The purpose of this guide is to provide assistance to Contracting Officers/Specialists in calculating contract price adjustments resulting from changes in the Service Contract Act (SCA) minimum wage rates and fringe benefits or changes in the Fair Labor Standards Act (FLSA) minimum wage. This guide is not all-inclusive, is informational, and its use is optional as a “Pilot Test Program” for processing the outlined contract price adjustments.

TABLE OF CONTENTS

1.0 BACKGROUND 2
   1.1 Entitlement to Adjustment--General
   1.2 Incorporation of Wage Determinations
   1.3 Claim Submission
   1.4 Timeliness of Claim

2.0 BLANK 2

3.0 SERVICE CONTRACT ACT WAGE DETERMINATIONS 2
   3.1 Requirement
   3.2 Standard Wage Determinations
   3.3 Collective Bargaining Agreement Wage Determinations
   3.4 Non-standard Wage Determinations

4.0 SERVICE CONTRACT ACT ADJUSTMENTS 3
   4.1 Applicability
   4.2 Required Documentation
   4.3 Hours Subject to Adjustment
   4.4 Wage Adjustment
   4.5 Fringe Benefit Adjustments

5.0 SCA ADJUSTMENTS BASED ON COLLECTIVE BARGAINING AGREEMENTS (CBA) TERMS 9
   5.1 Including Collective Bargaining Agreements in the Contract
   5.2 Collective Bargaining Agreement Wage Determination Revisions
   5.3 Entitlements Based on Collective Bargaining Agreements

6.0 EQUIVALENT FRINGE BENEFITS 12
   6.1 Meeting Fringe Benefit Requirements
   6.2 Wage-Fringe Benefit Offsets
1.0 BACKGROUND

1.1 Entitlement to Adjustment--General. The United States Department of Labor (DOL) issues wage determinations (WDs) under the Service Contract Act (SCA). When incorporated into a federal service contract, a WD establishes the minimum wages and fringe benefits a contractor must pay non-exempt service employees working under the contract. The clauses at FAR 52.222-43 (see marked up copy at attachment 1) “Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts)” and FAR 52.222-44, (see marked up copy at attachment 2) “Fair Labor Standards Act and Service Contract Act - Price Adjustment,” authorize adjustment of fixed price SCA-covered contracts when FLSA wage increases apply or SCA WDs requiring increased minimum wages and/or fringe benefits are incorporated into a contract. The adjustment is subject to certain specific limitations expressed in the appropriate clause.

1.2 Claim Submission. The contractor may submit a proposal for a contract price adjustment, under a fixed price SCA-covered contract containing the clause at FAR 52.222-43 or 52.222-44, in response to incorporation of revised SCA WDs into the contract. Occasionally, Congress will amend the Fair Labor Standards Act (FLSA) to increase the national minimum wage rate. An increase in the FLSA national minimum wage rate only entitles a contractor to recover increases enacted after award of the contract. Responsibility for complying with changed minimum wage and fringe benefit requirements and for properly requesting adjustment rests with the contractor.

1.3 Timeliness of Claim. The clauses at FAR 52.222-43 and FAR 52.222-44 require claims to be submitted within 30 days after the effective date of any unilateral modification incorporating a new wage determination unless the Contracting Officer extends the notification period in writing. Contractors must also notify the Contracting Officer promptly of any decrease under these clauses so the Contracting Officer can reduce the contract price accordingly (see 4.4.2).

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3.0 SERVICE CONTRACT ACT WAGE DETERMINATIONS
3.1 Requirement. The Contracting Officer (CO) incorporates WD revisions into a contract when required by FAR 22.1007, provided the revisions are received or available timely in accordance with FAR 22.1012. Revisions are incorporated into contracts when options are exercised, extensions are awarded, at the annual anniversary date in multiple year contracts subject to annual funding, or at the biennial anniversary date in multiple year contracts not subject to annual funding. Revised WDs are effective the first day the new contract period, even though the WD revision may be dated several months prior to incorporation.

3.2 Standard Wage Determinations. The most commonly required WDs are “Standard WDs” based on survey data from the locality (statewide, in some states). Standard WDs are those with a WD number falling between 1994-2000 and 1994-3200.

3.3 Collective Bargaining Agreement Wage Determinations. When a predecessor contractor is party to a Collective Bargaining Agreement (CBA), Section 4(c) of the SCA (and FAR 22.1008-3) require the successor contractor to pay no less than the CBA wages and fringe benefits in lieu of any other rates issued by DOL. The CO is required to incorporate a WD into the contract reflecting the CBA terms.

3.4 Non-standard Wage Determinations. DOL issues a number of specialized WDs based on surveys of wage rates in specific industries, such as WDs for elevator maintenance, household goods moving and storage, off-base food and lodging, and air transportation. Minimum wages and fringe benefits required by these WDs may vary considerably from those listed on Standard WDs.

