

## Contract Formation

# Activity 6: Service Contract Labor Standards Requirements Analysis

*Ensuring compliance with minimum wage and safety and health standards under the Service Contract Labor Standards.*

**Related Flow Charts:** [Flow Chart 6](#)

**Related Tools:** [Wage Determinations OnLine](#)

Tasks	FAR Reference(s)	Additional Information
1. Identify requirements for wage determination for service contracts.	<p>FAR 22.1001 Wage determination [definition].</p> <p>FAR 22.1002 Statutory requirements, [Service Contract Labor Standards].</p> <p>FAR22.1003 Applicability [Service Contract Labor Standards].</p> <p>FAR 22.1007 Requirement to obtain wage determinations [Service Contract Labor Standards].</p> <p>FAR 22.1008 Procedures for obtaining wage determinations [Service Contract Labor Standards].</p>	<p>Consider the requirements of the provisions at FAR 22.10 and related statutes, including the following:</p> <ul style="list-style-type: none"><li>• The Service Contract Labor Standards (formerly known as the Service Contract Act of 1965) applies to any service contract over \$2,500 unless exempted from the requirement. Under the Service Contract Labor Standards, a service contract is any contract with the principle purpose of requiring the contractor to furnish services in the United States through the use of service employees and any subcontract at any tier there under.</li><li>• The Service Contract Labor Standards does not apply to:<ul style="list-style-type: none"><li>○ Any contract for construction, alteration, or repair of public buildings or public works, including painting and decorating;</li><li>○ Any work required to be done in accordance with the Contracts for Materials, Supplies, Articles, and Equipment \$15,000 statute;</li><li>○ Any contract for transporting freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect;</li><li>○ Any contract for furnishing services by radio,</li></ul></li></ul>

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		<p>telephone, telegraph, or cable companies subject to the Communications Act of 1934.</p> <ul style="list-style-type: none"> <li>○ Any contract for public utility services.</li> <li>○ Any employment contract that provides for direct services to a federal agency by an individual(s).</li> <li>○ Any contract for operating postal contract stations for the U.S. Postal Service.</li> <li>○ Any administrative limitations, variations, tolerances, or exceptions by the Secretary of Labor.</li> </ul>
<p>2. Determine whether or not there is a predecessor contract covered by the Service Contract Labor Standards statute, and, if so, whether a collective bargaining agreement (CBA) exists. If no such CBA exists, proceed to Task 3. If such a CBA does exist, proceed to Task 6.</p>	<p>FAR 22.1002-3 Wage determinations based on collective bargaining agreements [statutory requirements].</p> <p>FAR 22.1002-2 Application of the Fair Labor Standards Act minimum wage [statutory requirements].</p> <p>22.1008-2 Successorship with incumbent contractor collective bargaining agreement [procedures for obtaining wage determinations].</p>	<p>If there is a predecessor contract, determine whether the incumbent prime contractor or its subcontractors and any of their employees have a collective bargaining agreement.</p>
<p>3. If no such CBA exists, require contractors to pay their employees at least the wages and fringe benefits found by the Department of Labor (DOL) to prevail in the locality or, in the absence of a wage determination, the minimum wage set forth in the Fair Labor Standards Act of 1938.</p>	<p>FAR 22.1002-2 Wage determinations based on prevailing rates [statutory requirements].</p> <p>FAR 22.1002-4 Application of the Fair Labor Standards Act minimum wage [statutory requirements].</p> <p>FAR 22.1008-1 Obtaining wage determinations [procedures for obtaining wage determinations].</p>	<p>Most prevailing wage determinations can be obtained using the Wage Determinations OnLine (WDOL) website at <a href="http://www.wdol.gov">http://www.wdol.gov</a>.</p>

Tasks	FAR Reference(s)	Additional Information
4. If the WDOL database does not contain the applicable prevailing wage determination for a contract action, use the e98 electronic process to request a wage determination from DOL.	FAR 22.1008-1 Obtaining wage determinations [procedures for obtaining wage determinations].	The e98 electronic process is located on the WDOL website. Provide as complete and accurate information on the e98 as possible, and ensure that the email address submitted on an e98 request is accurate.
5. Incorporate the appropriate wage determination or revision provided by the DOL into the solicitation.	FAR 22.1006 Solicitation provisions and contract clauses [Service Contract Labor Standards]	Comply with the requirements of FAR 22.1006 to incorporate the wage determination or revision and other provisions and clauses in the solicitation, contract, or contract modification.
6. If there is an applicable CBA, require contractors to pay their employees the wages and benefits at least equal to those contained in any bona fide CBA entered into under the predecessor contract.	FAR 22.1002-3 Wage determinations based on collective bargaining agreements [statutory requirements].	This requirement will not apply if the Secretary of Labor determines: <ul style="list-style-type: none"> <li>• After a hearing, that the wages and fringe benefits are substantially at variance with those which prevail for services of a similar character in the locality; or</li> <li>• That the wages and fringe benefits are not the result of arm's length negotiations.</li> </ul>
7. Notify both the incumbent contractor and its employees' collective bargaining agent in writing of the forthcoming successor contract.	FAR 22.1010 Notification to interested parties under collective bargaining agreements [Service Contract Labor Standards].	Give this written notification at least 30 days in advance of the earliest applicable acquisition date or the applicable annual or biennial anniversary date in order for the time-of-receipt limitations in paragraphs 22.1012-2(a) and (b) to apply. Retain a copy of the notification in the contract file.
8. Obtain a copy of any CBA between the incumbent contractor or subcontractor and its employees.	FAR 22.1008-2(d)(1) Successorship with incumbent contractor collective bargaining agreement [procedures for obtaining wage determinations].	Obtaining a copy of an incumbent contractor's CBA may involve coordination with the administrative contracting officer responsible for administering the predecessor contract.
9. Upon timely receipt of the CBA, use the WDOL website to prepare a wage determination referencing the CBA, and incorporate that wage determination, attached to a complete copy of the CBA, into the successor contract action.	FAR 22.1008-2(d)(2) Successorship with incumbent contractor collective bargaining agreement [procedures for obtaining wage determinations].	In using the WDOL process, it is not necessary to submit a copy of the collective bargaining agreement to the Department of Labor unless requested to do so.

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10. The e98 process also may be used to request that the Department of Labor prepare the cover wage determinations based on the CBA.	FAR 22.1008-2(d)(3) Successorship with incumbent contractor collective bargaining agreement [procedures for obtaining wage determinations].	If DOL has not responded to the request for a wage determination based on CBA within ten days, contact the Wage and Hour Division by telephone to determine when the wage determination can be expected. The telephone number is provided on the e98 website.
11. Address revisions to prevailing wage determinations and wage determinations based on CBAs as appropriate.	FAR 22.1012 Applicability of revision to wage determinations [Service Contract Labor Standards].	Revisions to prevailing wage determinations: Monitor the WDOL website to determine whether the applicable wage determination has been revised. Requirements for sealed bidding differ from requirements for contractual actions other than sealed bidding.” And “Revisions to wage determinations based on CBA: Requirements for sealed bidding differ from requirements for contractual actions other than sealed bidding.
12. If a wage determination was obtained through the e98 process, and bid opening, or commencement of work under a negotiated contract has been delayed more than 60 days, submit a new e98.	FAR 22.1014 Delay over 60 days in bid opening or commencement of work [Service Contract Labor Standards].	Any revision of a wage determination received as a result of the new e98 submission supersedes the previous wage determination, subject to the time frames in FAR 22.1012-1(b) and FAR 22.1012-1(c).