

addition, the geographic scope of contracts is often different and the geographic scope of the underlying survey data for the wage determinations applicable to those contracts may be different.

(c) Such wage determinations will set forth for the various classes of service employees to be employed in furnishing services under such contracts in the appropriate localities, minimum monetary wage rates to be paid and minimum fringe benefits to be furnished them during the periods when they are engaged in the performance of such contracts, including, where appropriate under the Act, provisions for adjustments in such minimum rates and benefits to be placed in effect under such contracts at specified future times. The wage rates and fringe benefits set forth in such wage determinations shall be determined in accordance with the provisions of sections 2(a)(1), (2), and (5), 4(c) and 4(d) of the Act from those prevailing in the locality for such employees, with due consideration of the rates that would be paid for direct Federal employment of any classes of such employees whose wages, if Federally employed, would be determined as provided in 5 U.S.C. 5341 or 5 U.S.C. 5332, or from pertinent collective bargaining agreements with respect to the implementation of section 4(c). The wage rates and fringe benefits so determined for any class of service employees to be engaged in furnishing covered contract services in a locality shall be made applicable by contract to all service employees of such class employed to perform such services in the locality under any contract subject to section 2(a) of the Act which is entered into thereafter and before such determination has been rendered obsolete by a withdrawal, modification, revision, or supersedure.

(d) Generally, wage determinations issued for solicitations or negotiations for any contract where the place of performance is unknown will contain minimum monetary wages and fringe benefits for the various geographic localities where the work may be performed which were identified in the initial solicitation. (See § 4.4(a)(3)(i).)

(e) Wage determinations will be available for public inspection during

business hours at the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC, and copies will be made available on request at Regional Offices of the Wage and Hour Division. In addition, most prevailing wage determinations are available online from WDOL. Archived versions of SCA wage determinations that are no longer current may be accessed in the "Archived SCA WD" database of WDOL for information purposes only. Contracting officers should not use an archived wage determination in a contract action without prior approval of the Department of Labor.

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

#### § 4.4 Obtaining a wage determination.

(a)(1) Sections 2(a)(1) and (2) of the Act require that every contract and any bid specification therefore in excess of \$2,500 contain a wage determination specifying the minimum monetary wages and fringe benefits to be paid to service employees performing work on the contract. The contracting agency, therefore, must obtain a wage determination prior to:

- (i) Any invitation for bids;
- (ii) Request for proposals;
- (iii) Commencement of negotiations;
- (iv) Exercise of option or contract extension;
- (v) Annual anniversary date of a multi-year contract subject to annual fiscal appropriations of the Congress; or
- (vi) Each biennial anniversary date of a multi-year contract not subject to such annual appropriations, if so authorized by the Wage and Hour Division.

(2) As described in § 4.4(b), wage determinations may be obtained from the Department of Labor by electronically submitting an e98 describing the proposed contract and the occupations expected to be employed on the contract. Based upon the information provided on the e98, the Department of Labor will respond with the wage determination or wage determinations that the contracting agency may rely upon as the correct wage determination(s) for the contract described in the e98. Alternatively, contracting agencies may

#### § 4.4

#### 29 CFR Subtitle A (7-1-15 Edition)

select and obtain a wage determination using WDOL. (See § 4.4(c).) Although the WDOL Web site provides assistance to the agency to select the correct wage determination for the contract, the agency remains responsible for the wage determination selected.

(3)(i) Where the place of performance of a contract for services subject to the Act is unknown at the time of solicitation, the solicitation need not initially contain a wage determination. The contracting agency, upon identification of firms participating in the procurement in response to an initial solicitation, shall obtain a wage determination for each location where the work may be performed as indicated by participating firms. An applicable wage determination must be obtained for each firm participating in the bidding for the location in which it would perform the contract. The appropriate wage determination shall be incorporated in the resultant contract documents and shall be applicable to all work performed thereunder (regardless of whether the successful contractor subsequently changes the place(s) of contract performance).

(ii) There may be unusual situations, as determined by the Department of Labor upon consultation with a contracting agency, where the procedure in paragraph (a)(3)(i) of this section is not practicable in a particular situation. In these situations, the Department may authorize a modified procedure that may result in the subsequent issuance of wage determinations for one or more composite localities.

