

**FAIR LABOR STANDARDS ACT,  
SERVICE CONTRACT LABOR STANDARDS**

**&**

**EO 13658**

**AIR FORCE PRICE ADJUSTMENT GUIDE**

**March 2015**

The purpose of this guide is to provide assistance in calculating contract price adjustments resulting from changes to the Service Contract Act (SCA)/Service Contract Labor Standards minimum wage rates and fringe benefits or changes in the Fair Labor Standards Act (FLSA) minimum wage. The terms “SCA” and “Service Contract Labor Standards” are used interchangeably throughout this guide, as they refer to the same statute. This guide is not all-inclusive, is informational, and its use is optional.

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## 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), also known as the Service Contract Labor Standards statute. When incorporated into a federal service contract, the 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](#), “Fair Labor Standards Act and Service Contract Labor Standards - Price Adjustment (Multiple Year and Option Contracts)” and [FAR 52.222-44](#), “Fair Labor Standards Act and Service Contract Labor Standards - Price Adjustment,” authorize adjustment of **fixed price** SCA-covered contracts when either FLSA wage increases apply or SCA WDs requiring increased minimum wages and/or fringe benefits are incorporated into a contract. Adjustments are subject to certain limitations expressed in the relevant clauses.

**1.1.1 A note on Executive Order (EO) 13658, “Establishing a Minimum Wage for Contractors”:** The clause at FAR 52.222-55, “Minimum Wages Under Executive Order 13658,” allows for adjustment of contract prices due to increases in the EO 13658 minimum wage. The principles and techniques set forth in this guide may be used to make price adjustments arising from that clause (reference paragraph (b) of the clause and FAR 22.1904), as the allowance for price adjustment under that clause is substantially similar to that found in 52.222-43 and -44.

Note, however, that 52.222-55 **ONLY** allows for adjustment of labor costs (“The Contracting Officer will adjust the contract price or contract unit price under this clause only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658....”). The clause contains no provision for adjusting H&W or fringe benefit rates, as those rates are not affected by the wage-setting process found in the clause. The clause does provide for adjustments to so-called “accompanying costs” as a result of an increase in the mandated minimum wage. Therefore, for price adjustments subject to 52.222-55, consult chapters 7, 9, and 13 of this guide for further assistance.

**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; under the provisions of EO 13658, DoL may also increase or change the minimum wage rate for contractors performing under contracts subject to SCA or the Davis-Bacon Act. An increase in the FLSA national minimum wage rate only entitles a contractor to recover increases enacted after award of the contract. Contractors are responsible for complying with changed minimum wage and fringe benefit requirements and for properly requesting adjustment.

**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 voluntarily made under these clauses so the Contracting Officer can reduce the contract price accordingly (see Section 7.4).

**1.4 U.S. Department of Labor Regulations.** The SCA is implemented by U.S. Department of Labor (DOL) regulations at **29 C.F.R. Part 4**. The entitlement to SCA price adjustment depends upon the extent to which the SCA requires a contractor to increase compensation to comply with a new or revised contract WD. Accordingly, much of the information with respect to entitlement expressed in this guide is based upon the clear language of Part 4 and other published DOL enforcement positions- this is especially so when considering fringe benefits. When necessary, Air Force Labor Advisors consult with DOL regarding SCA enforcement under particular circumstances. However, DOL personnel do not directly advise agency contracting personnel with respect to contractual matters such as SCA price adjustment actions.

## **2.0 ASSISTANCE FROM AIR FORCE LABOR ADVISORS**

Air Force Regional Labor Advisors are available to provide assistance to Air Force contracting personnel concerning the application of contract labor standards and calculating SCA and FLSA price adjustments. Labor Advisor contact information is included in **Section 17**. Major Command pricing specialists should be contacted for general contract pricing questions. A list of Agency Labor Advisors for **other federal agencies** and military departments is posted at the WDOL.gov website under the “Related Information” column.

### 3.0 SERVICE CONTRACT ACT WAGE DETERMINATIONS

**3.1 Requirement.** Contracting Officers incorporate a new or revised WD into an existing contract when required by FAR 22.1007, *provided* a new or revised WD is received or available timely in accordance with FAR 22.1012. New or revised WDs are incorporated into existing contracts at:

- option exercise;
- extension award;
- the annual anniversary date of multiple year contracts subject to annual funding; and
- the biennial anniversary date in multiple year contracts not subject to annual funding

New or revised WDs are always effective the first day of the new contract period, even though the WD may be dated several months prior to incorporation. A WD is not effective for a contract merely because it is published on WDOL.gov.

