BY THE U.S. GENERAL ACCOUNTING OFFICE

Report To The Chairman, Subcommittee On Labor-Management Relations, House Committee On Education And Labor

Assessment Of Federal Agency Compliance With The Service Contract Act

Procurement officials at 20 of 22 Federal installations GAO reviewed did not request required wage determinations from the Department of Labor or include current determinations in 381 procurements (valued at $13.1 million) of 980 procurements that were subject to the Service Contract Act.

Officials at the agency installations reviewed generally agreed with GAO's findings and had already taken or agreed to take corrective action to bring current or future service procurements into compliance with the act and Labor's current regulations.

GAO found no evidence to suggest that agencies acted with intent to circumvent the statutory or regulatory provisions.

GAO/HRD-82-59

JULY 21, 1982

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

HUMAN RESOURCES
DIVISION

B-200149

The Honorable Phillip Burton
Chairman, Subcommittee on Labor-Management
Relations
Committee on Education and Labor
House of Representatives

Dear Mr. Chairman:

In response to the January 9, 1980, request from the former Chairman of the Subcommittee and later discussions with your office, this report discusses our evaluation of Federal agencies' compliance with the Service Contract Act and the Department of Labor's current implementing regulations. We are continuing to review the act's overall administration and impact and the Department's August 1981 proposed regulatory changes, and we will be reporting our overall findings to the Congress later.

As agreed with your office, unless the report's contents are publicly announced earlier, we plan no further distribution of the report until 5 days from its issue date. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

Gregory J. Ahart
Director

GENERAL ACCOUNTING OFFICE
REPORT TO THE SUBCOMMITTEE
ON LABOR-MANAGEMENT RELATIONS
HOUSE COMMITTEE ON EDUCATION
AND LABOR

ASSESSMENT OF FEDERAL AGENCY COMPLIANCE WITH THE SERVICE CONTRACT ACT

D I G E S T

The Service Contract Act of 1965, as amended, requires service employees working under Federal contracts in excess of $2,500 to be paid the minimum wages and fringe benefits prevailing in the locality for similar employees. The act applies when a contract's principal purpose is to furnish services within the United States using service employees. (See p. 1.)

The former Chairman, Subcommittee on Labor-Management Relations, House Committee on Education and Labor, asked GAO to make a followup review on a previous report to the Subcommittee entitled "Review of Compliance with Labor Standards for Service Contracts by Defense and Labor Departments" (HRD-77-136, Jan. 19, 1978). As agreed with his office, GAO's review was restricted to assessing Federal procurement agency compliance with the act and its implementing regulations. (See p. 4.)

COMPLIANCE WITH WAGE DETERMINATION REQUIREMENTS

The Service Contract Act provides that contracts subject to the act specify the minimum wages and fringe benefits, as determined by the Secretary of Labor, to be paid the various classes of service employees working on the contract. GAO's review of 1,125 procurement contracts and purchase orders (valued at $90.6 million), at 22 Federal agency installations in six States, disclosed that many procurement officials did not always comply with (1) all wage determination requirements of the act and (2) the regulations, rulings, and interpretations Labor issued on the act's coverage of Federal contracts and purchase orders. At 20 of the installations, officials did not request wage determinations or include current wage determinations in 381 contracts and purchase orders, valued at about $13.1 million.

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These 381 procurement actions related primarily to:

--Emergency services, where it was impractical to delay the awards and contractor performance awaiting receipt of wage determinations from Labor (54 procurements valued at about $6.4 million).

--Services under contracts not principally for furnishing services or not performed principally by service employees (136 procurements valued at about $3.8 million).

--Maintenance services related to commercial products leased or purchased by the Government (69 procurements valued at about $720,000).

--Services provided by States or political subdivisions where Labor's wage determinations would not contain specific wages and fringe benefits, but rather, a statement adopting those being paid by them (13 procurements valued at about $557,000).

--Purchase orders or blanket purchase agreements issued under the Government's simplified small purchase procedures (intended to reduce the administrative time and cost of low-dollar-value transactions) where procurement officers misinterpreted the act's $2,500 threshold for wage determinations (37 procurements valued at about $217,000).

--Procurements that included wage determinations or other data obtained earlier from Labor and thought by the agencies to still be accurate and applicable (17 procurements valued at about $587,000).

--Procurements where noncompliance occurred primarily through administrative oversight (55 procurements valued at about $740,000).