(4) In no event may a contract subject to the Act on which more than five (5) service employees are contemplated to be employed be awarded without an appropriate wage determination. (See section 10 of the Act.)

(b) e98 process—

(1) The e98 is an electronic application used by contracting agencies to request wage determinations directly from the Wage and Hour Division. The Division uses computers to analyze information provided on the e98 and to provide a response while the requester is online, if the analysis determines that an existing wage determination is currently applicable to the procurement. The response will assign a

unique serial number to the e98 and the response will provide a link to an electronic copy of the applicable wage determination(s). If the initial computer analysis cannot identify the applicable wage determination for the request, an online response will be provided indicating that the request has been referred to an analyst. Again, the online response will assign a unique serial number to the e98. After an analyst has reviewed the request, a further response will be sent to the email address identified on the e98. In most cases, the further response will provide an attachment with a copy of the applicable wage determination(s). In some cases, however, additional information may be required and the additional information will be requested via email. After an applicable wage determination is sent in response to an e98, the e98 system continues to monitor the request and if the applicable wage determination is revised in time to affect the procurement, an amended response will be sent to the email address identified on the e98.

(2) When completing an e98, it is important that all information requested be completed accurately and fully. However, several sections are particularly important. Since most responses are provided via email, a correct email address is critically important. Accurate procurement dates are essential for the follow-up response system to operate effectively. An accurate estimate of the number of service employees to be employed under the contract is also important because section 10 of the Act requires that a wage determination be issued for all contracts that involve more than five service employees.

(3) Since the e98 system automatically provides an amended response if the applicable wage determination is revised, the email address listed on the e98 must be monitored during the full solicitation stage of the procurement. Communications sent to the email address provided are deemed to be received by the contracting agency. A contracting agency must update the email address through the “help” process identified on the e98, if the agency no longer intends to monitor the email address.

(4) For invitations to bid, if the bid opening date is delayed by more than sixty (60) days, or if contract commencement is delayed by more than sixty (60) days for all other contract actions, the contracting agency shall submit a revised e98.

(5) If the services to be furnished under the proposed contract will be substantially the same as services being furnished in the same locality by an incumbent contractor whose contract the proposed contract will succeed, and if such incumbent contractor is furnishing such services through the use of service employees whose wage rates and fringe benefits are the subject of one or more collective bargaining agreements, the contracting agency shall reference the union and the collective bargaining agreement on the e98. The requester will receive an e-mail response giving instructions for submitting a copy of each such collective bargaining agreement together with any related documents specifying the wage rates and fringe benefits currently or prospectively payable under such agreement. After receipt of the collective bargaining agreement, the Wage and Hour Division will provide a further e-mail response attaching a copy of the wage determination based upon the collective bargaining agreement. If the place of contract performance is unknown, the contracting agency will submit the collective bargaining agreement of the incumbent contractor for incorporation into a wage determination applicable to a potential bidder located in the same locality as the predecessor contractor. If such services are being furnished at more than one locality and the collectively bargained wage rates and fringe benefits are different at different localities or do not apply to one or more localities, the agency shall identify the localities to which such agreements have application. If the collective bargaining agreement does not apply to all service employees under the contract, the agency shall identify the employees and/or work subject to the collective bargaining agreement. In the event the agency has reason to believe that any such collective bargaining agreement was not entered into as a result of arm's-length negotiations, a full

statement of the facts so indicating shall be transmitted with the copy of such agreement. (See §4.11.) If the agency has information indicating that any such collectively bargained wage rates and fringe benefits are substantially at variance with those prevailing for services of a similar character in the locality, the agency shall so advise the Wage and Hour Division and, if it believes a hearing thereon pursuant to section 4(c) of the Act is warranted, shall file its request for such hearing pursuant to §4.10 at the time of filing the e98.

(6) If the proposed contract is for a multi-year period subject to other than annual appropriations, the contracting agency shall provide a statement in the comments section of the e98 concerning the type of funding and the contemplated term of the proposed contract. Unless otherwise advised by the Wage and Hour Division that a wage determination must be obtained on the annual anniversary date, a new wage determination shall be obtained on each biennial anniversary date of the proposed multi-year contract in the event its term is for a period in excess of two years.

