

# Service Contract Labor Standards (formerly Service Contract Act)



Redstone  
Government Consulting

*Helping You Navigate the Maze of Government Contracting*



## Instructors

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- Lanier Ford – Attorney & Shareholder (1994-2006) Counseled & Defended employers, including government contractors on a wide range of employment law issues
- Digital Fusion/Kratos - General Counsel, VP of HR & Corporate Secretary (2006-2009)
- Small Business Consultant (2009-2013)
- Lehr Middlebrooks – Attorney (2013-2017)
- Redstone Government Consulting (2017-present)
  - Client Support – Counseling on complex HR, employment law and gov con compliance issues
  - Investigations - Support in DoL and DoD IG investigations/audits; Responding to EEOC Charges of Discrimination; Assisting with Internal investigations
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# Sheri Buchanan

Director – Human Resources Consulting

- Diverse Human Resources Experience
  - Federal Government Contracting, Banking, Healthcare
  - Member SHRM and NASHRM
  - Member WorldatWork
- 10 Years with Redstone Government Consulting
  - Management of Outsourced HR Functions
  - OFCCP and AAP Compliance
  - Compensation Planning & Reasonableness
  - Service Contract Act & Davis Bacon Act Compliance
  - Contract Transition Support
  - Policy and Procedure Development, Implementation, Training
  - Human Resources Assessments
- BSBA in Human Resource Management, University of Alabama in Huntsville



# Learning Objectives



Importance of cross-functional understanding and participation



Applicability and fundamental requirements



Understanding Wage Determinations



How to accurately classify employees



Accurate administration of Fringe Benefit requirements



Basic understanding of impact on pricing and adjustments



Enforcement and Liability



# Cross- Functional Buy- In and Participation

HR

Contracts

Finance / Accounting

Bid / Proposal

PMs

Service Employees



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# Applicability of SCLS



# Application of the SCA

The McNamara-O'Hara Service Contract Act (SCA) applies to every contract entered into by the United States or the District of Columbia, the principal purpose of which is to furnish *services* to the United States through the use of *service employees*.

## Major Provisions (service contract > \$2500)

- Wage and Fringe Rates
- Record keeping and posting requirements
- Safety & Health

## Provisions (service contract < \$2500)

- FLSA minimum wages



# Who is a “Service Employee”?



- “...any person engaged in performance of contract, except employees who qualify for exemption as bona fide executive, administrative or professional employees under the FLSA (29 C.F.R. Part 541).”
  - See 29 C.F.R. 4.113
- Think “*non-exempt employees*”
  - Review Fair Labor Standards Act exemption status!
    - Must meet both the salary basis test AND the duties test



# SCLS vs Davis Bacon Act

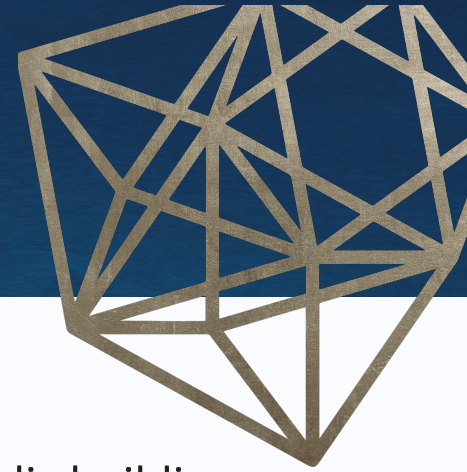


SCLS  
*Services*  
(regular and recurring)

DBA  
*Construction, alteration,  
repair of public building or  
works*  
(one time fix)



# Certain Contracts are Exempt from SCLS



- Contracts for construction, alteration, or repair, including painting, and decorating, of public buildings or public works (these are covered by the Davis-Bacon Act);
- Work required in accordance with the provisions of the Walsh-Healey Public Contracts Act;
- Contracts for transporting freight or personnel where published tariff rates are in effect;
- Contracts for furnishing services by radio, telephone, telegraph, or cable companies subject to the Communications Act of 1934;
- Contracts for public utility services;
- Employment contracts providing for direct services to a federal agency by an individual or individuals;
- Contracts for operating postal contract stations for the U.S. Postal Service;
- Services performed outside the U.S. (except in territories administered by the U.S., as defined in the Act); and
- Contracts subject to administrative exemptions granted by the Secretary of Labor in special circumstances because of the public interest or to avoid serious impairment of government business.



Know if SCA is  
applicable!

## SCA Coverage Determinations – Who Decides?

- Contracting agencies have initial responsibility for determining whether SCA applies Far 52.222-41
- GSA Schedule
- DOL has final authority for determination of SCA coverage
- Final rulings may be appealed to the Administrative Review Board (ARB)



# Wage Determinations



# Wage Determinations



Provides the monetary wages and fringe benefits.