GAO found no evidence to suggest that agencies acted with intent to circumvent the statutory or regulatory provisions in not submitting wage determination requests to Labor or not including determinations in bid solicitations and subsequent award documents.

Noncompliance by procurement offices resulted primarily from (1) reliance on the language of the act and regulations without knowledge of the varying interpretations developed by Labor since the regulations were first issued in 1968 and (2) misinterpretation and misunderstanding of the act's coverage in the current regulations and of other prevailing wage and procurement laws. Procurement officials at the agency installations reviewed generally agreed with GAO's findings and had already taken or agreed to take corrective action to bring current or future service procurements into compliance with the act and Labor's current regulations. (See pp. 7 to 17 and 19.)

COMPLIANCE WITH ADMINISTRATIVE REQUIREMENTS

In evaluating Federal agency compliance with Labor's other administrative requirements, GAO found that procurement officials did not:

--Timely request wage determinations from Labor for about 60 percent of the contracts and purchase orders reviewed.

--Submit copies of the incumbent contractors' collective bargaining agreements to Labor in 5 of the 81 procurements where submission was required.

--Require 23 of the 87 contractors reviewed to conform employee wages to rates in wage determinations Labor provided.

--Send notices of service contract and purchase order awards to Labor for 39 percent of the awards made.

However, GAO did not find that lack of agency compliance with these administrative requirements adversely affected the labor standards protection for the service workers. For example, in all five cases where Federal agencies did not submit required collective bargaining agreements with their requests for wage determinations, Labor responded with determinations reflecting the collectively bargained rates because unions routinely furnished Labor with copies of their agreements.

Also, for the procurements where the contractors were required to conform wages but did not do so, the wage rates the contractors paid reasonably conformed to those in Labor's wage determinations and, in some cases, were substantially higher. (See pp. 20 to 24.)

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GAO is not making any administrative or legislative recommendations until its current review of the act's overall administration and impact has been completed. (See p. 19.)

AGENCY COMMENTS

Except for two issues GAO raises in the report on (1) the impracticality of Labor's application of the act to emergency procurements and (2) the impact of the procurement agencies' untimely submission of wage determination requests, Labor said it provided only general observations on GAO's report because the lack of documentation of the basis of the findings made comments extremely difficult. (See app. IV.)

GAO believes that Labor's view on the lack of documentation is without merit and that the reported findings are well documented. Labor's comments and GAO's evaluation of them are included on pages 17 to 19, 25, and 26.

Contents

ABBREVIATIONS

ADP	automatic data processing
DOD	Department of Defense
GAO	General Accounting Office
GSA	General Services Administration
SCA	Service Contract Act of 1965, as amended
SF	Standard Form
VA	Veterans Administration

CHAPTER 1

INTRODUCTION

The Service Contract Act of 1965, as amended (SCA) (41 U.S.C. 351, et seq. (1976)), applies to Federal contracts 1/ whose principal purpose is to provide services within the United States through the use of service employees. The act provides labor standards protection to employees of contractors and subcontractors performing on covered contracts. Section 2(a) of the act requires that such contracts in excess of $2,500:

--Specify the minimum wages and fringe benefits to be paid to the various classes of service employees performing under the contracts, as determined by the Secretary of Labor to prevail in the locality or, where the predecessor contractor had a collective bargaining agreement, in accordance with wages and fringe benefits in that agreement.

--Require the contractor or subcontractor to notify its service employees of the minimum wages and fringe benefits applicable to the work.

--Prohibit any part of the services covered by the act from being performed under working conditions that are unsanitary or dangerous to the health or safety of employees.

Regardless of the contract dollar amount, the wage paid any employee working on a contract covered by SCA cannot be less than the minimum wage specified under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201, et seq. (1976)).

EMPLOYEES COVERED BY SCA

Before October 1976, the act defined "service employee" as (1) a guard, watchman, or other person engaged in a recognized trade or craft; skilled mechanical craft; or an unskilled, semi-skilled, or skilled manual labor occupation; or (2) any other employee, including a foreman or supervisor, in a position having trade, craft, or laboring experience as the paramount requirement.

On October 13, 1976, SCA was amended to revise the above definition by clarifying its coverage to include white-collar workers in positions similar to those of Federal workers as well

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1/"Contracts" means all types of agreements and orders, including letter contracts, letters of intent, and purchase orders for the procurement of services.

as the blue-collar counterparts of Federal wage board workers. The only persons now excluded from the act are bona fide executive, administrative, and professional employees.