(c) WDOL process—

(1) Contracting agencies may use the WDOL Web site to select the applicable prevailing wage determination for the procurement. The WDOL site provides assistance to the agency in the selection of the correct wage determination. The contracting agency, however, is fully responsible for selecting the correct wage determination. If the Department of Labor subsequently determines that an incorrect wage determination was applied to a specific contract, the contracting agency, in accordance with §4.5, shall amend the contract to incorporate the correct wage determination as determined by the Department of Labor.

(2) If an applicable prevailing wage determination is not available on the WDOL site, the contracting agency must submit an e98 in accordance with §4.4(b).

(3) The contracting agency shall monitor the WDOL site to determine whether the applicable wage determination has been revised. Revisions

#### § 4.5

published on the WDOL site or otherwise communicated to the contracting officer within the timeframes prescribed in § 4.5(a)(2) are applicable and must be included in the resulting contract.

(4) If the services to be furnished under the proposed contract will be substantially the same as services being furnished in the same locality by an incumbent contractor whose contract the proposed contract will succeed, and if such incumbent contractor is furnishing such services through the use of service employees whose wage rates and fringe benefits are the subject of one or more collective bargaining agreements, the contracting agency may prepare a wage determination that references the collective bargaining agreement by incorporating that wage determination, with a complete copy of the collective bargaining agreement attached thereto, into the successor contract action. It need not submit a copy of the collective bargaining agreement to the Department of Labor unless requested to do so. If the place of contract performance is unknown, the contracting agency will prepare a wage determination on WDOL and attach the collective bargaining agreement of the incumbent contractor and make both the wage determination and collective bargaining agreement applicable to a potential bidder located in the same locality as the predecessor contractor. (See section 4.4(a)(3).) If such services are being furnished at more than one locality and the collectively bargained wage rates and fringe benefits are different at different localities or do not apply to one or more localities, the agency shall identify the localities to which such agreements have application. If the collective bargaining agreement does not apply to all service employees under the contract, the agency shall identify the employees and/or work subject to the collective bargaining agreement. In the event the agency has reason to believe that any such collective bargaining agreement was not entered into as a result of arm's-length negotiations, a full statement of the facts so indicating shall be transmitted to the Wage and Hour Division with the copy of such agreement. (See § 4.11.)

#### 29 CFR Subtitle A (7-1-15 Edition)

If the agency has information indicating that any such collectively bargained wage rates and fringe benefits are substantially at variance with those prevailing for services of a similar character in the locality, the agency shall so advise the Wage and Hour Division and, if it believes a hearing thereon pursuant to section 4(c) of the Act is warranted, shall file its request for such hearing pursuant to § 4.10. A wage determination based upon the collective bargaining agreement must be included in the contract until a hearing or a final ruling of the Administrator determines that the collective bargaining agreement was not reached as the result of arm's-length negotiations or was substantially at variance with locally prevailing rates. Any questions regarding timeliness or applicability of collective bargaining agreements must be referred to the Department of Labor for resolution.

(5) If the proposed contract is for a multi-year period subject to other than annual appropriations, the contracting agency shall, unless otherwise advised by the Wage and Hour Division, obtain a new wage determination on each biennial anniversary date of the proposed multi-year contract in the event its term is for a period in excess of two years.

[70 FR 50896, Aug. 26, 2005]

#### **§ 4.5 Contract specification of determined minimum wages and fringe benefits.**

(a) Any contract in excess of \$2,500 shall contain, as an attachment, the applicable, currently effective wage determination specifying the minimum wages and fringe benefits for service employees to be employed thereunder, including any information referred to in paragraphs (a)(1) or (2) of this section;

(1) Any wage determination from the Wage and Hour Division, Employment Standards Administration, Department of Labor, responsive to the contracting agency's submission of an e98 or obtained through WDOL under § 4.4; or

(2) Any revision of a wage determination issued prior to the award of the contract or contracts which specifies minimum wage rates or fringe benefits for classes of service employees whose