**3.2 Obtaining SCA Wage Determinations.** The three types of SCA wage determinations (discussed below) are **Standard WDs**, **CBA WDs**, and **Non-standard WDs**. All can be obtained at the “Wage Determinations OnLine” (WDOL) website at <http://www.wdol.gov/> . Occasionally, it may be necessary to submit an electronic SF98 WD request to DOL through their “e98” website (see link at WDOL.gov). If an appropriate WD is available at WDOL.gov, submission of an “e98” WD request to DOL is not required. If an e98 is submitted to DOL to obtain a CBA WD- which is generally unnecessary- DOL will send an email requesting a scanned/electronic copy of the CBA.

**3.3 Standard Wage Determinations.** The most commonly required WDs are “Standard WDs” based on survey data from the locality (statewide, in several states). Standard WDs are those with a WD number currently falling between 05-2000 and 05-3200. They list some 300 classifications, matching the position descriptions contained in the Fifth Edition of the SCA Directory of Occupations.

**3.4 Collective Bargaining Agreement Wage Determinations.** Collective Bargaining Agreements (CBAs) are agreements between an employer and a union representing a number of a firm’s employees. The right to organize and bargain for wages, and other economic as well as noneconomic terms, is recognized in the National Labor Relations Act, as amended. When an incumbent predecessor contractor is party to a CBA, Section 4(c) of the SCA requires the successor contractor to pay no less than the CBA wages and fringe benefits in lieu of any other rates issued by DOL. For option years, the performing contractor is both the “incumbent predecessor contractor” and “successor contractor” for section 4(c) purposes. Section 4(c) protects ONLY wages and benefits; it does not protect non-wage/non-benefit provisions of a CBA, such as grievance procedures, seniority rules, overtime, and so forth. See Title 29 CFR 4.163(a). The CO is required to incorporate a WD into the contract referencing the CBA terms. “CBA WDs” can be easily generated and revised at the WDOL.gov website. (But see Sections 10.2 and 10.3 regarding “timeliness” and “prohibited contingencies”.) CBA WDs issued by the WDOL.gov system are numbered CBA-YYYY- ##### (such as CBA-2013-1234), while those issued by DOL do not currently include “CBA” in the number. **IMPORTANT: Contracting officers should know if employees working under their contracts are subject to a CBA. Even more importantly, contractors have a responsibility IAW FAR 52.222-41(m) to keep their contracting officers informed as such.**

**3.5 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. Most non-standard WDs can be obtained at the [WDOL.gov](http://WDOL.gov) website, but several are restricted to use by other (non-Air Force) agencies by the detailed description for each non-standard WD. These limitations and exclusions are not included in the WD headings. Non-standard WD descriptions (with limitations and exclusions) are contained in the WDOL.gov SCA WD selection process and SCA User's Guide (Appendix 'A'). Before using a non-standard WD, read the WD to ensure that it is appropriate for your requirement; if you have any questions or concerns regarding appropriateness, contact your regional labor advisor.

#### **4.0 ADJUSTMENTS-- GENERAL**

**4.1 Applicability.** A new or revised standard, non-standard, or CBA WD 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 12 "Unlisted Classes"** for adjustments involving service employee classifications whose work is not covered by any WD classification.

**4.2 Assumptions with Respect to Contract Pricing.** Both FLSA/SCA price adjustment clauses state, at paragraph '(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."* Thus, contract price should **not** have included amounts for known or projected increases in wage rates, fringe benefits, or allowable accompanying costs that may become effective **after the base period of the contract**. This also requires exclusion of any collective bargaining agreement (CBA) increases scheduled to become effective **after** the end of the base period. However, any CBA increases effective or scheduled to become effective at any time **during** the base contract period should have been included in the contract price for both the base period and options.

**4.3 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. The new base line established for wages and benefits will apply not only to the "current" contract year, but to all subsequent contract years, as well. Once incorporated, a WD is effective until deleted by contract modification or until a new or revised WD is subsequently incorporated for the same contract work. For adjustments under the authority of 52.222-99, the time period covered by the adjustment will generally run from 1 Jan-31 Dec, in keeping with the requirements of that clause.

**4.4 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**. Hours from a contractor's offer (solicitation response) are only used if historical hours are insufficient or considered unreliable by the CO. Regardless of method there are four elements needed from the contractor to calculate a contract price adjustment for a WD revision:

- actual or projected hours for the new contract period (Section 6);
- actual wages paid in the previous contract period (Section 7);
- fringe benefits paid in the previous contract period (Section 8);
- accompanying costs (certain payroll taxes) (Section 9)

**4.5 Maximum Adjustment.** An adjustment **should never exceed** the difference 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 (Section 14).