Two Types:

- Prevailing in the locality
- Collective Bargaining Agreement



# Wage Determinations

[SAM.gov](https://sam.gov)



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## Minimum Rates of Pay

## Fringe Benefits

- Health and Welfare
- Vacation vesting requirements
- Holidays
- Sick Leave

## Uniform Allowance

## Hazard Duty Pay

# Use the Correct Wage Determination

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Issuance of  
Wage  
Determinations:

The contracting agency must request a wage determination for every covered contract in excess of \$2,500 regardless of the number of employees expected to be employed on the contract.

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Wage determination must be issued for each contract requiring the use of more than five (5) service employees.

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Although not required to do so, Wage and Hour may issue a wage determination on contracts having five or less service employees.

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Agencies must obtain new WD at least once every two years.

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# Use the Correct Wage Determination

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Issuance of  
Wage  
Determinations

New WD may  
be required  
each year if:

Contract subject  
to annual  
appropriations.

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Annual contract  
option being  
exercised.

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\* Most contract extensions,  
even if shorter than one year,  
require a new WD.

\* GSA Schedule – incorporated  
annually into MAS contracts.

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# Correctly Classify Employees



Employees are classified based on the job descriptions listed in the SCA Directory of Occupations.

**The Directory of  
Service Contract Act Occupations**  
[SCADirectVers5.pdf \(dol.gov\)](#)

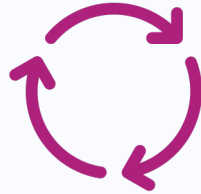
It is **essential** that an employer have a solid understanding of the duties in order to appropriately map employees.



# Conformance



Any class of service employee not listed in the wage determination must be classified by the contractor to provide a reasonable relationship (i.e. appropriate level of skill comparison) between the unlisted classifications and the classifications listed in the wage determination.

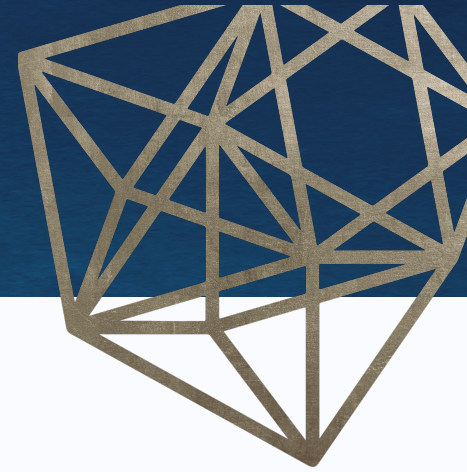


This is a **PROCESS!**



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# Dual Work Capacities



If an employee during a workweek works in different capacities in the performance of the contract, the employee must be paid the highest of the wage rates for all hours worked in the workweek unless the employer segregates the hours worked in each capacity and pays accordingly.



However, working in different capacities applies only to work in different job classifications, not levels within the same job classification.



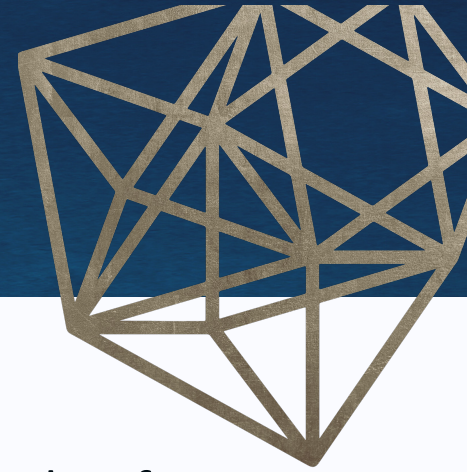
# Fringe Benefits



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# Fringe Benefits



Every covered contract in excess of \$2,500 contains a provision specifying the fringe benefits to be furnished to service employees and must be paid in addition to the minimum wage – these are SEPARATE requirements.

- Health & Welfare
- Vacation vesting requirements
- Holidays
- Sick Leave

SCA makes no distinction, with respect to its wage and fringe benefit provisions, between temporary, part-time, and full-time employees. (However, temporary and part-time employees are only entitled to an amount of the fringe benefits specified in an applicable determination which is proportionate to the amount of time spent in covered work.)



