




DEC 8 2015

ALL AGENCY MEMORANDUM No. 218

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

FROM: DR. DAVID WEIL 
Administrator

SUBJECT: Updates to Wage Determinations Issued Under the Service Contract Act

The Department of Labor's Wage and Hour Division ("WHD") is beginning to publish new area-wide wage determinations ("WDs") pursuant to the McNamara-O'Hara Service Contract Act ("SCA"). As explained in this memorandum, these area-wide SCA WDs will be based on a new primary data source. Consequently, these WDs will generally cover smaller geographic areas than prior area-wide WDs and will also reflect a transitional methodology for determining prevailing wage rates.

Background

The SCA requires that every covered contract contain a provision specifying the minimum monetary wages and fringe benefits to be paid to the various classes of service employees in the performance of the contract, as determined by the WHD in accordance with wage rates prevailing "in the locality." 41 U.S.C. § 6703; *see* 41 U.S.C. § 6702 (defining coverage). In issuing SCA WDs, WHD reviews all pertinent information available at the time the wage determination is made. Such information is most frequently derived from area surveys published by the Bureau of Labor Statistics ("BLS"), but may also be obtained from Government contracting officers and from other available sources, including employees and their representatives and employers and their associations. *See* 29 C.F.R. § 4.51(a).

The SCA's implementing regulations provide that a wage determination based on a survey will generally define its "locality" as the same geographic area included within the scope of the survey. *See* 29 C.F.R. § 4.54(a). Although the term "locality" has an elastic and variable meaning, it is "ordinarily limited geographically to a particular county or cluster of counties comprising a metropolitan area." *Id.*

New Primary Data Source for Area-Wide SCA Wage Determinations

Since 2001, the Locality Pay Survey ("LPS") portion of the National Compensation Survey published by the Bureau of Labor Statistics ("BLS") served as the primary data source for determining prevailing wage rates under the SCA. With the enactment of the Federal Government's fiscal year 2011 budget, the LPS was eliminated. As a result of this development and in accordance with the requirements of the SCA and its implementing regulations, WHD began to evaluate options for adopting and transitioning to a new survey data source.

As a result of that process, WHD determined that the most appropriate primary data source to use for calculating SCA prevailing wage rates is the Occupational Employment Statistics ("OES")

survey published by BLS. Between 2001 and 2010, the OES survey served as a secondary data source for determining SCA wage rates either by supplementing LPS data or serving as the primary data source for areas or classifications not covered by the LPS. The OES survey currently produces wage data annually for over 800 occupations in approximately 577 localities, which represents a significantly larger number of localities than the LPS. Moreover, the OES survey generates separate wage data for metropolitan statistical areas (“MSAs”) and non-metropolitan statistical areas (“NMSAs”).

Transitioning to the New Primary Data Source

WHD has started publishing area-wide SCA WDs based on the OES survey. Transitioning to this new methodology will affect SCA WDs in two significant ways. First, WHD will begin to issue locality-based wage determinations based on the OES survey’s geographic areas. As a result, the number of area-wide SCA WDs published by WHD will increase in part because the OES survey provides wage data for substantially more geographic areas than the LPS. Utilizing the OES survey as the primary data source for SCA WDs will therefore enable WHD to publish WDs that generally cover smaller geographic areas. WHD anticipates that it will publish approximately 858 WDs as it transitions from the LPS to OES-based wage determinations and makes corresponding changes to the geographic scope of its WDs. WHD expects this number to decrease once the transition to OES-based geographic areas is complete.

Second, transitioning to the OES survey as the primary wage data source for area-wide SCA WDs also affects the methodology that will be utilized to determine SCA prevailing wage rates. Because the immediate transition to OES geographic localities and wage rates could in some instances have a disruptive impact on the procurement process or adversely affect the expectations and reliance interests of stakeholders, WHD will implement the new methodology gradually through a transitional process that is consistent with the SCA and the interests of the regulated community. In particular, WHD generally does not intend to reduce wage rates on area-wide SCA WDs during its transition to the new primary data source and new geographic localities. Maintaining existing wage rates as a floor during the transitional period will provide contracting agencies, contractors, workers, and their representatives with stability and predictability while WHD moves toward full implementation of the new data source. Along the same lines, and in accordance with Administrative Review Board precedent, WHD generally will cap any increases in wage rates at 10 percent per WD rate update. WHD anticipates that SCA wage rates and OES survey rates will converge over time, leading to progressively fewer instances where capping is implicated. These transitional tools will enable WHD to effectively implement the new primary data source for area-wide SCA WDs in a manner that is consistent with the SCA, promotes predictability, and minimizes any adverse impact upon the procurement process.

Publication of SCA WDs under the New Methodology

WHD has developed a “crosswalk” to assist its staff and the regulated community in identifying which new SCA WD(s) correspond to a locality or WD used under the prior methodology. This crosswalk is attached to this memorandum and is available on WDOL.gov. As indicated in the crosswalk, area-wide WDs issued under the prior methodology have a “2005” prefix whereas WDs issued under the revised methodology have a “2015” prefix. In the example shown below, a user searching for the area-wide SCA WD applicable to Harris County, Texas would find that the new wage determination for this county is 2015–5233:

State	County	Prior WD: 2005-####	New WD: 2015-####
TX	Harris	2515	5233

This crosswalk provides a tool for the regulated community to easily locate the new WD number associated with a particular county. WHD anticipates that it will take several months or more to issue new wage determinations for all localities, and so a new WD may not be initially available for a specific locality. A wage determination issued pursuant to the new methodology will have the “2015” prefix and the four digit suffix as indicated in the crosswalk. Visitors to WDOL.gov may locate the area-wide WD currently applicable to a locality by continuing to use the interactive pull-down menus found on the “Selecting SCA WDs” webpage. Federal agencies may also submit an e98 request to obtain the current area-wide WD applicable to a specific locality. Stakeholders may also monitor the WDOL website to determine whether new wage determinations for specific localities have been issued.

Additional Updates and Changes

In addition to adopting a new primary data source for determining SCA prevailing wage rates, WHD has updated the SCA Directory of Occupations (“Directory”), which is published on www.wdol.gov. This revised Directory includes updated occupational definitions for existing SCA classifications as well as definitions for 27 new classifications found on area-wide WDs that will be issued under WHD’s new methodology.

Conclusion

Questions pertaining to the new methodology for determining SCA prevailing wage rates discussed herein, the applicability of SCA WDs to specific contracts or contract periods, or the revisions to the Directory should be referred to WHD’s Branch of Service Contract Wage Determinations.

For additional information and resources related to the Service Contract Act, please visit <http://www.dol.gov/whd/govcontracts/sca.htm> and <http://www.wdol.gov>.