According to the most current Labor estimates, during fiscal year 1979 about 574,000 1/ workers were employed on a one-time, intermittent, or full-time basis on about 45,000 service contracts which were valued in excess of $8 billion and subject to SCA's labor standards protection.

OBTAINING A WAGE DETERMINATION

As authorized by SCA, the Secretary of Labor issued regulations in 1968 governing Federal agencies' administration of the act. Other than changes needed to implement the 1972 and 1976 SCA amendments, the regulations have not been revised over the years to reflect Labor's numerous policies, rulings, and interpretations. However, Labor has recently proposed extensive changes to the regulations.

Labor's regulations envision an initial determination by the procuring agency as to whether a contract "may be subject to the Act." Thus, if the agency believes a contract is subject to the act, it must notify Labor by submission of a Standard Form (SF)-98, "Notice of Intention to Make a Service Contract." If the agency does not believe a contract may be subject to the act, it does not have to submit anything to Labor or include the SCA clause in the solicitation.

When the contracting agency believes SCA coverage may exist, the regulations require the agency to submit an SF-98 to Labor's Wage and Hour Division headquarters in Washington, D.C., not less than 30 days before any invitation for bids, request for proposals, or commencement of negotiations, if the contract amount would exceed $2,500. The SF-98 is a request for Labor to provide a current wage determination for the occupational classes and geographical area(s) to be involved in the contract.

The contracting agencies are required to submit, with the SF-98, copies of any collective bargaining agreements specifying the current or prospective wage rates and fringe benefits payable under such agreements of an incumbent contractor. The agreements are to be submitted only if the services to be furnished under the proposed contract will be substantially the same as those already being performed. In such cases, the act requires Labor to use

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1/While it does not have more definitive or current data, Labor believes this 1979 figure may significantly underestimate the number of employees performing on contracts subject to SCA.

provisions of these collective bargaining agreements in setting the wage rates and fringe benefits under its wage determinations. The SCA regulations also require that the contracting agency include a detailed explanation for SF-98's that are not submitted to Labor at least 30 days before any invitation for bids or commencement of negotiations.

Wage determinations set forth the minimum wages and fringe benefits established by Labor for specific occupations in a geographical area. They are normally based on rates determined through surveys made by Labor's Bureau of Labor Statistics, or since the act was amended in 1972, the rates stipulated in applicable union collective bargaining agreements.

Labor has an established goal of responding to the procuring agency within 30 days of receipt of an SF-98 with (1) an applicable wage determination, (2) a notice that SCA applies but no applicable wage determination exists 1/ and the employees must therefore be paid at least the minimum wage established under the Fair Labor Standards Act, (3) a judgment that SCA does not apply to the contract the request is intended to cover, or (4) a request for additional information.

According to Labor, about 20 professional and clerical employees at its Wage and Hour Division headquarters prepare and issue all SCA wage and fringe benefit determinations. About 11,000 separate SCA wage and fringe benefit determinations affecting about 35,100 contracts are currently in effect.

ENFORCING SCA

SCA provides that the Secretary of Labor (1) issue enforcement regulations, (2) hold hearings, (3) make decisions on issues arising under the act, (4) have agencies withhold payments due contractors who have underpaid employees, and (5) sue to collect underpayments. The act also requires that any firm, or person, that violates the act be debarred from Government contracts for 3 years unless the Secretary recommends otherwise because of unusual circumstances. In addition, the act provides for the contracting agency to cancel contracts for violations of SCA stipulations.

The Secretary has delegated enforcement responsibilities, except for the act's workplace health and safety standards, to the Deputy Under Secretary for Employment Standards, 2/ who heads

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1/According to Labor, this situation may occur only when five or fewer service employees will be engaged in contract performance.

2/Formerly, the Assistant Secretary for Employment Standards.

Labor's Employment Standards Administration. Within this agency, day-to-day administration and enforcement of SCA is carried out by the Wage and Hour Division, through its headquarters organization, 10 regional offices, 71 area offices, and about 270 field stations located nationwide. SCA's workplace safety and health standards are administered and enforced by Labor's Occupational Safety and Health Administration.

The Wage and Hour Division enforces contractor compliance with SCA wage and fringe benefit determinations through field investigations, usually in response to specific complaints alleging violations. During fiscal year 1980, the division's compliance officers conducted 2,327 investigations to determine contractor compliance with SCA. These investigations, according to Labor, disclosed that unpaid minimum wages and fringe benefits (totaling about $5 million) were due 18,391 service employees by 851 contractors. As of October 1, 1981, a total of 252 persons or firms were listed as being debarred from bidding on, or accepting, any Federal contracts as a result of SCA violations.