# Health and Welfare (H&W) Rates

H&W Rates in effect for bids opened and service contracts awarded on or after June 23, 2022:

\$4.80 per hour if  
Executive Order 13706  
(Paid Sick Leave) is  
**NOT** applicable

\$4.41 per hour if  
Executive Order  
13706 (Paid Sick  
Leave) is applicable

\$2.04 per hour in  
Hawaii

# Calculate Health and Welfare Correctly



## H&W can be comprised of

- Cost of “bona-fide fringe” benefits
  - Cannot include benefits which are legally required
  - Cannot include vacation, holiday, sick which is required per the WD
- Cash-in-lieu

## H&W payments are to be calculated per the “Average Cost” or “Fixed Cost” method as specified by the Wage Determination:

- Odd numbered WDs are Fixed Cost (29 CFR 4.175(a))
- Even numbered WDs are Average Cost (29 CFR 4.175(b))



# H&W Calculations: Odd vs Even



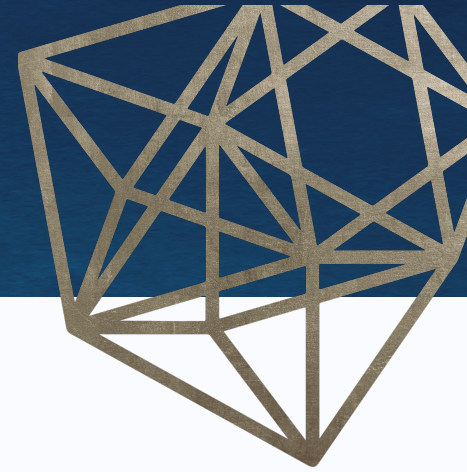
## Odd/Fixed Calculation

- All hours *paid* up to 40 in a week (2080 annually)
- Calculated per service employee

## Even/Average Calculation

- All hours *worked*, no cap
- Calculated on average per all service employees on contract

# Bona-Fide Benefits | 29 CFR 4.171

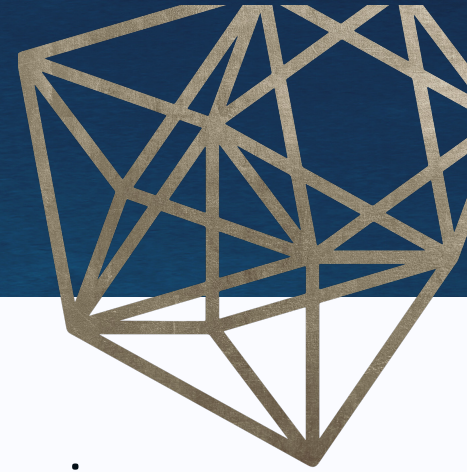


## Review the regulations!

- Specified in writing and made pursuant to terms of the plan, fund, program
- Primary purpose is to provide systematically for payment of benefits to employee on account of death, disability, advanced age, retirement, illness, medical expenses, hospitalization, supplemental unemployment benefits, and the like
- Must contain a definite formula for determining the amount to be contributed by the contractor and a definite formula for determining the benefits for each of the employees participating in the plan
- Contractor's contributions must be paid irrevocably to a trustee or third person pursuant to an insurance agreement, trust or other funded arrangement
- ERISA considerations
- Cannot require deductions from wages
- Consideration of unfunded self-insured plans



# Adhere to the Vacation Requirements



- Vacation is due to the employee in one lump sum on the employee's anniversary date. Must consider:
  - The total length of time an employee has been in the employer's service, both performing commercial work and performing on the federal contract, and
  - The total length of time an employee has been employed in any capacity in the continuous service of any predecessor contractor(s) who carried out similar contract functions at the same federal facility.
- In other words, the employee's vacation is VESTED on the employee's anniversary date. Vacation does not accrue.
- Vacation must be used or paid out by following anniversary date or termination date, whichever occurs first.

# Holiday Pay



- An employee's entitlement to holiday pay vests by working in the workweek in which the named holiday occurs or is on paid sick leave or vacation leave. 29 C.F.R. §§ 4.174(a)(1) – (2).
- Unless there is a provision in the wage determination to the contrary, an employee must receive the holiday fringe benefits even though he/she worked only part of the week in which the holiday occurred.
- An employee need not be paid for a holiday that occurs earlier in the workweek prior to his/her hiring, provided the holiday does not occur during the first week of the contract. 29 C.F.R. § 4.174(b).
- A contractor need not provide holiday pay to any employee who does not perform any work in the workweek in which the holiday occurred provided that the employer did not lay off the employee during that workweek to avoid having to pay for the holiday. 29 C.F.R. § 4.174(a)(2).



# Pricing and Adjustments



# Pricing and Adjustments

## Proposal Phase

- Minimum rates of pay
- Fringe Benefits
  - Health & Welfare
  - Vacation vesting requirements
  - Holidays
  - Sick Leave
- Uniform allowance
- Hazard duty pay
- Other CBA requirements



# Pricing and Adjustments

## Price Adjustment

- If FFP, FAR 52.222-43/44 Fair Labor Standards Act and Service Contract Labor Standards –Price Adjustment.
- Gives right to adjustment due to WD change if:
  - Request is made within 30 days of the new WD being issued
  - No escalation was included for Option Years
- Can include increases/decreases in wages and fringe along with accompanying increase/decrease in social security tax, unemployment taxes and workers' comp premiums.
- CANNOT include G&A, overhead or profit.