## 5.0 DOCUMENTATION OF CLAIM

**5.1 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 (See Section 6.4 "Prorated Periods"). All data and calculations submitted by a contractor should be independently verifiable. In all cases, the contractor is obligated by paragraphs (f) and (g) of the FAR 52.222-43 clause to provide sufficient documentation to substantiate a claim.

**5.2 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 merit bonuses or commissions. These payments must be included in determining the total actual wages paid to employees. COs should specifically ask the contractor whether any additional payments were provided. However, "discretionary" 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 (not established or promised in advance).

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. Determine whether the contractor paid any portion of a fringe benefit increase in cash directly to the employees or to an insurance company, pension plan, or other third party provider. If the increase is paid directly to employees, it is considered taxable wages and the contractor will incur an accompanying adjustment in FICA taxes, and potentially, workers compensation and

unemployment costs. If the H&W adjustment is paid to a third party provider, the contractor incurs no increase in payroll taxes. See Section 9 for coverage of “Accompanying Costs”.

**6.0 EMPLOYEE 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 (6.1);
- non-covered employees (6.2);
- changed work conditions or contract requirements (6.3);
- prorated periods (6.4);
- paid time off hours (6.5);
- overtime hours (6.6)

**6.1 Exempt Employees.** The contract price is not adjusted for employees who are exempt from the SCA and FLSA. Exempt personnel include professionals such as engineers and lawyers, administrative employees such as Personnel or Finance Directors, certain employees working with computers and executives such as Project Managers and upper-level supervisors). The contractor must **exclude** exempt employees before calculating an adjustment. Contact your regional labor advisor for more information.

**6.2 Non-covered Employees.** SCA wage rates do not apply to all of 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.

**6.3 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 demand for the services provided. However, adjustment must not duplicate any portion of a separate adjustment made or to be made for contract changes.

*Example: The contract as originally conceived and awarded provided for mowing services on 500 acres of grass; historically this has required 4000 hours of labor. Starting in the next period of performance, the contract will require services to cover 1000 acres at the same service level. Therefore, we would adjust projected hours upwards to 8000 hours, since the acreage to be maintained has been doubled.*

**6.4 Prorated Periods.** The Contractor may have less than 12 months of historical payroll data to use as a basis for projecting the next fiscal year’s hours using the forward pricing method. Historical data may be prorated to apply an adjustment claim across the 12 months of the next period *provided* the work is not subject to seasonal or other significant fluctuations. For extension periods, use only the corresponding month(s) from the previous contract year. To prorate the available data for the next fiscal year, **calculate the average monthly hours** worked for all covered non-exempt employees by labor category and multiply it by 12.

*Example: The contractor provided 4 months of payroll data for employees in different labor classifications. After excluding exempt or non-covered employees, the records indicate*



*one employee classification worked a total of 12,000 hours and the other employee class worked a total of 16,440 hours. The prorated hours are calculated by dividing the hours worked (12,000 and 16,440) by 4 (the number of months of data) to establish the monthly average by labor category (3,000 and 4,110 respectively), and then multiplying by 12. The projected hours for the next fiscal year would be 36,000 for the first classification and 49,320 for the second labor classification.*

**6.5 Paid Time Off.** Include hours required for vacation and holidays in wage increase adjustments. Only include sick leave hours if the hours are specifically required by the 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 subject to a standard WD usually credit any sick leave costs against their Health & Welfare fringe benefit obligation. Reference Section 8.2 on fringe benefit adjustments for increases in the number of holidays, vacation days, or sick leave days required by a CBA. All paid hours should be included and are eligible for adjustment.

**6.6 Overtime Hours.** Federal overtime laws (CWHSSA and FLSA) require premium payments for hours worked in excess of 40 per week, and several states require overtime for work over eight hours per day. 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 1 ½ times the regular wage rate. The “straight-time” (non-overtime) 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 normally reimbursable. Contractors generally have the ability to manage their work so that overtime hours do not occur or need to be used. 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 instances where the overtime hours were actually **required** and/or **authorized** by the contract (such as a pre-priced line item for overtime work). Health and Welfare fringe benefit adjustments are normally not due on overtime hours. However, even-numbered standard WDs (and some CBAs) require H&W to be paid on “all hours worked”— including overtime hours.

*Example: The contractor's employees work a total of 42,000 hours in a given labor category of which 4,000 hours were considered overtime and paid at 1 ½ times the regular rate of pay. The WD increased the wage rate for that classification by \$1.30 per hour. The contractor **would** be entitled to a price adjustment of \$54,600 ( $\$1.30 \times 42,000$ ), but **would not** be entitled to the additional overtime premium of \$2,600 ( $\$1.30 \times 5 \times 4,000$ )*

**7.0 WAGE RATE 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 accompanying costs, but excluding
- general & administrative expenses (G&A), overhead, and profit (see Section 9.4)

**7.1 Calculating the Actual Rate Paid.** The actual hourly rate paid in the previous period is the total of the hourly rate paid and any other compensations (bonuses, commissions, 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.

