APPENDIX A

SERVICE CONTRACT ACT OF 1965, AS AMENDED [1]

(41 U.S.C. 351, et seq.)

(Revised text[1] showing in italics new or amended language provided by Public Law 92-473, as enacted October 9, 1972, and in bold face new or amended language provided by Public Law 94-489, as enacted October 13, 1976.)

AN ACT To provide labor standards for certain persons employed by Federal contractors to furnish services to Federal agencies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the 'Service Contract Act of 1965".

SEC. 2. (a) Every contract (and any bid specification therefor) entered into by the United States or the District of Columbia in excess of $2,500, except as provided in section 7 of this Act, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States through the use of service employees shall contain the following :

(1) A provision specifying the minimum monetary wages to be paid the various classes of service employees in the performance of the contract or any subcontract thereunder, as determined by the Secretary, or his authorized representative, in accordance with prevailing rates for such employees in the locality, or, *where a collective bargaining agreement covers any such service employees, in accordance with the rates for such employees provided for in such agreement, including prospective wage increases provided for in such agreement as a result of arm's-length negotiations. In no case shall such wages be lower than the minimum specified in subsection (b)* .

(2) A provision specifying the fringe benefits to be furnished the various classes of service employees, engaged in the performance of the contract or any subcontract thereunder, as determined by the Secretary or his authorized representative to be prevailing for such employees in the locality, *or; where a collective-bargaining agreement covers any such service employees, to be provided for* in *such agreement, including prospective fringe benefit increases provided for in such agreement, as a result of arm's-length negotiations.* Such fringe benefits shall include medical or hospital care, pensions on retirement or death, compensation. for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday-pay, costs of apprenticeship or other similar programs and other bona tide fringe benefits not otherwise required by Federal, State, or local law to be provided by the contractor or subcontractor. The obligation under this subparagraph may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the Secretary.

(3) A provision that no part of the services covered by this Act will be performed in buildings or surroundings or under working conditions, provided by or under the control or supervision of the contractor or any subcontractor, which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish the services.

(4) A provision that on the date a service employee commences work on a contract to which this Act applies, the contractor **or** subcontractor will deliver to the employee a notice of the compensation required under paragraphs' (1) and (2) of this subsection, **on** a form prepared by the Federal agency,

[1] Public Law 89-286, 79 Stat. 1034, as amended by Public Law 92-418, 86 Stat 789; by Public Law 93-57, 87 Stat. 140; and by Public Law 94-489 90 Stat 2358.

or will post a notice of the required compensation in a prominent place at the worksite.

(5) A statement of the rates that would be paid by the Federal agency to the various classes of *service employees if section 5341* or section 5332 *of title 5, United States Code, were applicable to them. The Secretary shall give due consideration to such rates in making the wage and fringe benefit determinations specified in this section.*

(b) (1) No contractor who enters into any contract with the Federal Government the principal purpose of which is to furnish services through the use of service employees and no subcontractor thereunder shall pay any of his employees engaged in performing work on such contracts less than the minimum wage specified under section 6(a) (1) of the Fair Labor Standards Act of 1938, as amended (62 Stat. 1060; 29 U.S.C. 201, et seq.).

(2) The provisions of sections 3, 4, and 5 of this Act shall he applicable to violations of this subsection.

SEC. 3. (a) Any violation of any of the contract stipulations required by section 2 (a) (1) or (2) or of section 2 (b) of this Act shall render the party responsible therefor liable for a sum equal to the amount of any deductions, rebates, refunds, or underpayment of compensation due to any employee engaged in the performance of such contract. So much of the accrued payment due on the contract or any other contract between the same contractor and the Federal Government may be withheld as is necessary to pay such employees. Such withheld sums shall be held in a deposit fund. On order of the Secretary, any compensation which the head of the Federal agency or the Secretary has found to be due pursuant to this Act shall be paid directly to the underpaid employees from any accrued payments withheld under this Act.

(b) In accordance with regulations prescribed pursuant to section 4 of this Act, the Federal agency head or the Secretary is hereby authorized to carry out the provisions of this section.

(c) In addition, when a violation is found of any contract stipulation, the contract is subject upon written notice to cancellation by the contracting agency. Whereupon, the United States may enter into other contracts or arrangements for the completion of the original contract, charging any additional cost to the original contractor.

SEC. 4. (a) Sections 4 and 5 of the Act of June 30, 1936 (49 Stat. 2036), as amended, shall govern the Secretary's authority to enforce this Act, make rules, regulations, issue orders, hold hearings, and make decisions based upon findings of fact, and take other appropriate action hereunder.