# Pricing and Adjustments

## Request for Equitable Adjustment

- For situations which are not covered by the Price Adjustment Clause, there may be entitlement to a REA via “constructive change” or “changes clause”
  - Not easy to get
  - Can include G&A, Overhead, Profit, Costs associated with calculations



# Non-Displacement of Qualified Workers



# EO 13495 Non-Displacement of Qualified Workers Under Service Contracts



- DOL and FAR regulations implementing EO 13495 took effect January 18, 2013 and applied to solicitations issued on or after that date.
- Revoked by President Trump October 31, 2019.
- Reinstated as EO 14055 by President Biden November 18, 2021.
  - Where a follow-on contract is awarded, a successor contractor must grant a right of first refusal to the predecessor contractor's service employees before offering jobs to others.
  - Predecessor contractors must provide a list of incumbent employees (with Service Contract Act anniversary dates) to the contracting officer prior to the end of the contract term and contracting officer is required to provide a copy of this list to the successor contractor and may – upon request – provide a copy of the list “to employees or their representatives”.



# EO 13495 Non-Displacement of Qualified Workers Under Service Contracts



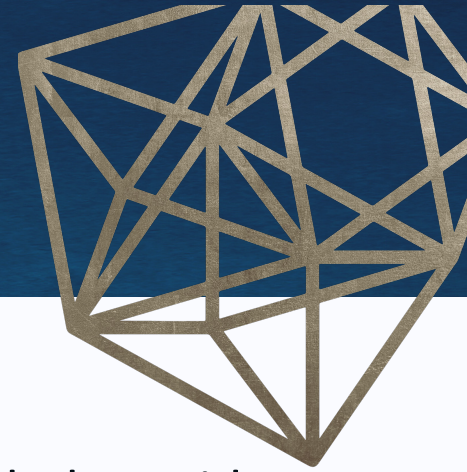
- A written offer of employment must be made to covered incumbent employees to the extent there is a position available, and those employees will have at least 10 days to accept the offer.
  - Exception: Contractor is not required “to offer a right of first refusal to any employee(s) of the predecessor contractor for whom the contractor . . . reasonably believes, based on reliable evidence of the particular employees’ past performance, that there would be just cause to discharge the employee.”
- Prime contractors must flow down the contract clause to subcontractors.
- Enforcement includes “equitable” remedies such reinstatement of employees and back wages, as well as debarment.



# Paid Sick Leave



# EO 13706 Paid Sick Leave



Applies to “new contracts” issued on or after January 1, 2017, or that are awarded outside the solicitation process.

- Applies to employees performing work covered by contracts governed by SCA & DBA or (or other specific types of government contracts), including employees who qualify for an exemption.
- Employees earn 1 hour of sick leave for every 30 hours worked, up to 56 hours / year – accrual basis OR all provided in a lump sum at the beginning of each “year”.
- There are specific provisions on how/when sick leave may be used.

# EO 13706 Paid Sick Leave

What is a “new contract”?

A contract that is entered into prior to January 1, 2017, will constitute a new contract if, through bilateral negotiation, on or after January 1, 2017:

- the contract is renewed;
- the contract is extended, unless the extension is made pursuant to a term in the contract as of December 31, 2016 providing for a short-term limited extension; or
- the contract is amended pursuant to a modification that is outside the scope of the contract.

The definition of "new contract" does *not* include the unilateral exercise of a pre-negotiated option to renew an existing contract by the Federal Government.



# Cross-Functional Understanding



# Cross- Functional Buy- In and Participation

HR

Contracts

Finance / Accounting

Bid / Proposal

PMs

Service Employees



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# Bid/Proposal

## Establish

Establish procedures to accurately capture projected costs and streamline the proposal process.

## Prepare

Prepare proposal in line with SCA requirements.

## Understand

Understand SCA-covered categories and SCA labor category mapping.

## Develop

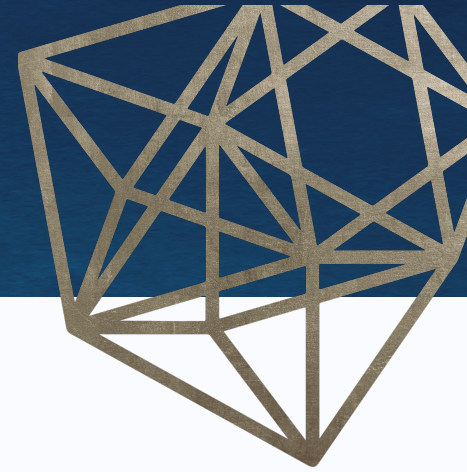
Develop price proposal in light of SCA wage and benefit minimums.

## Craft

Carefully craft bids and proposals to incorporate flexibility should WDs be revised.