*Example: The contractor paid a regular hourly wage rate of \$10.10 per 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 \$.17 per hour (\$350.00/2080). The total actual wage rate for the employee would then be \$10.27/hour (\$10.10 + prorated bonus of \$.17).*

**7.2 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.

**7.3 Increases:** 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. (See Section 5.3 regarding "maximum adjustment".)

*Example: The prior WD required a minimum wage rate of \$14.00/hour. The contractor actually paid employees \$14.40/hour in the prior period. The revised WD requires a minimum wage rate of \$14.70/hour. The allowable hourly wage adjustment is limited to \$.30/hour (\$14.70 new minimum less actual payment of \$14.40). If the contractor had elected to pay employees \$15.00/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 paid the same or more than the new minimum rate during the previous contract period.*

**7.4 Decreases.** 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 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. If a voluntary decrease is made, require the contractor to submit a proposal for reduction in contract price. Follow the same guidelines as for an increase.

**8.0 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

**8.1 Health and Welfare (H&W) Rates.** The allowable hourly adjustment is the difference between the new H&W rate and the hourly cost of 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. Standard WDs requiring "average cost" H&W (see 8.1.2) are only used on contracts that previously included an average cost WD. All others use Standard WDs with "per employee" H&W discussed at 8.1.1. DOL is expected to eventually eliminate one

of these H&W methodologies, which will simplify application of Standard WDs and SCA price adjustment. The relationship of the even or odd WD number to the H&W requirement (discussed below) applies only to Standard WDs— not Non-standard WDs or CBA WDs.

**8.1.1 Per Employee H&W (Odd-numbered WDs).** Standard WDs ending with an odd number (12-2063, etc.) are the most common and require an hourly H&W benefit on a “per employee” basis. The “per employee” rate is required for each employee for all **hours compensated (which includes paid vacation and paid holidays)** by the contractor, **up to a maximum of 40 hours per week** (or 2080 hours per year). The term “hours compensated” includes paid time off such as holidays and vacations. Standard WDs with the “Per employee” H&W are required for contracts that were not previously subject to a Standard WD with the “average cost” H&W.

**8.1.2 Average Cost H&W (Even-numbered WDs).** Standard WDs ending with an even number (12-2064, etc.) require that the H&W furnished must average at least the minimum H&W rate per hour for all employees working on the contract that are subject to a Standard WD. It is paid only on **hours worked (defined as time spent in work status- does not include vacation and holiday)**, including overtime hours, and there is no weekly or annual maximum on the hours. Under average cost, some employees may receive contributions and/or benefits that cost less than the minimum H&W amount if there are legitimate reasons, such as the difference between the contractor’s cost for a health plan’s “self, only” premium and “self and family” premium. But, the average hourly cost for all SCA employees subject to the standard H&W rate must meet or exceed the minimum H&W rate for total work hours.

**8.1.3 Determining H&W Benefit Cost.** Contractors are only entitled to an increase in H&W based on amounts paid for H&W in the prior contract period. A contractor may credit-- against their H&W obligation-- costs that are incurred for any “bona fide” fringe benefit not already required by the WD or other law. Determining the amount previously paid is simple if the benefit was paid all in cash or contributed to one benefit fund or plan. If paid in several different ways, identify and total the cost of the various components. This might include contributions to a health plan and/or 401k plan, furnishing of sick leave (when not specifically required by the WD), furnishing of additional paid holidays/days off (exceeding that required by the WD), and furnishing additional amounts in cash. Compare the total cost of benefits creditable against H&W to the new H&W requirement. Then adjust contract price by the amount (if any) that the contractor is required to increase H&W payments to comply with the new WD.

**8.1.4 Annual H&W Increases.** The H&W rate is increased annually if warranted by DOL survey data. DOL usually publishes an All Agency Memorandum (AAM) revising the WD H&W rate in June each year. Standard WDs (and some of the non-standard WDs) are then revised to include the increased rate. The most current H&W AAM is posted in the WDOL.gov library at <http://www.wdol.gov/aam.aspx> .

