McNamara-O’Hara Act*, or *Service Contract Act of 1965* shall mean the Service Contract Act of 1965 as amended by Public Law 92-473, 86 Stat. 789, effective October 9, 1972, Public Law 93-57, 87 Stat. 140, effective July 6, 1973, and Public Law 94-489, 90 Stat. 2358, effective October 13, 1976 and any subsequent amendments thereto.

(b) *Secretary* includes the Secretary of Labor, the Assistant Secretary for Employment Standards, and their authorized representatives.

(c) *Wage and Hour Division* means the organizational unit in the Employment Standards Administration of the Department of Labor to which is assigned the performance of functions of the Secretary under the Service Contract Act of 1965, as amended.

(d) *Administrator* means the Administrator of the Wage and Hour Division, or authorized representative.

(e) *Contract* includes any contract subject wholly or in part to the provisions of the Service Contract Act of 1965 as amended, and any subcontract of any tier thereunder. (See §§ 4.10-4.134.)

(f) *Contractor* includes a subcontractor whose subcontract is subject to provisions of the Act. Also, the term *employer* means, and is used interchangeably with, the terms *contractor* and *subcontractor* in various sections in this part. The U.S. Government, its agencies, and instrumentalities are not contractors, subcontractors, employers or joint employers for purposes of compliance with the provisions of the Act.

(g) *Affiliate* or *affiliated person* includes a spouse, child, parent, or other close relative of the contractor or subcontractor; a partner or officer of the contractor or subcontractor; a corporation closely connected with a contractor or subcontractor as a parent, subsidiary, or otherwise; and an officer

or agent of such corporation. An affiliation is also deemed to exist where, directly or indirectly, one business concern or individual controls or has the power to control the other or where a third party controls or has the power to control both.

(h) *Wage determination* includes any determination of minimum wage rates or fringe benefits made pursuant to the provisions of sections 2(a) and/or 4(c) of the Act for application to the employment in a locality of any class or classes of service employees in the performance of any contract in excess of \$2,500 which is subject to the provisions of the Service Contract Act of 1965. A wage determination is effective upon its publication on the WDOL Web site or when a Federal agency receives a response from the Department of Labor to an e98.

(i) *Wage Determinations OnLine (WDOL)* means the Government Internet Web site for both Davis-Bacon Act and Service Contract Act wage determinations available at <http://www.wdol.gov>. In addition, WDOL provides compliance assistance information and a link to submit an e98 or any electronic means the Department of Labor may approve for this purpose. The term will also apply to any other Internet Web site or electronic means that the Department of Labor may approve for these purposes.

(j) The *e98* means a Department of Labor approved electronic application (<http://www.wdol.gov>), whereby a contracting officer submits pertinent information to the Department of Labor and requests a wage determination directly from the Wage and Hour Division. The term will also apply to any other process or system the Department of Labor may establish for this purpose.

[48 FR 49762, Oct. 27, 1983, as amended at 70 FR 50895, Aug. 26, 2005]

**§ 4.1b Payment of minimum compensation based on collectively bargained wage rates and fringe benefits applicable to employment under predecessor contract.**

(a) Section 4(c) of the Service Contract Act of 1965 as amended provides special minimum wage and fringe benefit requirements applicable to every

contractor and subcontractor under a contract which succeeds a contract subject to the Act and under which substantially the same services as under the predecessor contract are furnished in the same locality. Section 4(c) provides that no such contractor or subcontractor shall pay any service employee employed on the contract work less than the wages and fringe benefits provided for in a collective bargaining agreement as a result of arms-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for in such collective bargaining agreement. If, however, the Secretary finds after a hearing in accordance with the regulations set forth in § 4.10 of this subpart and parts 6 and 8 of this title that in any of the foregoing circumstances such wages and fringe benefits are substantially at variance with those which prevail for service of a character similar in the locality, those wages and/or fringe benefits in such collective bargaining agreement which are found to be substantially at variance shall not apply, and a new wage determination shall be issued. If the contract has been awarded and work begun prior to a finding that the wages and/or fringe benefits in a collective bargaining agreement are substantially at variance with those prevailing in the locality, the payment obligation of such contractor or subcontractor with respect to the wages and fringe benefits contained in the new wage determination shall be applicable as of the date of the Administrative Law Judge's decision or, where the decision is reviewed by the Administrative Review Board, the date of the decision of the Administrative Review Board. (See also § 4.163(c).)

(b) Pursuant to section 4(b) of the Act, the application of section 4(c) is made subject to the following variation in the circumstances and under the conditions described: The wage rates and fringe benefits provided for in any collective bargaining agreement applicable to the performance of work under