4.0 SERVICE CONTRACT ACT ADJUSTMENTS

4.1 Applicability. The standard WD revision or CBA WD wage and fringe benefit terms must be incorporated into the contract before the contracting officer can negotiate an SCA adjustment. SCA price adjustments apply to service employees whose work is covered by one or more classifications listed on the applicable WD or CBA. See Section 7 for adjustments involving classifications that do not appear on the WD.

4.1.1 Time Period Covered by the Adjustment. The period covered by the adjustment begins with the date the new WD is required by the terms of the contract – not the date of the WD. The date for compliance with the new WD will normally coincide with the beginning of option periods, extension periods, or with contract performance anniversary dates. To avoid confusion, contracting officers should draft the contract modification to explicitly state the date the new or revised WD is effective.

4.1.2 Elements of a Price Adjustment. Generally, a contractor claims an adjustment based on the projected impact of a new or revised WD. The projection uses the employee hours in the prior contract period, factoring in any known or expected changes to contract scope or work force. This method is known as the Forward Pricing Method. If the claim has been delayed until after the adjustment period is over, by either an approved extension to the 30-day requirement for filing or by delay in contract modification, the contractor should use actual employee hours worked as the basis for the claim. This method is known as the Actual Cost Method. Regardless of method there are four elements needed from the contractor to calculate a contract price adjustment for a WD revision:

- actual wages paid in the previous contract period
- actual or projected hours for the new contract period
• fringe benefit costs paid in the previous contract period
• Accompanying Costs (certain payroll taxes) as specified in the clause

4.1.3 Maximum Adjustment. An adjustment should never exceed the differential (or delta) in wages and fringe benefits between the “old” WD and the “new” WD. A greater adjustment would indicate that the contractor was previously in violation of the law by paying less than the minimum wage rates required under the SCA or FLSA. (See Section 9 of this guide.)

4.2 Required Documentation. The contracting officer should require contractors to submit payroll data for the previous contract period with its claim for an adjustment. 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. A shorter time period may not produce an accurate forecast (using forward pricing), particularly if the workload fluctuates from month to month or season to season. Projected adjustments for an extension period (generally three months or less) should utilize only the corresponding months from the prior contract year if the workload was subject to predictable annual fluctuations. All data and calculations submitted by a contractor should be independently verifiable. In all cases, the contractor is obligated to provide sufficient documentation to substantiate a claim.

4.2.1 Content of Payroll Documentation. The CO should be specific in requesting the supporting documentation that includes:
• the SCA classification(s) and hourly wage rate actually paid each SCA-covered employee performing contract work in the prior contract period
• the actual hours worked on the contract by each employee in each classification
• vacation and holiday hours paid to each employee in each classification
• additional payments made to each employee, such as shift differentials, performance-based or merit bonuses. (These payments must be included in determining the total actual wages paid to employees.) COs should specifically ask the contractor whether any such compensations were provided. However, “discretionary” pay or bonuses are excluded from the wage rate, since the decision to give the bonus and the amount of the bonus are at the contractor’s discretion.

Employee stock dividends and other payments that represent a return on the owner’s investment in the business are not included when calculating the wage rate. For a Health and Welfare (H&W) rate increase, require data supporting the actual premiums paid by the contractor or the contractor’s actual costs for equivalent benefits provided.

4.3 Hours Subject to Adjustment. The hours subject to adjustment are projected from the historical payroll data after adjustments or exclusions are made for:
• exempt employees (4.3.1)
• non-covered employees (4.3.2)
• changed work conditions or contract requirements (4.3.3)
• paid time off hours (4.3.4)
• overtime hours (4.3.5)

4.3.1 Exempt Employees. The contract price is not adjusted for employees who are exempt from the SCA and FLSA (salaried professional, administrative or management employees). The contractor must exclude exempt employees from the payroll documentation data before calculating any adjustments.
NOTE: Engineers, doctors, project managers, directors and contract management officials are typically exempt employees.

4.3.2 Non-covered Employees. SCA wage rates do not apply to a contractor’s non-exempt employees, but only those that are “directly engaged in performing the specified contract services.” For example, personnel such as a payroll clerk or billing clerk may be necessary to the performance of the contract, but not directly engaged in the performance of the specified contract services (i.e., support personnel in corporate office). As with exempt employees, the SCA WD does not cover these employees and the contractor is not entitled to an adjustment for their wages or benefits.

4.3.3 Changed Work Conditions. Historical payroll data must be adjusted for any circumstances that will not apply in the future or will otherwise impact future workload. Examples include changes in contract scope; equipment changes that may impact labor requirements, and anticipated increases or decreases in the services provided.