**8.1.5 Special H&W Rates for Hawaii.** A contractor subject to the “**per employee**” H&W under Standard WD 05-2153 for Hawaii can pay a specified “reduced” H&W rate if they are making separate contributions under the state’s prepaid Health Care Act. However, the standard rate is required for contractors not making such contributions. Accordingly, standard WD 05-2153 lists two H&W rates, and the required rate for a particular contractor depends upon whether or not they are making the separate Health Care Act contributions. A contractor subject to the “**average cost**” H&W under Standard WD 05-2154 for Hawaii must pay a rate of \$1.64. This rate is “grandfathered” until the lower “per employee” reduced rate overtakes it.

**8.2 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 (8 hours maximum for each new holiday for a full-time employee). If, in the preceding period, the contractor already provided as many holiday hours as the new WD requires, no adjustment is appropriate for an increase in SCA-required holidays.

**8.3 Vacation.** WD's usually list vacation benefits as a number of weeks earned per number of years' 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 of vacation entitlement. Employees who quit or are terminated are only due unpaid vacation (if any) that 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 "two weeks paid vacation after 1 year of service" and the new WD states "three 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 two weeks of vacation after one year of service, **three weeks vacation after five years**, and four weeks vacation after ten years. The revised WD now requires two weeks vacation after one year of service, **three weeks vacation after four years**, and four weeks vacation after ten years. The one-year and ten-year entitlements 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 fourth anniversary** during the next contract period. No adjustment is required for employees reaching any other anniversary during the next contract period because the WD did not change their vacation benefit.*

**8.4 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. However, holidays and vacation entitlements are prorated based on the number of hours they normally work per day (holidays) or per week (vacation).

*Example: An employee who regularly works four hours per day/16 hours per week on the contract is entitled to four hours pay for each required holiday and 16/40ths of the full-time vacation benefit (16 hours pay for each vacation week due).*

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

**8.5 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 specifies otherwise.

**9.0 ACCOMPANYING COSTS.** The FAR 52.222-43 clause specifically allows reimbursement of the following “accompanying costs”: Federal Insurance Contributions Act (FICA); federal and state unemployment taxes (FUTA and SUTA); and Workers' Compensation Insurance (WCI). But, these costs are only allowable **to the extent** that they 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, but 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 any portion of a fringe benefit increase paid in cash--** and only to the extent that increases were caused by WD incorporation. **Note that adjustments under FAR 52.222-99 may not consider accompanying costs, as the clause specifically allows only for an increase in “labor costs.”**

*Example: The contractor is entitled to a \$.17 increase for H&W. If the contractor increases fringe benefits furnished by making contributions to a bona fide benefit fund, plan, or program, there is no adjustment for accompanying costs. If the contractor pays the H&W increase in cash added to the wage rate, then an adjustment is permitted for accompanying costs on the \$.17 per hour paid “in cash”. If the increase is paid by a combination of contributions and cash, apply accompanying costs to the cash portion of the H&W increase, only.*

**9.1 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 currently (2014) \$117,000, so it is very likely that contractors will have to pay the **combined 7.65% FICA rate** on all wages earned by service employees. Current caps may be found at <http://www.ssa.gov/OACT/COLA/cbb.html>.

**9.2 Unemployment Taxes.** The Federal and State unemployment tax payments are **not always affected** by a WD revision. Unemployment taxes are paid by contractors on the “taxable wage base”-- wages up to a specific annual ceiling or cap.

**9.2.1 Federal Unemployment Tax Allowance (FUTA).** The current FUTA rate of .8% is only paid on wages up to a cap of \$7,000, so there would rarely be a claim for FUTA on wage increases. The contract price is **not adjusted** for changes in the FUTA or SUTA rate. When an adjustment on wage increases is warranted, only the current FUTA and/or SUTA rate(s) apply.

**9.2.2 State Unemployment Tax Allowance (SUTA).** 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 a DOL link at <http://workforcesecurity.doleta.gov/unemploy/agencies.asp>). The SUTA cap for 34 states is \$15,000 or less. Since annual employee wages would normally exceed the caps in most states without regard to a revised WD, typically **no additional** FUTA or SUTA is required-- the contractor is already paying the maximum tax. 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 increase.

*Example: Assume the SUTA rate is 2% (.02), the SUTA cap is \$28,000 and an employee's WD rate increased from \$ 12.00 per hour (\$24,960 per year) to \$12.50 per hour (\$26,000 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, instead, the cap was \$25,500, then the cost increase to the employer would be \$10.80 (\$25,500 cap less \$24,960 earned in the prior year = \$540 x .02).*

**9.3 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 or cap, so increased costs would normally be allowable for WCI that result from a WD revision. 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 new rate is applied only to the increase resulting from the revised WD. The CO verifies the applicable WCI rates by requesting suitable documentation from the contractor. State WCI offices can be reached through <http://www.dol.gov/owcp/dfec/regs/compliance/wc.htm>.

