

## 22.1008-2 Successorship with incumbent contractor collective bargaining agreement.

(a) Early in the *acquisition* cycle, the *contracting officer shall* determine whether [41 U.S.C. 6707\(c\)](#) affects the new *acquisition*. The *contracting officer shall* determine whether there is a predecessor contract covered by the *Service Contract Labor Standards* statute and, if so, whether the incumbent prime *contractor* or its subcontractors and any of their employees have a collective bargaining agreement.

(b) [41 U.S.C. 6707\(c\)](#) provides that a successor *contractor must* pay wages and fringe benefits (including accrued wages and benefits and prospective increases) to *service employees* at least equal to those agreed upon by a predecessor *contractor* under the following conditions:

(1) The services to be furnished under the proposed contract will be substantially the same as services being furnished by an incumbent *contractor* whose contract the proposed contract will succeed.

(2) The services will be performed in the same locality.

(3) The incumbent prime *contractor* or subcontractor is furnishing such services through the use of *service employees* whose wages and fringe benefits are the subject of one or more collective bargaining agreements.

(c) The application of [41 U.S.C. 6707\(c\)](#) is subject to the following limitations:

(1) [41 U.S.C. 6707\(c\)](#) will not apply if the incumbent *contractor* enters into a collective bargaining agreement for the first time and the agreement does not become effective until after the expiration of the incumbent's contract.

(2) If the incumbent *contractor* enters into a new or revised collective bargaining agreement during the period of the incumbent's performance on the current contract, the terms of the new or revised agreement *shall* not be effective for the purposes of [41 U.S.C. 6707\(c\)](#) under the following conditions:

(i)

(A) In sealed bidding, the *contracting* agency receives notice of the terms of the collective bargaining agreement less than 10 days before bid opening and finds that there is not reasonable time still available to notify bidders (see [22.1012-2\(a\)](#)); or

(B) For contractual actions other than sealed bidding, the *contracting* agency receives notice of the terms of the collective bargaining agreement after award, provided that the start of performance is within 30 days of award (see [22.1012-2\(b\)](#)); and

(ii) The *contracting officer* has given both the incumbent *contractor* and its employees' collective bargaining agent timely written notification of the applicable *acquisition* dates (see [22.1010](#)).

(d)

(1) If [41 U.S.C. 6707\(c\)](#) applies, the *contracting officer shall* obtain a copy of any collective bargaining agreement between an incumbent *contractor* or subcontractor and its employees. Obtaining a copy of an incumbent *contractor's* collective bargaining agreement *may* involve coordination with the administrative *contracting officer* responsible for administering the predecessor contract. (Paragraph (m) of the clause at [52.222-41](#), *Service Contract Labor Standards*, requires the incumbent prime *contractor* to furnish the *contracting officer* a copy of each collective bargaining agreement.)

(2) If the *contracting officer* has timely received the collective bargaining agreement, the *contracting officer may* use the *Wage Determinations* at *SAM.gov* website to prepare a *wage determination* referencing the agreement and incorporate that *wage determination*, attached to a complete copy of the collective bargaining agreement, into the successor contract action. In using the *Wage Determinations* at *SAM.gov* process, it is not necessary to submit a copy of the collective bargaining agreement to the Department of Labor unless requested to do so.

(3) The *contracting officer may* also use the *e98* process on *Wage Determinations* at *SAM.gov* to request that the Department of Labor prepare the cover *wage determination*. The Department of Labor's response to the *e98 may* include a request for the *contracting officer* to submit a complete copy of the collective bargaining agreement. Any questions regarding the applicability of the *Service Contract Labor Standards* statute to a collective bargaining agreement *should* be directed to the *agency labor advisor*.

(e)

(1) [41 U.S.C. 6707\(c\)](#) will not apply if the Secretary of Labor determines (i) after a hearing, that the wages and fringe benefits in the predecessor *contractor's* collective bargaining agreement are substantially at variance with those which prevail for services of a similar character in the locality, or (ii) that the wages and fringe benefits in the predecessor *contractor's* collective bargaining agreement are not the result of arm's length negotiations (see [22.1013](#) and [22.1021](#)). The Department of Labor (DOL) has concluded that contingent collective bargaining agreement provisions that attempt to limit a *contractor's* obligations by means such as requiring issuance of a *wage determination* by the DOL, requiring inclusion of the *wage determination* in the contract, or requiring the Government to adequately reimburse the *contractor*, generally reflect a lack of arm's length negotiations.

(2) If the *contracting officer's* review (see [22.1013](#)) indicates that monetary provisions of the collective bargaining agreement *may* be substantially at variance or *may* not have been reached as a result of arm's length bargaining, the *contracting officer shall* immediately contact the *agency labor advisor* to consider if further action is warranted.

(f) If the services are being furnished at more than one location and the collectively bargained wage rates and fringe benefits are different at different locations or do not apply to one or more locations, the *contracting officer shall* identify the locations to which the agreements apply.

(g) If the collective bargaining agreement does not apply to all *service employees* under the contract, the *contracting officer shall* access *Wage Determinations* at *SAM.gov* to obtain the prevailing *wage determination* for those *service employee* classifications that are not covered by the collective bargaining agreement. The *contracting officer shall* separately list in the *solicitation* and contract the *service employee* classifications-

(1) Subject to the collective bargaining agreement; and

(2) Not subject to any collective bargaining agreement.

**Parent topic:** 22.1008 Procedures for obtaining wage determinations.