4.3.4 Paid Time Off Hours. Include hours required for vacation and holidays in wage increase adjustments. Only include sick leave hours if the hours are specifically required by the standard WD or collective bargaining agreement (CBA). Since standard WDs do not require sick leave, such payments are voluntary and not directly affected by WD wage rate increases (the “current” wage rate is not required by SCA for these hours). Contractors usually credit sick leave costs against their Health & Welfare fringe benefit obligation. Reference Section 4.5 on fringe benefit adjustments for increases in the number of holidays, vacation days, or sick leave days required by a CBA.

4.3.5 Overtime Hours. Some cost increases associated with overtime hours are reimbursable and some are not. Generally, overtime hours are paid by contractors at a premium rate of time and one half (or double time if required by CBA). The straight-time portions of SCA or FLSA wage increases on overtime hours are properly reimbursable under a price adjustment claim. The premium portions of such wages are not reimbursable. Contractors have the ability to manage their work so that overtime hours do not occur. They may reschedule employees and/or hire additional workers. Therefore, the overtime premium payments are viewed as within the contractor’s control to entirely avoid. An exception may be considered in the rare instance that the overtime hours were actually required and/or authorized by the contract (or actions of contracting agency officials). Health and Welfare fringe benefit adjustments are not due on overtime hours. One Exception-- contracts with even-numbered WDs (i.e., 1994-2008) specifying H&W on an “average cost” basis, which must be paid on “all hours worked”—including overtime hours).

Example: The contractor’s employees work a total of 12,000 hours in a given labor category of which 1,000 hours were considered overtime and paid at time and one half the regular rate of pay. The WD increased the wage rate for that classification by $.30 per hour. The contractor would be entitled to a price adjustment of $3,600 ($30 x 12,000), but would not be entitled to the additional premium of $150 ($30 x .5 x 1,000) that occurred due to 1,000 of the hours being overtime unless required by the Government outside the normal scope of the contract.

4.4 Wage Adjustment. The following factors must be considered:

- the minimum wage rate for the new period, less
- the actual wage rate paid in the previous period, plus
- allowable payroll taxes, but excluding
• general & administrative expenses (G&A), overhead, and profit (see 4.4.4)

4.4.1 Calculating the Actual Rate Paid. The actual hourly rate paid in the previous contract period is the total of the hourly rate paid and other compensations (bonuses, shift differentials, etc.) converted to an hourly rate. Most calculations involve only a simple wage rate (no bonus, commission, etc.). If there are any other compensations, they must be prorated over the hours worked in the period for which they are paid. To do this, divide the total other compensation by the number of hours they cover. For example, an annual bonus for a full-time/40 hour per week employee would be divided by 2080 to convert it to an average hourly rate (2080 represents the usual standard for hours worked/paid in a year). The regular wages and other hourly rates are then added together for each employee to determine their total actual rate paid in the previous period.

Example: The contractor paid a regular hourly wage rate of $7.10/hour, and a year-end performance bonus of $350 to each employee. Although the bonus is included as part of one bi-weekly pay period, it is still considered to be applicable to one year of work, or 2,080 hours. The average hourly rate represented by the bonus is an additional $0.17/hour ($350.00/2080). The total actual wage rate for the employee would then be $7.27/hour ($7.10 + prorated bonus of $.17).

4.4.2. Increases and Decreases: The amount of adjustment is limited to the difference between the new wage rate and the rate actually paid by the contractor to the employees in the previous contract period [FAR 52.222-43(d)]. (See 4.1.3 regarding “maximum adjustment”.)

Example: The prior WD required a minimum wage rate of $10.00/hour. The contractor actually paid employees $10.40/hour in the prior period (including hourly and non-hourly compensation). The revised WD requires a minimum wage rate of $10.70/hour. The allowable hourly wage adjustment is limited to $.30/hour ($10.70 new minimum less actual payment of $10.40). If the contractor had elected to pay employees $11.00/hour after the revised WD, the adjustment would still be limited to $.30/hour. Similarly, no adjustment would be due at all if the contractor was already paying a rate equal to or greater than the new required rate during the previous contract period [FAR 52-222-43(d)(1)].

When a WD decreases wage or benefit rates issued previously, a contract price decrease is only warranted when the contractor voluntarily decreases wages or benefits paid to service employees. WDs list minimum wage and benefit rates, and a contractor is not required to decrease wages or benefits paid to comply with a new WD. However, if the contractor makes a voluntary decrease, follow the same guidelines for an increase, the contractor must reduce the contract price accordingly.