**9.4 General & Administrative Expenses, Overhead, and Profit.** General and administrative expenses (G&A), overhead, and profit are specifically **excluded** by the clauses at FAR 52.222-43 and FAR 52.222-44. They are **not allowable** as part of an SCA price adjustment. Increases in **general liability insurance, state gross receipts taxes, bonding costs, GSA Industrial Funding fees**, and similar expenses are **not allowable** as part of an SCA adjustment-- despite such costs being calculated based on total wages or total revenue.

## **10. ADJUSTMENTS BASED ON COLLECTIVE BARGAINING AGREEMENT (CBA) TERMS**

**10.1 Including CBA Wage Determinations in the Contract.** The right to organize and bargain for wages, and other economic as well as noneconomic terms, is recognized in the National Labor Relations Act, as amended. 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 ("successor") contract period. Note that there may be more than one CBA involved, each covering a different group of contract employees. If a CBA is either new or has been revised since the last contract period, a "CBA WD" can be obtained as discussed at Section 3.2. A WD or WDs based on one or more CBAs should then be incorporated into the appropriate option extension period (or multiple year contract anniversary). The CBA must have been provided to the contracting agency in a timely manner (see Section 10.2), and cannot contain prohibited contingency provisions (see Section 10.3). Also, the CO must review the CBA to determine whether the rates appear to be excessive. If the contract WD references a CBA that has **not** been replaced or revised, but includes scheduled increases for the current year, the existing contract WD is sufficient to require the increases and entitle the contractor to price adjustment. **Note that section 4(c) applies to wages and benefits only- it does not cover "work rules."** If the union no longer represents the employees or if the agreement expires prior to the start of the contract period, contact an Air Force Regional Labor Advisor for assistance.

**10.2 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 22.1012-2](#)). If a CBA is not received timely, a CBA WD should NOT be created or revised at



WDOL.gov or obtained through the e98 system. The contractor is not entitled to price adjustment arising from a CBA submitted untimely, since the SCA provisions of the Government contract do not require the increases.

**10.3 Prohibited Contingencies.** CBA 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 or 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) (<http://www.wdol.gov/aam/AAM159.pdf>). Contact your AF Regional Labor Advisor if you believe a CBA may contain a prohibited contingency. Do not generate or revise a CBA WD or submit an e98 request. If the CBA is determined to contain a prohibited contingency, the contractor is not entitled to price adjustment arising from that CBA.

**10.4 Collective Bargaining Agreement Wage Determination Revisions.** Obtain CBA WDs as outlined at Section 3.2. 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. The Contracting Officer 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 an AF Regional Labor Advisor for claims involving unusual CBA provisions.

**10.5 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 wage terms such as shift rate differentials or additional pay for Lead workers, and additional fringe benefits such as a pension, health plan, or sick leave. The rules for entitlement to benefits such as holiday and vacation pay may differ from the standard rules that would otherwise apply, since CBA terms supersede the standard rules. However, employee expense reimbursements are subject to the same limitations as stated in Section 7.2 of this guide, and accompanying costs are calculated as discussed at Section 9.

**10.5.1 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 22.1012-2](#)).

*Example: An annual option period began October 1, and CBA increases (under a CBA submitted timely prior to option start) became effective March 1 of the following year. The increased wages are effective for seven months (March-Sept.) of the option period, so the adjustment is limited to those seven months.*

**10.5.2 Overtime.** Most 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 wages or fringe benefits

under SCA. In most cases, overtime premiums are **not subject to adjustment** under the FAR 52.222-43 clause. Reimbursement is limited to the straight time portion of payments for any overtime hours as discussed in Section 6.6 of this Guide. An **exception** is made if the contract includes a pre-priced line item for overtime, which would require adjustment of the pre-priced hourly rate. However, CBA terms cannot change (for contract pricing purposes) the definition of “overtime” or “basic hourly rate”, or the overtime premium of 1/2 times the basic hourly rate.

**10.5.3 Shift Differential.** This pay is often required by CBAs and is specified as an additional wage rate for hours worked during non-standard schedules (example: “for shifts starting at or after 6:00 p.m., each employee will be paid a \$1.00/hr. shift differential for all hours worked between 6:00 p.m. and 4:00 a.m.”). It is not an overtime premium. Shift differentials **are enforceable** under SCA and subject to adjustment provided the differential was conformed (see Section 12) for a standard or non-standard WD, or is included in the terms of an applicable CBA.