# Contracts



Review contract documentation for references to SCA and applicable WDs.

Confirm SCA applicability and review potential exemptions.

Note SCA-covered contracts in database.

Communicate importance of SCA compliance across departments.

Maintain contract documentation for at least 3 years after work has been completed.

Flow down clauses to subs; Know when to expect from prime.



# Human Resources



Identify SCA employees during onboarding.

Train corporate and local managers.

Review benefit plans for “bona fide” benefits.

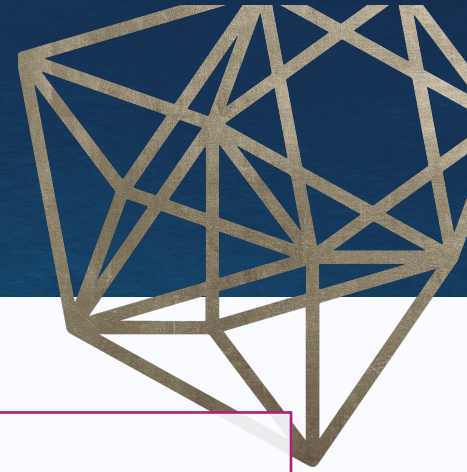
Gather and organize employee information (service dates, benefits).

Resolve wage and benefit complaints across departments.

POC for predecessor and successor.

Ensure required postings are displayed.

# Finance / Accounting



## Cross-check

- Cross-check systems to confirm that WD information is accurate.

## Administer

- Efficiently administer timekeeping system to ensure time is tracked correctly.

## Complete

- Complete payroll timely.

## Oversee

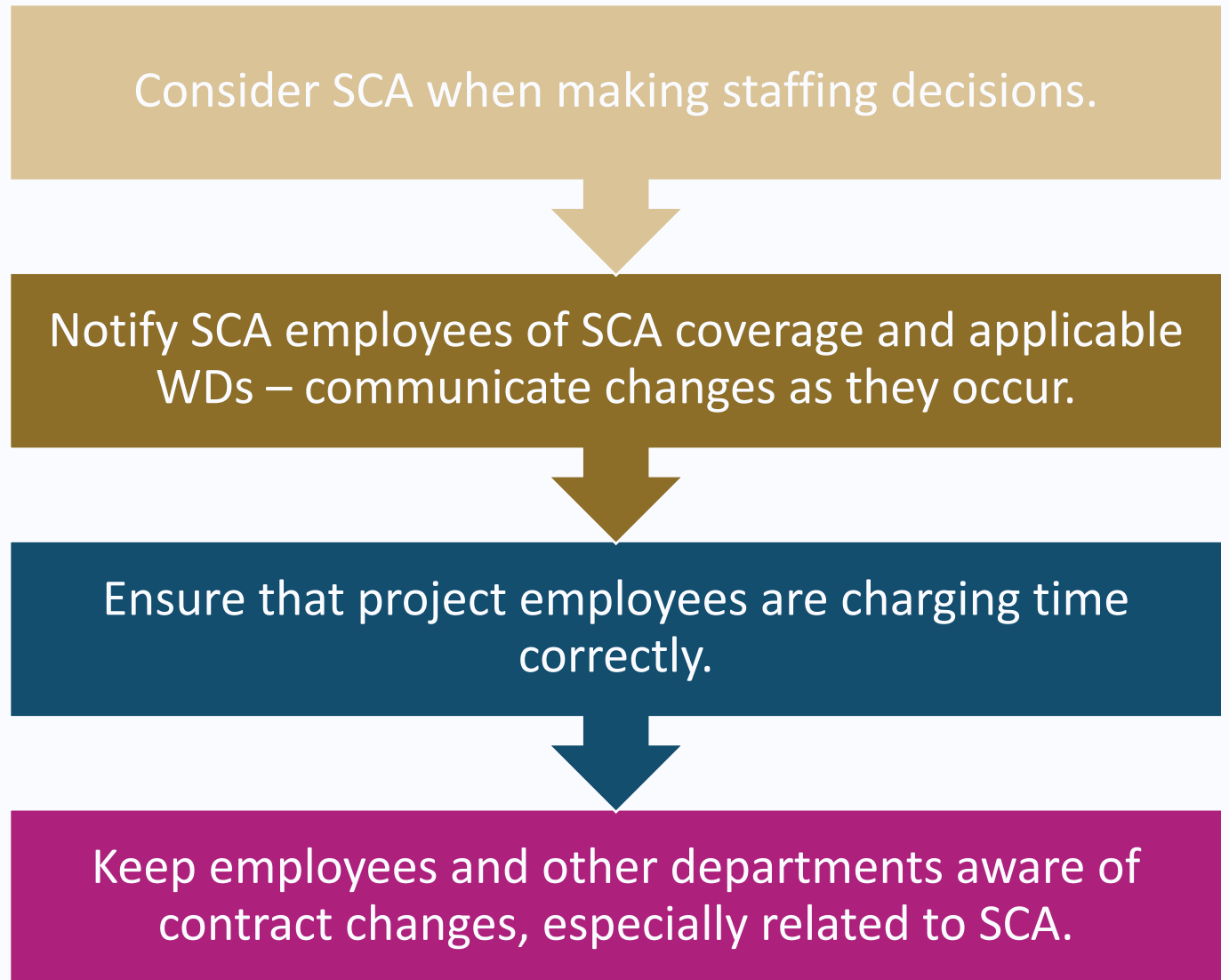
- Oversee Requests for Equitable Adjustments (REAs) and submit to contracting offers as needed.