4.4.3 “Accompanying Costs” Applicable to Wage Adjustments. The Clause specifically lists certain accompanying costs that are allowable on the amount of wage adjustment. Federal Insurance Contributions Act (FICA), federal and state unemployment taxes (FUTA and SUTA), and Workers’ Compensation Insurance (WCI) are included in the wage differential calculation—but only to the extent that these taxes are expected to increase as a result of the WD increase. Only the employer’s share of the taxes is considered. Taxing authorities may periodically increase the tax rates applicable. No adjustment is allowed for a tax rate increase on the total wage rate. The applicable tax rate, whether increased or not, is applied only to the increase in wages and those fringe benefits paid in cash, and only to the extent they were caused by WD Incorporation [FAR 52.222-43(e)].
Example: The contractor is entitled to a $.25 increase for H&W. If the contractor increases bona fide fringe benefits furnished there is no adjustment for payroll taxes. If the contractor pays the H&W increase in cash added to the wage rate, then an adjustment is permitted for the payroll taxes on the $.25 per hour in additional wages.

4.4.3.1 FICA (Social Security and Medicare). If the FICA rate is scheduled to change during the period for which adjustment is being made, the adjustment should reflect the old rate for the months prior to the change, and the new rate for the months after the change. Use the total amount of wage increases and only those benefit increases paid as additional wages, and apply the applicable rate to arrive at the total FICA adjustment for the period. There is no maximum amount of wages (“cap”) on which contractors must pay the 1.45% Medicare portion of FICA, so it must be paid on all wages earned. The cap on the 6.2% Social Security portion is so high ($94,200 for the year 2006), that it is likely that contractors will have to pay the combined 7.65% FICA rate on all wages earned by service employees.

4.4.3.2 Unemployment Taxes. The Federal Unemployment Tax Act (FUTA) and State Unemployment Tax Act (SUTA) payments are normally not affected by a WD revision. Unemployment taxes are paid by contractors on wages up to a specific annual ceiling or cap. The current FUTA rate of .8% is only paid on wages up to a cap of $7,000. SUTA caps vary by state, and rates vary by state and by employer, but the maximum SUTA rate is 5.4% (state SUTA websites can be reached through http://workforcesecurity.doleta.gov/map.asp). Since annual employee wages usually exceed the caps in most states without regard to the revised WD, typically no additional FUTA or SUTA is required-- the contractor is already paying the maximum tax. The contract price is not adjusted for changes in the FUTA or SUTA rate. Only current rates apply. The CO verifies the applicable SUTA rate by requesting suitable documentation from the contractor or contacting the relevant state employment tax office. If an adjustment is due, it is only for the FUTA/SUTA percent rate times the wage rate differential.

Example: Assume the SUTA rate is 2% (.02), the SUTA cap is $14,000 and an employer's WD rate increased from $6.00 per hour ($12,480 per year) to $6.50 per hour ($13,520 per year). For an employee working 40 hours per week and earning only the minimum rate required by the WD, the SUTA cost to the employer would increase by $20.80 for the year ($.50 x 2080 hours x .02). If the cap was $13,000, then the cost increase to the employer would be $10.40 ($13,000 cap less $12,480 earned in the prior year x .02).

4.4.3.3 Workers Compensation Insurance (WCI). WCI rates vary for each contractor according to the type of industry, compensation claim history, and employee classification. There is usually no ceiling/cap. Include increased costs for WCI that result from the WD revision in the contract price adjustment. In some states, WCI is expressed as an hourly rate, and not as a percentage of wages. In such cases, no adjustment would be allowable since the SCA or FLSA wage increase would not cause an increase in the contractor’s WCI cost. If the WCI rate percentage does increase, the increase is not applied to the total wage rate. The CO verifies the applicable WCI rates by requesting suitable documentation from the contractor. State WCI websites can be reached through http://www.dol.gov/esa/regs/compliance/owcp/wc.htm.

4.4.4 G&A, Overhead and Profit. General and administrative expenses (G&A), overhead, and profit are specifically excluded by the FAR Clauses. They are not allowable as part of an SCA price adjustment.
Increases in **general liability insurance, state gross receipts taxes, and bonding costs** are also **not allowable** as part of an SCA adjustment (despite such costs being calculated based on total wages or total revenue).

### 4.4.5 Employee Reimbursements.

Employee expenses reimbursed by the contractor, such as payment for fuel, mileage, meals, lodging, tool and uniform allowances and safety shoes, boots, or gear, are not considered when calculating the **hourly wage rate paid**. Such payments are considered as reimbursement of a contractor’s business expenses, not wages or fringe benefits. These items must be excluded from any calculation for price adjustment under this Clause.

### 4.5 Fringe Benefit Adjustments.

SCA required fringe benefits in standard WDs consist of:

- a specified hourly amount for Health & Welfare (H&W) benefits;
- a stated number of holidays, and;
- a stated amount of vacation time.