(b) The Secretary may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act *(other than section IO), but only in special circumstances where he determines that such limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of government business, and is in accord with the remedial purpose of this Act to protect prevailing labor standards.*

(c) No contractor or subcontractor under a contract, which succeeds a contract subject to this Act and under which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits, including accrued wages and fringe benefits, and any prospective increases *in wages and fringe* benefits *provided for in a collective-bargaining agreement as a result of arm's-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract:* Provided, *That in any of the foregoing circumstances such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality.*

(d) Subject' to limitations in annual appropriation Acts but notwithstanding any other provision of law, contracts to which. this Act applies may, if authorized by the Secretary,

be for any term of years not exceeding five, if each such contract provides for the periodic adjustment of wages and fringe benefits pursuant to future determinations, issued in the manner prescribed in section 2 of this Act no less *often than once every two years during the term of the contract, covering the various classes of service employees.*

SEC. 5. (a) The Comptroller General is directed to distribute a list to all agencies of the Government giving the names of persons or firms that the Federal agencies or the Secretary have found to have violated this Act. Unless the Secretary otherwise recommends *because of unusual circumstances,* no contract of the United States shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest until three years have elapsed from the date of publication of the list containing the name of such persons or firms. *Where the Secretary does not otherwise recommend because of unusual circumstances, he shall, not* later *than ninety days after a hearing exam iner has made a finding of a viotation of this Act, forward to the Comptroller General the name of the individual or firm found to have violated the provisions of this Act.*

(b) If the accrued payments withheld under the terms of the contract *are* insufficient to reimburse all service employees with respect to whom there has been a failure to pay the compensation required pursuant to this Act, the United States may bring action against the contractor, subcontractor, or any sureties in any court of competent jurisdiction to recover the remaining amount of under-payments. Any sums thus recovered by the United States shall be held in the deposit fund and shall be paid, on order of the Secretary, directly to the underpaid employee or employees. Any sum not paid to an employee because of inability to do so within three years shall be covered into the Treasury of the United States as miscellaneous receipts.

SEC. 6. In determining any overtime pay to which such service employees are entitled under any Federal law, the regular or basic hourly rate of pay of such an employee shall not include any fringe benefit *payments* computed hereunder which are excluded from the regular rate under the Fair Labor Standards Act by provisions of section 7(d) thereof.

SEC. 7. This Act shall not apply to --

(1) any contract of the United States or District of Columbia for construction, alteration and/or repair, including painting and decorating of public buildings or public works ;

(2) any work required to he done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036) ;

(3) any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect;

(4) any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934 ;

(5) any contract for public utility services, including electric light and power, water, steam, and gas ;

(6) any employment contract providing for direct services to a Federal agency by *an* individual *or* individuals ; and

(7) any contract with the Post Office Department, the principal purpose of which is the operation of postal contract stations.

SEC. 8. For the purposes of this Act-

(a) "Secretary" means Secretary of Labor.

(b) The term "service employee" means any person engaged in the performance of a contract entered into by the United States and not exempted under section 7, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations); and shall include all such persons

regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(c) The term "compensation" means **any of** the payments or fringe benefits described in section 2 of this Act.

(d) The term "United States" when used in a geographical sense shall include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, Johnston Island, and Canton Island,[2] but shall not include any other territory under the jurisdiction of the United States or any United States base or possession within a foreign country.

SEC. 9. This Act shall apply to all contracts entered into pursuant to negotiations concluded or invitations for bids issued on or after ninety days from the date of enactment of this Act.

Sec. 10. It is the intent of the Congress that determinations of minimum monetary wages *and fringe benefits for the various classes of service employees under the provisions of paragraphs (1) and (2) of section 2 should be made with respect to all contracts subject to this Act, as soon as it is administratively feasible to do so. In any event, the Secretary shall make such determinations with respect to at least the following contracts subject to this Act which are entered into during the applicable fiscal year:*

(1) For the fiscal year ending June 30, 1973, all contracts under which more than twenty-five service employees are to be employed.

(2) For the fiscal year ending June SO, 1974, all contracts, under which more than twenty service employees are to be employed.

(3) For the fiscal year ending June 30, 1975, all contracts under which more than fifteen service employees are to be employed.

(4) For the fiscal year ending June 3O, 1976, all contracts under which more than ten service employees are, to be employed.

(5) For the fiscal year ending June 30, 1977, and for each fiscal year thereafter, all contracts under which more than five service employees are to be employed.

Approved October 22, 1965 (Public Law 89-286).

Approved October 9, 1972 (Amendments, Public Law 92473).

Approved October 13, 1976 (Amendments, Public Law 94-489).

2 Canton Island added by Public Law 93-57. 87 Stat. 140.

Legislative History (Public Law 89-286) :
House Report No. 948 (Comm. on Education & Labor).
Senate Report No. 798 (Comm. on Labor & Public Welfare).
Congressional Record, Vol. 111 (1965) :
Sept. 20, Considered and passed House.
Oct. 1, Considered and passed Senate, amended.
Oct. 6, House concurred in Senate amendment.

Legislative History (Public Law 92-473) :
House Report No. 92-1251 (Comm. on Education and Labor).
Senate Report No. 92-1131 (Comm. on Labor and Public Welfare).
Congressional Record, Vol. 118 (1972) :
Aug. 7, considered and passed House.
Sept. 19, considered and passed Senate, amended.
Sept. 27, House concurred in Senate amendments.

Legislative History (Public Law 94-489) :
House Report No. 94-1571 (Comm. on Education and Labor).
Congressional 'Record, Vol. 122 (1976) :
Sept. 21, considered and passed House.
Sept. 30, considered and passed Senate.