OBJECTIVES, SCOPE, AND METHODOLOGY

We made this review at the request of the former Chairman, Subcommittee on Labor-Management Relations, House Committee on Education and Labor, as a followup to our previous report to the Subcommittee, entitled "Review of Compliance with Labor Standards for Service Contracts by Defense and Labor Departments" (HRD-77-136, Jan. 19, 1978). We performed our work in accordance with our current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

We reviewed the extent to which Federal procurement agencies--both defense and civil--complied with SCA and its implementing regulations when contracting for services. Our objectives were to determine the extent Federal agencies:

--Acted to avoid, or otherwise failed to comply with, existing SCA wage determination requirements in procuring services, and the reasons therefor.

--Failed to comply with other SCA administrative requirements, and the reasons therefor, by not:

1. Timely requesting wage determinations from Labor.

2. Inserting appropriate SCA clauses and wage determinations in all applicable bid solicitations, contracts, and purchase orders.

3. Carrying out "wage conformance" procedures for contractor service employee job classifications not

covered by wage determinations but employed in the performance of the contracts or purchase orders.

4. Notifying Labor of contracted services being performed under collective bargaining agreements.

5. Submitting to Labor required notices of service contract awards.

We selected for review Federal defense and civil agency procurement offices located within the immediate geographic areas of Atlanta, Georgia; Birmingham, Alabama; Dallas/Fort Worth, Texas; Denver, Colorado; Los Angeles, California; and Norfolk, Virginia. These localities were selected, with the Subcommittee's concurrence, on the basis of our having readily available staff resources in these locations. At each location, the specific installations were selected for review, on the basis of our general knowledge of procurement activity from prior GAO work, with the objective of gathering data on the full range of experiences among Federal defense and civil agencies that contract for services subject to SCA coverage.

However, because of special concerns expressed by the Subcommittee, we also included all the General Services Administration (GSA) regional offices in these localities in our review. Accordingly our review involved onsite examinations at 22 Federal agency procurement offices, representing 10 Department of Defense (DOD) installations and 12 civil department or agency installations, which included 3 GSA regional offices. (See app. I for a list of Federal agency installations included in the review.)

Federal agencies generally use contracts to obtain goods and services costing more than $10,000 and purchase orders for goods and services costing $10,000 or less. Between October 1, 1979, and June 30, 1980 (the most current completed fiscal period when we initiated the review), the 22 procurement offices awarded, or exercised options on, about 16,600 contracts valued at $846.4 million and awarded about 108,000 purchase orders valued at $83.2 million. At each of the 22 offices, we interviewed procurement officials and reviewed the contract and purchase order files to identify those procurement transactions which we believed--under Labor's existing SCA regulations, rulings, and interpretations--would be subject to SCA. To identify SCA-related procurements, we reviewed most procurement documents at installations with a small contract or purchase order activity. At installations with large procurement activity, we applied scientific random sampling techniques to select contracts or purchase orders subject to SCA for review.

We reviewed a total of 1,125 procurement transactions, valued at about $90.6 million (807 contracts valued at about

$88.8 million and 318 purchase orders valued at about $1.8 million) that under Labor's rules and interpretations would be subject to SCA coverage.

We also contacted or visited 87 contractors to determine whether they were employing service workers in job classifications not covered by Labor's wage determinations, and if so, whether the wages paid those employees reasonably conformed, or needed to be conformed, to Labor's issued rates. Where possible, we reviewed contractor payroll records to verify this information.

In assessing the extent of Federal agency noncompliance, and the reasons therefor, we reviewed and evaluated SCA's provisions and legislative history, and Labor's implementing regulations, rulings, interpretations, and procedures.

Our interviews of agency procurement officials, which were conducted onsite without a uniform interview instrument, were intended to (1) elicit these officials' reaction to our file review findings of apparent noncompliance and (2) ascertain their understanding of SCA's wage determination requirements and their perceived problems in complying with those requirements. We performed our field examinations between July and December 1980 and completed our data gathering and analysis in December 1981.

Because of the methodology we used in selecting the specific Federal agency installations and procurement offices for review, our findings cannot be statistically projected nationwide. However, these agency installations and offices provided data on a broad range of procurement activity subject to SCA coverage which showed various degrees of noncompliance with the act and Labor's implementing regulations. Their noncompliance experiences may therefore be typical of those at other Federal agency procurement offices not included in our review.