#### 4.5.1 Health and Welfare Rates (H&W).

The allowable hourly adjustment is the difference between the new hourly fringe benefit rate and the hourly cost of the benefits actually provided by the contractor during the previous contract period. This assumes that the contractor was paying at least the minimum H&W rate, previously. At present, Standard WDs require an hourly H&W of either $3.01 “per hour per employee”, or $3.01 per hour on an “average cost” basis. The “per employee” rate on odd-numbered Standard WDs (1994-2007, etc.) is applied to all hours **paid** by the contractor to the employee, **up to a maximum of 40 hours per week (or 2080 hours per year)**, including paid time off such as holidays, vacations, and sick leave. The “average cost” H&W on even-numbered Standard WDs (1994-2008, etc.) must average at least $3.01 per hour for all employees working on the contract subject to a Standard WD. It is paid only on hours worked, including overtime hours, but there is no weekly or annual maximum on the hours. Under average cost, some employees may receive contributions/benefits that cost less than the $3.01 amount if there are legitimate reasons, such as the difference between a health plan’s “self, only” premium and “self and family” premium—as long as the average hourly cost for all SCA employees subject to the standard H&W rate is at least $3.01 for total work hours. DOL normally publishes an All Agency Memorandum (AAM) which revises the WD H&W rate(s) around June 1st each year. Rates cited above became effective in May/June 2006.

#### 4.5.2 Holidays.

When the revised WD **increases** the number of required holidays, the contractor may generally claim an adjustment for the increased cost. The adjustment is the SCA minimum wage rate times the number of increased holiday hours (generally 8 hours per each new holiday for a full-time employee). If, in the preceding period, the contractor provided more holidays or leave time than the new WD requires, no adjustment is appropriate for the increase in SCA-required holidays.

#### 4.5.3 Vacation.

WD’s usually list vacation benefits as a number of weeks earned per total years of service. Total years of service normally include continuous employment on predecessor contracts (if essentially the same service in the same location). Unless the WD states otherwise, vacation benefits become vested on the employee’s annual anniversary date. The anniversary date is the month and day the employee was first employed on the contract. Since vacation benefits do not accrue (unless stated so on the WD), no adjustment is made for less than a full year’s vacation entitlement. Employees who quit or are terminated are only due unpaid vacation (if any) that they **vested on a prior anniversary date** and no prorated amount is due for time worked since their prior anniversary. A vacation adjustment **is only applicable if the revised WD changed the vacation benefit** or entitlement criteria (if, for instance, the old WD stated...
“one week paid vacation after 1 year of service” and the new WD states “two weeks paid vacation after 1 year of service”). No adjustment is permitted merely because an individual employee’s seniority has increased his/her entitlement.

*Example:* The original WD listed one-week vacation after one year of service, two weeks vacation after three years, and three weeks vacation after five years. The revised WD now includes a requirement for two weeks vacation after one year of service and three weeks vacation after five years. (The three-year entitlement is no longer listed and the five-year entitlement did not change). An adjustment equal to one week's pay at the revised WD rate maybe 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 during the next contract period because there was no change in their benefits.

4.5.4 Part-time Employees. Part-time employees are entitled to fringe benefits unless specifically excluded by the WD. Therefore, a contractor is allowed to claim appropriate adjustments for these employees prorated based on the number of hours they normally work.

*Example:* An employee who regularly works 17 hours per week on the contract receives 17/40ths of the full-time benefit for a holiday or vacation and health & welfare fringe benefit amounts. If the revised WD authorized an additional holiday, the contractor would be entitled to an adjustment for that employee equal to the WD wage rate times 8 hours times 17/40.

Part-time employees working an *irregular schedule* are also entitled to holiday pay based on the number of hours worked in the workweek preceding the holiday. Vacation for an irregularly scheduled employee is based on the number of hours worked in the year preceding their anniversary date of employment.

4.5.5 Temporary Employees. The SCA regulations make no distinction between regular full-time employees and temporary employees. Therefore, temporary employees are also entitled to fringe benefits, unless the applicable WD or CBA specifically excludes such employees from receiving benefits.

5.0 SCA ADJUSTMENTS BASED ON COLLECTIVE BARGAINING AGREEMENT (CBA) TERMS

5.1 Including CBA Wage Determinations in the Contract. Section 4(c) of the SCA makes the wage rates and monetary fringe benefits of a predecessor contractor's CBA enforceable under the Act for the following contract period. The CBA must have been provided to the contracting agency in a timely manner (see 5.1.1), and cannot contain prohibited contingency provisions (see 5.1.2). If a CBA has not been replaced or revised, but includes scheduled increases for the current year, the existing CBA WD in the contract is sufficient to require the increases and entitle the contractor to price adjustment. If the union no longer represents the employees or if the agreement expires prior to the start of the contract period, contact the Center Industrial Labor Relations Officer (Talmage Reynolds, 544-4600) for assistance.