**10.5.4 Other Premium Payments.** Most other premium payments are **not enforceable** CBA provisions under SCA. This includes “Show-Up Pay” or “Call-In Pay”, where a CBA may require payment of a minimum 4 hours, no matter how many hours are worked, or additional or extended paid break times. DOL regulations do not consider such hours as “hours worked”, so they are not enforceable under SCA or subject to price adjustment.

*Example: The CBA states that employees that are called back to work will be paid a minimum of 4 hours wages, regardless of hours actually worked. If the employee worked only one hour, only one hour would be included or counted as part of the price adjustment- **not all four.***

**10.5.5 Vacations.** Some CBAs specify **accrual** of vacation, rather than having it become 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. Employees earn (accrue) the vacation benefit hours specified in each week, pay period, or month. 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 will reach their one year anniversary date **within that extension period.***

**10.5.6 Sick Leave, Jury Duty, and 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 of this sick leave will actually be used and the cost will actually be incurred.*

**10.5.7 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. In most instances, a severance pay claim is only considered following the end of a contract. However, severance pay is never reimbursed when paid to former employees who were hired by a successor contractor in an equivalent position-- regardless of CBA language. For these reasons, contact your AF Regional Labor Advisor prior to processing a claim that includes amounts for severance pay.

**10.5.8 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 cost is to be considered when CBA provisions change these plans. Revisions which reduce the contractor's actual contribution to a benefit plan should be considered a reduction in SCA-required benefits and adjusted accordingly (see 7.4 regarding decreases).

**10.5.9 Shop Steward Time/Other Fringe Benefits.** Time that an employee spends performing shop steward duties (i.e., processing grievances, etc.) does not generally count as time worked as this is not effort expended in performance of the contract itself (ref 29 CFR 4.178). Contact an AF Regional Labor Advisor for assistance in determining the applicability of any proposed adjustments that are not discussed in this Guide.

**10.5.10 Initial CBAs.** When a CBA is first applicable under a contract, all fringe benefits paid under the previous contract period must be considered. The cost of health and life insurance, pension, 401(k) plan, sick leave, extra holidays or vacation, (etc.), and any cash payments for benefits must be compared to the cost of all bona fide fringe benefits required by the CBA.

*Example: The contractor previously paid an hourly health plan premium of \$3.40 and a 401(k) contribution of \$.50 per hour (total \$3.90 per employee). The contractor's total hourly cost for the CBA's health plan, pension, and sick leave benefits is \$4.62 per hour. The contractor is entitled to an adjustment of \$.72 per hour for these fringe benefits.*

## **11.0 EQUIVALENT FRINGE BENEFITS**

**11.1 Meeting Fringe Benefit Requirements.** A contractor may furnish any combination of bona fide fringe benefits and/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 increased H&W to \$4.00/hour. The contractor may provide a bona fide benefit plan costing at least \$4.00/hour, contribute a lesser amount to such a plan if the difference is made up by other bona fide benefits and/or cash payments, or pay \$4.00 in cash. However, if the contractor had paid \$4.50/hour in the previous year for one or more benefits, there would be no entitlement to an adjustment.*

**11.2 Wage-Fringe Benefit Offsets:** Under SCA, 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 adjustment 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 is \$4.00 per hour. The contractor was paying employees \$15.10 per hour plus a health insurance plan that costs \$5.00 per hour. The new WD increases the wage rate to \$15.50 per hour, and increases the H&W fringe benefit minimum to \$4.50. The contractor decides to maintain his health insurance plan costing \$5.00 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 \$.50 excess (being paid as a fringe benefit) against the wage rate adjustment.*

## **12.0 UNLISTED CLASSES (CONFORMANCE)**

**12.1 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**. An SF 1444 is initiated by the contractor and submitted to DOL through the Contracting Officer in accordance with FAR 22.1019 and 52.222-41(c)(2). This will 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 FAR 52.222-43 clause for any contract period. However, conformance establishes a base line for incremental wage increases (or decreases) in subsequent contract periods (see Section 12.2). Unconformed classifications and the individuals working under those unconformed classifications remain eligible for H&W increases mandated by a new area wage determination, however.

*Example: The contractor employs janitors and lead janitors. The janitors exist as a classification on the contract wage determination. The lead janitors do not. Since the lead janitor classification does not exist, they are treated as janitors for wage and benefit price adjustment purposes. Thus, any H&W increase applicable to the janitor classification would apply to the unconfirmed lead janitors.*

**12.2 Indexing Conformed Rates (Option Years and Extension Periods)).** 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 FAR 52.222-43 clause (except as noted in 12.3). 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 conformed wage rate of \$10.00, for a \$.22/hour increase. This increase is subject to adjustment under the Clause.*

**12.3 Follow-on Contracts.** If a labor classification was conformed in the previous contract and the work is still not covered by the WD for the follow-on contract solicitation, the conformed classification and the current "indexed" wage rate (effective for the final option or extension period) should be included in the solicitation as an attachment to the WD. The "indexed" wage rate is determined following the procedures in Section 12.2. If the work is still not covered by the WD in the solicitation, the awardee (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 the base period indexed rate becomes the basis for indexed adjustments in the option years.