## Keep

- Keep detailed documentation of all finance/accounting functions.



# Project and People Managers (PMs)





# Recordkeeping and Enforcement

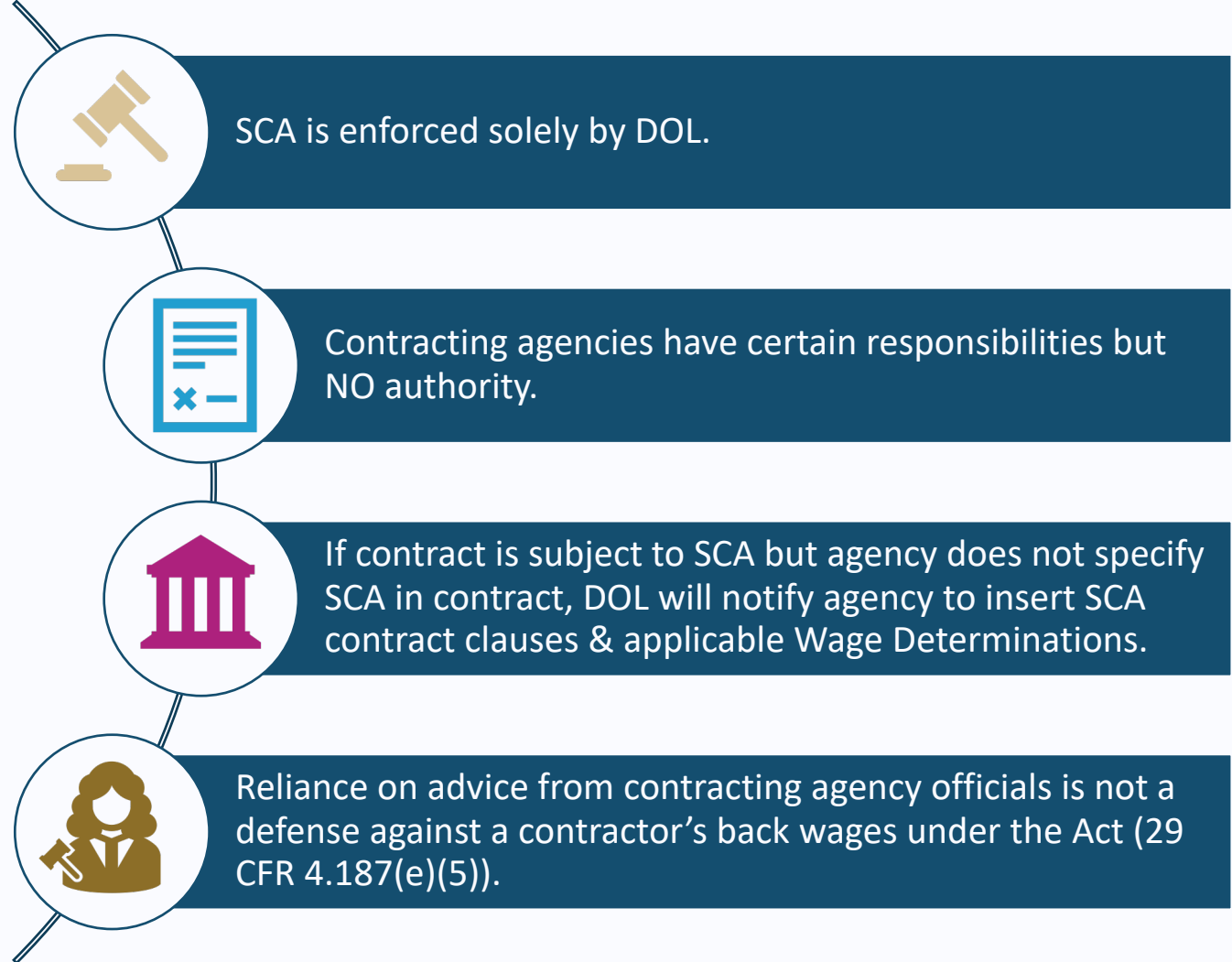


# Keep Good Records and Provide Notifications



- Basic records such as name, address and social security number of each employee must be maintained for three years from completion of the work. In addition, the following records must also be maintained for 3 years:
  - The correct work classification(s), wage rate(s) and fringe benefits provided (or cash equivalent payments provided in lieu of fringe benefits);
  - The total daily and weekly compensation of each employee;
  - The number of daily and weekly hours worked by each employee;
  - Any deductions, rebates or refunds from each employee's compensation;
  - Any list of a predecessor contractor's employees which had been furnished showing employee's length of service information;
  - A list of wages and fringe benefits for those classes of workers conformed to the wage determination attached to the contract.
- Provide notice to employees.
- Flow down to subcontractors.

# Enforcement





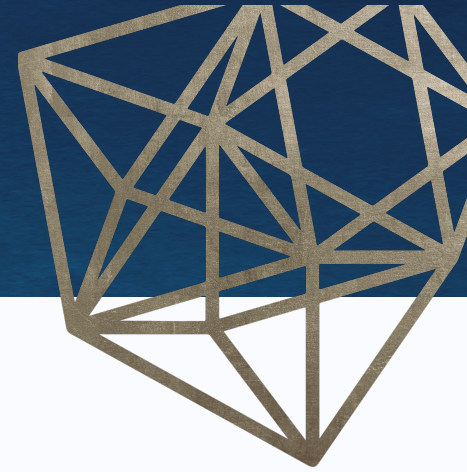
# Investigations Under SCA



Wage and Hour has sole enforcement authority.

- Employee has no right of private action.
- Format/What to Expect in Investigations:
  - Review of Contract information
  - Review wage determination
  - Review payrolls
  - Interview employees
  - Conference with Management
  - Conclusion of investigation

# Penalties



The SCA provides authority to

- withhold contract funds;
- to reimburse underpaid employees;
- terminate the contract;
- hold the contractor liable for associated costs to the government;
- and debar from future government contracts for a period of three years any persons or firms who have violated the SCA.



If an agreement  
is not reached...



Employer has right to a hearing  
before money is distributed.

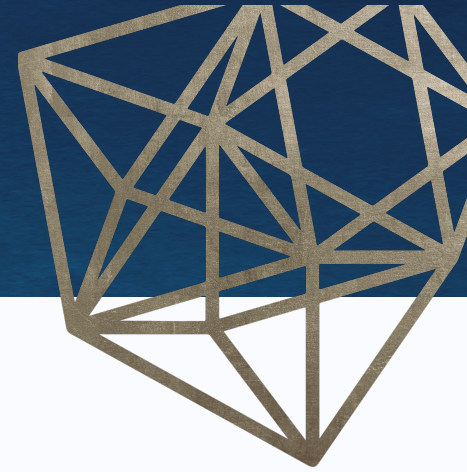


Back wages take priority over  
tax liens and assignments.



Debarment from future  
contracts?

# Liability / Reporting



The contractor is liable for the amount of any underpayments of compensation due to the employee engaged in the performance of the contract.