5.1.1 Timeliness. For a CBA to have standing (be enforceable) under SCA, the contractor must have provided the new or revised CBA to the contracting agency in a timely manner (FAR 22.1012-3 or 22.1012-5). The contractor is not entitled to price adjustment arising from a CBA
submitted untimely, since the SCA provisions of the Government contract did not require the increases.

5.1.2 Prohibited Contingencies. Contingencies that make the CBA terms applicable only upon action of a third party will invalidate the CBA for SCA purposes. Contingencies that provide for wage/fringe benefit increases only upon DOL’s issuing a WD based upon the CBA terms, or upon incorporation into a government contract, or upon the contractor receiving a price adjustment (or similar contingencies) are prohibited by DOL’s All Agency Memorandum No. 159 (http://www.wdol.gov/aam/AAM159.pdf).

5.2 Collective Bargaining Agreement Wage Determination Revisions. CBA WDs merely reference the CBA by the names of the incumbent contractor and the union, and by date of the CBA and any CBA supplement or addendum. No specific wage or benefit amounts are listed on the WD. Without the specific rates listed on a WD, the contracting office must determine the allowable adjustment by reviewing the appropriate CBA provisions. The adjustment is limited to the allowable wage rates and fringe benefits as noted in this Guide. Contracting officers should seek assistance from their Center Industrial Labor Relations Officer (Talmage Reynolds, 544-4600) with claims involving unusual CBA provisions.

5.3 Entitlements Based on Collective Bargaining Agreements. CBA terms applied through incorporation of a CBA WD entitle the contractor to contract price adjustment. Although the contractor has negotiated the wage and fringe benefit terms of the CBA, the SCA requires the CO to impose those terms upon the contractor in the same way that a Standard WD is imposed. Wage adjustments for a revised CBA WD are calculated much the same as standard WD adjustments. The CBA may require other economic terms such as shift rate differentials, and additional fringe benefits, such as pension, apprenticeship programs, and sick leave. Further, the rules for entitlement to benefits such as holiday and vacation pay may differ from the standard rules that would otherwise apply. Employee expense reimbursements are subject to the same limitations as stated in 4.4.5. Accompanying costs are calculated as discussed at Section 4.4.3 of this guide.

5.3.1 Effective Dates of CBA Changes. 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. A CBA with such “prospective” increases must be received timely prior to the start of the contract period (see FAR 22.1012-3).

5.3.2 Overtime. Many CBAs provide overtime compensation for hours worked in excess of a standard schedule, i.e., time-and-one-half for hours over 8 per day, or double-time pay for Sunday or holiday work. Such overtime premiums are not required by SCA, the Contract Work Hours and Safety Standards Act, or FLSA, nor are they considered fringe benefits under SCA. Overtime premiums in excess of the statutory requirements are not subject to adjustment under the Clause. Reimbursement is limited to the straight time portion of payment of any overtime hours as discussed in section 4.3.5 of this Guide.

5.3.3 Premium Payments: Work conditions, work rules, and most other premium payments are not enforceable CBA provisions under SCA. Examples: Show-Up or Call-In Pay (CBA requires payment of a minimum 4 hours if an employee is called to work on his/her day off); Break-Time (CBA requires an employer to provide a 30-minute paid break in mornings and afternoons). Therefore, any such changes to CBA terms would not justify an SCA price adjustment. Such paid hours are not hours worked and are not counted.
5.3.4 **Shift Differential.** This pay is often required by CBAs and is specified as an additional wage rate for hours worked during non-standard schedules. It is not an overtime premium. *Shift differentials are covered by SCA* and subject to adjustment.

5.3.5 **Vacations.** Some CBAs specify an accrual of vacation, rather than it becoming due on an employee’s annual anniversary date. The CBA will also specify the accrual rate and accrual period, such as a certain number of hours accrued each week or month. Each week, pay period, or month the employee earns (accrues) the vacation benefit hours specified. Price adjustment for increases in vacation benefits should be computed using the CBA accrual schedule. A CBA may also increase the number of weeks of vacation benefits for years of service. When adjustments are for short contract extensions, only adjust for vacation benefits that will be required during that period.