**12.4 Additional Work.** If conformance was required because new work was added to the contract during performance, rates are conformed to the contract WD that was in effect when the new classification 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 at FAR 52.222-43; it is normally negotiated as part of a bilateral modification adding the work. Indexed increases for such conformed rates in subsequent option years are discussed at Section 12.2.

## **13.0 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 an electronic SF98 request indicates "no WD applicable" (rare). Congress periodically enacts increases to FLSA minimum rates. The FLSA/SCA price adjustment clauses at FAR 52.222-43 and 52.222-44 permit 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 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.

#### **14.0 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 AF Regional Labor Advisor for assistance when evaluating such claims, or if enforcement action by DOL appears to be warranted.

#### **15.0 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**- the promotion, reclassification, etc., was done at the discretion of the contractor. Where upward reclassifications are alleged to be required by SCA (involuntary), the contractor may be in violation of SCA (see Section 14).

*Example: An employee was classified and paid as an “Accounting Clerk I” in the previous contract year. The contractor’s adjustment proposal requests the difference from the previous “Accounting Clerk I” minimum rate actually paid to the current “Accounting Clerk II” minimum rate, which would promote the employee at Air Force expense. The contractor is only entitled to the difference between the previous Accounting Clerk I rate paid and the current rate for the same classification. If the contractor chooses to classify and pay the employee as an “Accounting 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.*

#### **16.0 ABILITY ONE/SOURCE AMERICA CONTRACTS**

In evaluating price adjustment requests received from non-profit agencies (NPAs) on contracts awarded under the Ability One/Source America (formerly NIB and NISH) programs, note additional adjustments (other than those permitted under the price adjustment clause) may be authorized based on the follow-on year (FOY) agreement as agreed to by both parties. Under Pricing Memorandum No. 3 (PR-3), the Contracting Officer and the NPA may specify in the contract what costs are to be adjusted (in “follow-on years”) that are in addition to cost increases recoverable under the FLSA/SCA Price Adjustment clause covered by this guide. **Note that this means that the FOY should be incorporated into the contract.** Any costs specified as adjustable in a contract provision; although specifically excluded by the SCA price adjustment clause, should be considered in conjunction with the standard price adjustment entitlements. However, those adjustments should not be made under the authority of the SCA price

adjustment clause- meaning that contracting officers should cite the other enabling authority (for instance, the FOY agreement) when adjusting elements other than those allowed under the auspices of 52.222-43. Consult with your pricing or legal advisor regarding any adjustment issues for Ability One/Source America contracts outside the scope of the SCA price adjustment Clause. Where a combined price adjustment is processed, the contract file should be annotated to record the amount being reimbursed under the authority of the SCA price adjustment clause separately from the amount being reimbursed under the follow-on year agreement.

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## **17.0 AIR FORCE LABOR ADVISORS DIRECTORY**

Chief, Air Force Labor Advisors Office  
**DSN 834-2383 or Comm. (719) 556-2383**

Air Force Labor Advisors Office, SAF/AQCA  
1050 East Stewart Avenue, Building 2025  
Peterson AFB CO 80914-9050

### **REGIONAL OFFICES**

**Eastern Regional Office**  
**DSN 854-6734 or Comm. (321) 494-6734**

Air Force Labor Advisors Office (East)  
1201 Edward White II St. MS#7200  
Patrick AFB FL 32925-3238

Region Served: AL, CT, DE, FL, GA, MA, MD, ME, MI, NC, NH, NJ, NY, OH, PA, RI, SC, VA, VT, WV, Europe/Atlantic

**Central Regional Office**  
**DSN 834-2367 or Comm. (719) 556-2367**

Air Force Labor Advisors Office (Central)  
1050 East Stewart Avenue, Building 2025  
Peterson AFB CO 80914-9050

Region Served: AR, CO, KS, IN, KY, IL, LA, MO, MS, NM, OK, TN, TX, WI, WY, Canada

**Western Regional Office**  
**DSN 775-2097 or Comm. (801) 775-2097**

Air Force Labor Advisors Office (West)  
6072 Fir Avenue  
Hill AFB, UT 84056

Region Served: AK, AZ, CA, HI, IA, ID, MN, MT, NE, ND, NV, OR, SD, UT, WA, Pacific