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Concurrently with this review of Federal agency compliance with SCA, we performed a separate comprehensive review and evaluation of SCA and its administration by Labor. The results of that review will be reported to the Congress later.

CHAPTER 2

FEDERAL AGENCY NONCOMPLIANCE WITH SCA WAGE DETERMINATION REQUIREMENTS

Federal agencies did not fully comply with existing SCA wage determination requirements. At 22 agency procurement offices, we reviewed 1,125 procurement actions valued at about $90.6 million. Procurement officials at 20 of these offices did not request wage determinations or include current determinations in 381 procurements (valued at about $13.1 million) of 980 procurements which would be subject to SCA under Labor's rulings, interpretations, and regulations in effect during our review.

The major types of procurements or categories of services included in our review for which the agencies did not comply with SCA wage determination requirements were:

--Emergency services, where it was impractical to delay the awards and contractor performance awaiting receipt of wage determinations from Labor.

--Services under contracts not principally for furnishing services or not performed principally by service employees.

--Maintenance services related to commercial products purchased or leased by the Government.

--Services to be provided by States or political subdivisions where Labor's wage determinations would not contain specific wages and fringe benefits, but rather, a statement adopting the existing wages and fringe benefits paid by them.

--Purchase orders or blanket purchase agreements issued under the Government's simplified small purchase procedures (intended to reduce the administrative time and cost of low-dollar-value transactions) where procurement officers misinterpreted SCA's $2,500 threshold for wage determinations.

--Procurements that included wage determinations or other data obtained earlier from Labor and thought by the agencies to still be accurate and applicable.

--Procurements for which wage determinations were not obtained or included as a result of administrative oversight.

We found no evidence to suggest that agencies acted with specific intent to circumvent the statutory or regulatory provisions in not submitting wage determination requests to Labor or not including determinations in bid solicitations and subsequent award documents.

The table on the following page summarizes--for the 1,125 procurements we reviewed--the numbers, amounts, and percentages of contracts and purchase orders where agencies (1) appropriately complied with SCA wage determination requirements and (2) did not meet SCA wage determination requirements. (See apps. II and III for compliance data by individual procurement offices reviewed.)

Except for specific changes resulting from the 1972 and 1976 SCA amendments, Labor has not amended its regulations since they were issued in 1968. Thus, many procurement officials were not aware of Labor's subsequent rulings and interpretations involving SCA's coverage. Instead, they relied on the language of SCA and of the existing regulations in determining whether procurements were subject to SCA coverage.

Our evaluations of the agencies' noncompliance with SCA wage determination requirements follow.

EMERGENCY PROCUREMENTS

In the rush to mitigate the consequences of natural disasters and other emergency situations, 6 procurement offices did not include wage determinations in 54 contracts and purchase orders valued at about $6.4 million. These procurement actions primarily involved

--fighting floods in southern California,

--cleaning up oil spills off the west coast, and

--repairing medical support equipment and an air-conditioning unit in certain Veterans Administration (VA) medical centers.

Labor's regulation requires an SF-98 requesting a wage determination to be submitted at least 30 days before the estimated bid solicitation date, for recurring or planned procurements, and "as soon as practicable" if exceptional circumstances exist. The regulation allows no exception from the submission requirements for emergency service procurements. However, for the emergency procurements identified in our review that were awarded without SCA wage determinations, contractors necessarily started work immediately and, in many cases, would have completed the work before receiving a wage determination from Labor. In such circumstances, application of SCA's wage determination requirements would have had no practical effect.

In contrast to Labor's application of SCA to emergency services, Labor has taken a different position regarding other types of emergency procurements. Section 9 of the Walsh-Healey

Extent of, and Reasons For, Federal Agency Noncompliance with SCA's Wage Determination Requirements