*Examples:* If a CBA increased vacation benefits from four hours every two weeks worked, to five hours every two weeks, the adjustment would be computed on each employee for each two-week period within the extension. However, if a CBA increased vacation benefits from two weeks for one year service to three weeks for one year service (and those with two years service already earn three weeks), *the adjustment for the extension period is limited to those employees who reach their one year anniversary date within that extension period.*

5.3.6 **Sick Leave, Jury Duty, or Bereavement Leave.** If such paid leave is a CBA requirement, an increase requiring more days or hours than previously required or an increase in the wage rate applicable to hours worked and leave time may be an allowable adjustment. The adjustment is limited to the extent that the increase is required by the CBA, and to the extent that the fringe benefit is realistically expected to be used. The contractor should provide supporting documentation from the previous contract period for any claim involving more than a minimal number of hours for these benefits.

*Example:* The contractor’s previous CBA calls for 5 sick days per year with an annual cash out provision for any unused sick leave at the end of each year. The new agreement changes the sick leave provisions to 10 sick days per year with no cash out provision, but does permit employees to accumulate sick leave in the same manner as federal civil service employees. The contractor’s claim for reimbursement of the difference between 5 days per year per employee and 10 days per year per employee is not appropriate for reimbursement unless the contractor can reasonably demonstrate that all this sick leave will actually be used and the cost will actually be incurred.

5.3.7 **Severance Pay.** Some CBAs contain a severance pay clause. Allowable severance pay depends not only upon specific CBA language, but on other circumstances, as well. Not all CBA severance provisions are enforceable under SCA. For these reasons, contact your Center Industrial Labor Relations Officer (Talmage Reynolds, 544-4600) prior to processing a claim that includes amounts for severance pay.

5.3.8 **Retirement and Pension Plans, Health or Life Insurance.** If such plans are a CBA requirement, the adjustment should be based upon the difference between the new requirement and the amount actually paid in the prior contract period. *Only the contractor's portion* of the costs is to be considered when CBA provisions change these plans. Revisions which reduce the contractor’s actual contribution to a benefits plan should be considered a reduction in
SCA-required benefits and adjusted accordingly. Reference paragraph 4.4.2. regarding decreases.

6.0 EQUIVALENT FRINGE BENEFITS

6.1 Meeting Fringe Benefit Requirements. A contractor may furnish any combination of bona fide fringe benefits or cash added to the paycheck to meet the fringe benefit requirements of the WD. Cash payments in lieu of fringe benefits are called "equivalent fringe benefits". A review of price adjustment claims for increased benefits under SCA should include review of the equivalent fringe benefits provided.

Example: The WD requires H&W of $2.50/hour and $.50/hour in pension benefits. The contractor may provide a health plan costing $3.00/hour and meet the requirements for both benefits. If either benefit requirement increases, the contractor may claim an adjustment for that amount. However, if the contractor had paid $3.10/hour in the previous year for both benefits, any price adjustment claim for an increase in either benefit would be offset by the $.10 payment made in excess of the previous minimum benefits.

6.2 Wage-Fringe Benefit Offsets: Any fringe benefits payments in excess of those required may not be used to offset wage requirements. However, payment of additional wages may be used to offset required fringe benefits, provided they are clearly identified as such on payroll records and communicated as fringe benefit “cash equivalents” to the affected employees. All such payments must be considered when evaluating SCA price adjustments claims. For adjustment purposes, a contractor is not required to apply excess fringe benefits towards a wage increase.

Example: The contractor’s minimum wage rate under the WD is $15.00 per hour and the minimum H&W fringe benefit level is $3.15 per hour. The contractor was paying employees $15.10 per hour plus a health insurance plan that costs $4.00 per hour. The new WD increases the wage rate to $15.50 per hour, and increases the H&W fringe benefit minimum to $3.45. The contractor decides to maintain his health insurance plan costing $4.00 per hour, and begins paying employees the new wage rate of $15.50. The contractor may claim a wage adjustment of $.40, the difference between the previous wage rate paid ($15.10) and the new minimum wage rate ($15.50). The contractor is not entitled to an adjustment for the H&W increase, since the H&W already being paid exceeds the new minimum. However, the CO would not offset any part of the $.55 excess (being paid as fringe benefits) against the wage rate adjustment.

7.0 UNLISTED CLASSES

7.1 New Contracts. When the WD initially issued for a contract or solicitation does not include all SCA non-exempt labor categories needed by the contractor, missing classifications must be added (conformed) to the applicable contract wage determination after award. A SF 1444 is submitted to DOL in accordance with FAR 22.1019 and 52.222-41(c)(2) to establish enforceable SCA minimum wages and benefits for the unlisted classes. Wage rates are conformed to the WD applicable to the contract year or period in which the classification was first used (usually the base year—but not always). DOL’s response is retroactive to the earliest date any employee worked in the classification. Additional wages and/or fringe benefits required by DOL’s response to a conformance request are not adjustable under the Clause for any contract.
period. However, conformance establishes a base line for incremental wage increases (or decreases) in subsequent contract periods (see paragraph 7.3).