Any employer, employee, labor or trade organization, contracting agency, or other interested person or organization may report an apparent violation to any office of the Wage and Hour Division.



# Minimum Wage for Contractors



# Minimum Wage for Contractors

## 12 February 2014

On February 12, 2014, President Obama signed Executive Order 13658, “Establishing a Minimum Wage for Contractors,” to raise the minimum wage to \$10.10 for all workers on Federal construction and service contracts.

## 1 January 2020

January 1, 2020, the Executive Order 13658 minimum wage rate increased to \$10.80 per hour (tipped employees performing work on or in connection with covered contracts generally must be paid a minimum cash wage of \$7.55 per hour).



# Executive Order on Increasing the Minimum Wage for Federal Contractors



- On April 27, 2021, President Biden signed Executive Order 14026 requiring federal contractors and subcontractors to pay their employees a minimum of \$15/hour beginning on January 30, 2022, for new contract solicitations. Covered contracts are principally those subject to SCA and DBA.
- The EO references contracts covered by the Service Contract Act and the Davis-Bacon Act and provides that it “shall apply only to contracts or contract-like instruments at the thresholds specified in those statutes.”
- Where workers’ wages are governed by the Fair Labor Standards Act of 1938, this order shall apply only to procurement contracts or contract-like instruments that exceed the micro-purchase threshold, as defined in 41 U.S.C. 1902(a), unless expressly made subject to this order pursuant to regulations or actions taken under section 4 of this order.”
- You may access the full text of the Order here: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/04/27/executive-order-on-increasing-the-minimum-wage-for-federal-contractors/>

# Applicability of EO 14026



Applies to four major categories of contractual agreements:

- procurement contracts for construction covered by the Davis-Bacon Act (DBA);
- service contracts covered by the Service Contract Act (SCA);
- concessions contracts, including any concessions contract excluded from the SCA by the Department of Labor's regulations at 29 CFR 4.133(b); and
- contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.