	Contracts (note a)		Purchase orders (note a)		Total (note a)	
	Number	Amount	Number	Amount	Number	Amount
Procurements found to be in compliance	677	$77,195,460	67	$ 342,040	744	77,537,500
	(83.9)	(86.9)	(21.1)	(19.2)	(66.1)	(85.6)
Procurements found not in compliance:						
Emergency services	38	6,350,789	16	83,554	54	6,434,343
	(4.7)	(7.2)	(5.0)	(4.7)	(4.8)	(7.1)
Principal purpose other than services	40	3,220,161	96	584,138	136	3,804,299
	(5.0)	(3.6)	(30.2)	(32.8)	(12.1)	(4.2)
Commercial product-support services	11	382,932	58	336,813	69	719,745
	(1.4)	(0.4)	(18.2)	(18.9)	(6.1)	(0.8)
Services from State or local governments	11	544,566	2	12,147	13	556,713
	(1.4)	(0.6)	(0.6)	(0.7)	(1.2)	(0.6)
Misinterpretation of SCA's dollar threshold for coverage	1	30,626	36	186,046	37	216,672
	(0.1)	(b)	(11.3)	(10.5)	(3.3)	(0.2)
Agency or Labor procedural errors	9	536,260	8	51,055	17	587,315
	(1.1)	(0.6)	(2.5)	(2.3)	(1.5)	(0.6)
Administrative oversight	20	557,186	35	182,516	55	739,702
	(2.5)	(0.6)	(11.0)	(10.3)	(4.9)	(0.8)
Total (note c)	807	$88,817,980	318	$1,778,309	1,125	$90,596,289
	(100)	(100)	(100)	(100)	(100)	(100)

a/Percentages are shown in parentheses.

b/Less than 0.05 percent.

c/Individual percentages may not add to 100 percent due to rounding.

Public Contracts Act 1/ provides a statutory exemption for purchases of materials, supplies, etc., that may usually be bought in the open market. Labor has interpreted the congressional intent of this exemption to include purchases made without advertising for bids under circumstances where the public exigency requires immediate delivery of the goods. The Government's procurement regulations generally describe "public exigency" as a compelling need of unusual urgency--when the Government would be seriously injured, financially or otherwise, if supplies or services are not furnished by a certain date and could not be procured by that date through formal advertising. The emergency service procurements identified in our review would fit this description.

The Secretary of Labor has the authority under section 4(b) of SCA to exempt such procurements from requirements of the act if he determines that it 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 the act to protect prevailing labor standards.

Thus, the rationale Labor applied in exempting emergency material or supply procurements from the Walsh-Healey Public Contracts Act could also be applied to emergency service procurements otherwise subject to SCA, particularly those of short duration. We therefore believe such procurements should be exempted from SCA's wage determination requirements.

SERVICES UNDER CONTRACTS NOT PRINCIPALLY FOR SERVICES OR NOT PERFORMED PRINCIPALLY BY SERVICE EMPLOYEES

Under Labor's interpretations at the time of our review, 136 contracts and purchase orders at 12 procurement offices, totaling about $3.8 million, were subject to SCA although the procurements either were not principally for services (126 procurements for $1.6 million), or were not performed principally by service employees (10 procurements for $2.2 million).

1/The Walsh-Healey Public Contracts Act of 1936 (41 U.S.C. 35, et seq. (1976)) provides labor standards protection to employees of contractors manufacturing or furnishing materials, supplies, articles, and equipment to the Government. It applies to all Government contracts for supplies and equipment exceeding $10,000. The act requires that the employees be paid wages not lower than the minimum wages determined by the Secretary of Labor to be prevailing in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract. However, Labor has not issued wage determinations under this act since 1964 because of a Federal court ruling (Wirtz v. Baldor Electric Co., 337 F. 2d 518 (D.C. Cir. 1964)) and, in the absence of such determinations, the minimum wage specified in the Fair Labor Standards Act has applied.

Regarding the 126 procurements not principally for services, Labor contended, at the time of our review, that SCA applied to a contract when any contract specification called for services using service employees. This contention was based on Labor's interpretation of section 2(a) of SCA which stated that the act applies to "[e]very contract (and any bid specification therefor) * * * the principal purpose of which is to furnish services in the United States through the use of service employees * * *." However, the agency procurement officials believed, and we agree, that "bid specification," as used in the act, referred to the bidding document that precedes a contract award--not an individual specification in a contract--and that the "principal purpose" language of the act applied to the contract as a whole. In a September 1980 report, 1/ we discussed the impropriety of Labor's interpretation based on our evaluation of the act's legislative history and language and Labor's regulations and administrative manual.

Many of the principal purpose problems that procurement agencies encounter result from confusing and inconsistent rulings and interpretations Labor has issued on whether particular types of contracts or contract work are covered by SCA or the Walsh-Healey Public Contracts Act.