7.2 Indexing Conformed Rates. The amount of adjustment for a conformed classification is limited to the "indexed" rate increases. The indexed wage rate is determined by adding the percent change of only those classifications listed on the WD that are actually used on the contract. The contractor computes the unweighted percentage of change (increases, decreases and no change) in wage rates from the old WD applicable to the previous period to the new WD applicable to the next period. The average of these percentage changes is applied to the conformed rate to determine the amount of increase or decrease. The contractor may claim this amount as an adjustment under the Clause (except as noted in 7.3). The contracting officer should verify the contractor's calculations prior to approving an adjustment.

*Example*: The WD for the base year listed three hundred classifications, five of which were used on the contract. For the base year, DOL approved an SF 1444 submitted by the contractor to conform a wage rate of $10.00 for Classification X. At first option start, the changes in WD wage rates for each classification used on the contract were: +3%, +3.5%, +2%, no change, and +2.5%. The sum of these changes, 11%, is divided by 5 (the number of classifications employed on the contract), which provides the average increase of 2.2%. The average increase of 2.2% is applied to X's conforming wage rate of $10.00, for a $.22/hour increase. This increase is subject to adjustment under the Clause.

7.3 Follow-on Contracts. If a labor classification was conformed in the previous contract and still does not appear on the WD provided for the successor contract solicitation, the conformed classification and the current "indexed" wage rate should be included in the solicitation as an attachment to the WD. The "indexed" wage rate is determined following the procedures in paragraph 7.2. If the work is still not covered by the WD in the solicitation, the successful offeror (incumbent or non-incumbent) of a follow-on contract may choose to index the previously conformed rate into the base period of the new contract rather than establish the rate(s) through a new conformance action. Price adjustment is not authorized for the indexed increase from the previous contract to the new contract, but become the basis for indexed adjustments in the option years of the contract.

7.4 Additional Work. If conformance was required because new work was added to the contract during performance, rates are conformed to the WD that was in effect when the new classification(s) was first used under the contract, and the conformance is effective retroactive to that date. Adjustment to contract price for additional work does not fall under the FLSA/SCA price adjustment clause; it is normally negotiated as part of a bilateral modification adding the work. Increases indexed for such conformed rates in subsequent contract years are covered under Section 7.2.

8.0 FAIR LABOR STANDARDS ACT ADJUSTMENTS

The FLSA minimum wage applies to all SCA-covered contracts of $2,500 or less and to SCA contracts over $2,500 when DOL's response to a SF98 request indicates "no WD applicable" (rare). Congress periodically enacts increases to FLSA minimum rates. The Clause permits contract price adjustment, but only for FLSA minimum wage increases that are enacted after contract award. No adjustment is permitted for increases enacted prior to contract award, even if they do not take effect until after award. Contractors should have anticipated these increases when developing their bids or proposals. The same principles used for SCA wage adjustments
apply to FLSA adjustments. That is, the maximum adjustment is limited to the difference between the new minimum wage and the rate that the contractor was actually paying the workers. FLSA does not require fringe benefits, so no fringe benefit adjustments are appropriate under an FLSA adjustment request.

9.0 LABOR LAW VIOLATIONS

The portion of any price adjustment request resulting from violations of SCA or other labor laws must be rejected. Contractors are fully responsible for compliance with the requirements of SCA and other labor laws. Payment of employees at less than the minimum required wages and/or fringe benefits is a violation of SCA. The term “rate actually paid”, as used in this guide, assumes compliance with SCA. This “rate actually paid”, therefore, can be no less than the minimum rate required by SCA or FLSA provisions, whether or not the contractor has actually complied with the provisions. Contact your Center Industrial Labor Relations Officer (Talmage Reynolds, 544-4600) for assistance when evaluating such claims.

10.0 CONTRACTOR RECLASSIFICATION OF EMPLOYEES

No price adjustment is allowable for voluntary upgrading (promoting) of employees by a contractor. The cost impact of such promotions must be borne by the contractor. Where upward reclassifications are alleged to be required by SCA (involuntary), see paragraph 9, above.

Example: An employee was classified and paid as a “General Clerk I” in the previous contract year. The contractor’s adjustment proposal requests the difference from the previous “General Clerk I” minimum rate actually paid to the current “General Clerk II” minimum rate, which would promote the employee at Government expense. The contractor is only entitled to the difference between the previous General Clerk I rate paid and the current rate for the same classification. If the contractor chooses to classify and pay the employee as a “General Clerk II” this will establish a new baseline for future adjustments. This rationale also applies to classifications changed due to a DOL SCA compliance action.

Attachment 1

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) (Nov 2006)**

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


(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)