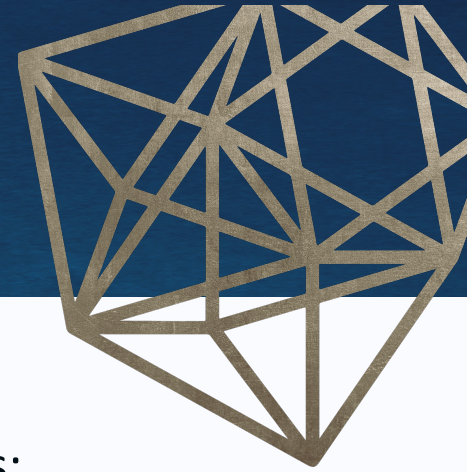


# Applicability of EO 14026 (continued)



- Workers performing on or in connection with covered Federal contracts whose wages are governed by the Fair Labor Standards Act (FLSA), the SCA, or the DBA are generally entitled to receive the Executive Order minimum wage for all time spent performing on or in connection with covered Federal contracts.
  - employees who are entitled to the FLSA minimum wage;
  - service employees who are entitled to prevailing wages under the SCA; and
  - laborers and mechanics who are entitled to prevailing wages under the DBA.
- FLSA exempt employees are not entitled to this minimum wage.
- FLSA-covered workers performing “in connection with” covered contracts are also excluded from coverage of the Executive Order if they spend less than 20% of their work hours in a particular workweek performing in connection with covered contracts.

# Contractor Responsibilities



Contractors and subcontractors must:

- include the Executive Order contract clause in any covered lower-tiered subcontracts;
- notify all workers performing on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order;
- comply with pay frequency and recordkeeping obligation;
- prohibits the taking of kickbacks from wages paid to workers on covered contracts; and
- prohibits retaliation against any worker for exercising his or her rights under the Executive Order or the implementing regulations.



# Questions and Discussion





# About Redstone Government Consulting, Inc.



## Who Are We?

- A consulting team of the most experienced industry veterans, ex-DCAA auditors, and the brightest new talent in the industry.
- Our expert consultants focus solely on the needs of Government Contractors.
- Many of our Consultants previously worked in CPA firms, DCAA, law-firms, and Executive-level positions with Government Contractors.

## What Do We Do?

- FAR/CAS Compliance, DCAA and DCMA Approved Systems, Outsourced Accounting, HR Compliance and Outsourcing, Contracts/Subcontracts Consulting, Costpoint, Unanet, and Training Programs for Government Contractors.

## Why Redstone?

- We help you navigate the maze of government contracting. Our mission is to provide you the expertise and support you need to comply with all the government regulations impacting your back office and administration, thus allowing you to focus on what you do best – Supporting your customers and fulfilling the needs of our Government and the Warfighter.



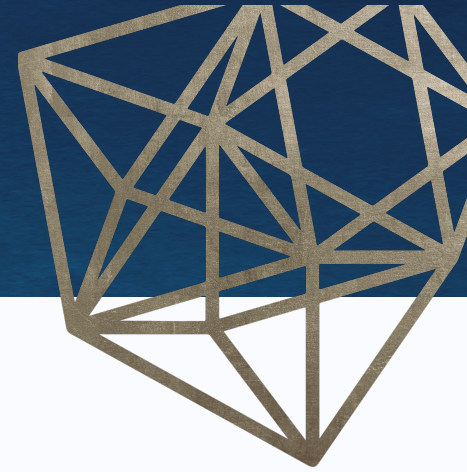


# Consulting Services



- Compliant Approved Accounting Systems
- Small Business Compliance
- Accounting Outsourcing & CFO Consulting
- Accounting & Billing Systems
- Human Resources Compliance
- Proposal Pricing & Cost Volume Support
- Government Property
- Material Management & Accounting System (MMAS)
- Contractor Purchasing System Review (CPSR)
- Cost, Pricing, & Budgeting
- Application of Labor Laws to Government Acquisitions
- REA's, Claims, & Terminations
- Incurred Cost Proposals
- CAS Advisory Services, Cost Impact Calculation & Disclosure Statement Preparation & Review
- DCAA Audit Support
- Contracts Management & Closeout Assistance
- Indirect Rate Strategy & Design
- Government Compliance Training

# Webinars and Blogs



**Sign up for our blogs and whitepapers to receive information on:**

- Current industry trends in Government Contracting
- Latest DCAA and DCMA audit issues
- Accounting and FAR Compliance
- Contracts Administration
- HR for Government Contractors
- Employment Law
- Project Management
- Deltek and Unanet Implementation Guidance and User Best Practices

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