Section 7(2) of SCA exempts from SCA coverage any work subject to the Walsh-Healey Public Contracts Act. Labor rulings and interpretations, in general, have provided that contracts exclusively for services are covered by SCA but that contracts in which services are incidental to, or an integral part of, manufacturing or furnishing materials, supplies, articles, or equipment are subject to the Walsh-Healey Public Contracts Act. However, Labor has not been consistent in its interpretations. Over the years, it has issued rulings providing for different labor standards coverage on contracts having the same or similar characteristics. That is, Labor determined that certain contracts were subject to the Walsh-Healey Public Contracts Act, but also ruled that similar contracts were subject to SCA. For example, existing rulings under each act provide coverage for the following:

--Producing drawings and furnishing blueprints.

--Making photographic reproductions.

--Rebuilding or overhauling equipment.

1/Report to the Chairman, House Committee on Government Operations, entitled "Service Contract Act Should Not Apply to Service Employees of ADP and High-Technology Companies" (HRD-80-102, Sept. 16, 1980).

--Repairing and maintaining motor vehicles.

--Preparing and furnishing maps.

Regarding rental contracts, Labor has issued varying rulings on SCA coverage. For example, a contract to rent building space, which calls also for furnishing all associated building services, is a contract principally for the space. Services are only incidental and, therefore, not covered by SCA. The same principle applies to vehicle rental contracts which also provide for maintenance of the vehicles in an operating condition. However, Labor has ruled that a contract for rental of wiping cloths, fender covers, and coveralls is principally for laundry, dry cleaning, and delivery services, and, therefore, covered by SCA.

In the case of research contracts, Labor has issued conflicting rulings. For example, Labor ruled that SCA did not apply to a research contract, entitled "Total Patient Services Schedule Study." Yet, in ruling on another research contract, entitled "Study of Dental Health-Related and Process Outcomes Associated with Prepaid Dental Care," Labor said that SCA did apply. In the latter ruling Labor cited its regulations which provide SCA coverage even though contracts require tangible items to be supplied. Such contracts, according to Labor, are chiefly for services; the furnishing of tangible items are of secondary importance and "merely the material manifestation" of what the Government wishes to acquire.

In some of the examples above, Labor's rulings and interpretations compounded the problems by developing a "dual coverage" policy. For example, aircraft engine overhaul and rebuild contracts, which had been covered by the Walsh-Healey Public Contracts Act in some early rulings and by SCA in others, were later determined to be covered by both. That is, Labor said SCA covered disassembly of the engines, while the Walsh-Healey Public Contracts Act covered engine rebuilding and reassembly.

Regarding the 10 procurements agencies believed were not principally performed by service employees, most of the procurement dollars (nearly $2 million) called for development or maintenance of computer programs. These services are generally performed by professional computer programmers or systems analysts. These employees would usually be classified as professionals; however, Labor collects wage data and issues wage determinations covering these classifications, noting on the determinations that the term "service employee" does not include any one who qualifies as a bona fide executive, administrative, or professional employee under the regulations. If notified of the procurements, we believe Labor would have viewed these procurements as subject to SCA and required the agencies to obtain and include wage determinations in the award documents.

COMMERCIAL PRODUCT-SUPPORT SERVICES

Seven procurement offices did not include wage determinations in 69 contracts and purchase orders, valued at about $720,000, involving certain commercial product-support services--procurements calling for the lease or purchase (including maintenance) of automatic data processing (ADP) or other high-technology equipment or, in some procurements, for equipment maintenance only. They either (1) misinterpreted a 90-day exemption Labor applied to maintenance of this equipment in 1979, (2) determined that the principal purpose of the procurement involved the lease or acquisition of equipment, or (3) determined that the maintenance workers qualified as professionals not covered by SCA.

We do not agree that all maintenance workers on such contracts would always qualify as professionals and thus be exempt from the act's coverage. However, in our September 1980 report, 1/ we concluded that SCA (1) was not intended to cover maintenance services related to commercial products acquired by the Government, (2) coverage on these contracts would impose undue financial and administrative burdens on the affected companies, and (3) wage protection for these service workers was not needed.

Prior to the issuance of our report, Labor had granted a 90-day exemption (Aug. 10 to Nov. 8, 1979) from application of SCA to contracts for lease or purchase, plus maintenance, of ADP and telecommunications equipment. The exemption did not cover other types of equipment or contracts involving only equipment maintenance. Some procurement officials misunderstood Labor's application of the exemption and did not include wage determinations in maintenance-only contracts awarded during the exemption period. Following that period, Labor acted to apply SCA coverage to both contracts for equipment purchase or rental that included maintenance and contracts for maintenance only.

The wage determination Labor currently furnishes to agencies under these circumstances covers both types of contracts involving equipment maintenance and provides that the wage rates and fringe benefits currently paid by contractors to their various classes of service technicians engaged in performing contracts with maintenance and repair specifications are adopted as prevailing. This variation from normal SCA wage determinations, in effect, represents a recognition by Labor that the labor standards of service technicians in the ADP and high-technology industries are adequately protected without application of SCA-mandated wage rates and fringe benefits. Thus, the absence of

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1/See footnote 1, page 11.

this determination in these contracts should have no adverse effect on the labor standards protection of these employees.

CONTRACTS WITH STATE OR LOCAL GOVERNMENTS

Procurement officials at five offices did not include wage determinations in 13 contracts or purchase orders, totaling about $557,000, which called for services of employees in State or local governmental units. Most of the officials believed that contracts with State or local governments were exempt from SCA coverage; one had misinterpreted or misread the section of Labor's SCA regulations relating to noncoverage of service contracts entered into by State or local public bodies with other parties, using Federal grant or contract funds. Another section in the regulations, however, provides clear coverage of Federal service contracts with State or local governments.

Notwithstanding this noncompliance, we believe that the potential for a State or local agency to reduce its employees' wages merely to be the successful bidder on a Federal service contract, a primary reason for enacting SCA in 1965, would rarely, if ever, exist. Although Labor's SCA regulations assert coverage to these contract employees, application of Labor's wage determinations to these procurements has no effect on the wages and fringe benefits of the service employees involved. Under Labor's administrative procedures for SCA wage determinations, when Labor's SCA staff know that the contract or purchase order will be awarded to a State or local agency, the wage determination they issue does not contain any worker classifications or specific wage rates. Instead, the determination contains a statement similar to the following:

> "The wage rates and fringe benefits paid by the * * * [State or local agency] to employees engaged in the performance of the above contract are adopted as prevailing for purposes of this determination."

In this situation, the State or local agency needs only to pay its employees on the contract at their regular wage and fringe benefit rates. Accordingly, the lack of wage determinations in contracts in this category has no adverse impact on labor standards protection of the employees involved.

MISINTERPRETATION OF SCA'S DOLLAR THRESHOLD FOR APPLICATION TO SMALL PURCHASES

Procurement officers at six offices did not include wage determinations in 37 small purchase procurement actions totaling about $216,700, through misinterpretation of

- changes in the dollar limitation for use of simplified small purchase procedures, or application of SCA to

"charge account" transactions under blanket purchase agreements entered into under these procedures (three offices involving 34 procurements totaling about $178,900), and

--SCA's application when modifications increase procurement action amounts over the SCA wage determination threshold of $2,500 (three offices involving three procurements totaling about $37,800).

The Congress established the $2,500 threshold for application of wage determinations to service contracts on the basis of the dollar limitation existing at that time in procurement law for use of simplified small purchase procedures. These procedures, designed to reduce administrative costs on low-dollar-value purchases, permitted civilian and defense procurement activities to award contracts and purchase orders without subjecting the transactions to the formal, more time consuming, and more costly advertising-bid-award process. In 1974, the Congress raised the small purchase limitation to $10,000 (Public Law 93-356), but did not correspondingly increase the dollar threshold levels in any of the laws implementing social and economic programs through the procurement process, including SCA. 1/ However, procurement staff at one office erroneously believed that, since the SCA threshold was based on the small purchase limitation, any increase in the latter automatically extended to SCA.

In another application of the simplified small purchase procedures, procurement officials misinterpreted Labor's regulations that require SCA coverage and wage determination in blanket purchase agreements issued for an indefinite amount, or with an estimated amount between $2,500 and $10,000. A blanket purchase agreement is used as a simplified method of filling anticipated repetitive needs for small quantities of supplies or services by establishing, in effect, "charge accounts" with qualified sources. Supplies or services are furnished in response to individual purchase orders, or "calls," the agency may issue during the life of the agreement. Labor's regulations provide that blanket purchase agreements are "contracts" within the intent of SCA--that SCA's coverage and wage determination requirements extend to all indefinite-amount blanket purchase agreements and to those over $2,500.

Federal procurement regulations generally implement this Labor requirement. However, some procurement officials had equated the issuance of an individual purchase order or "call"

1/Section 907(a) of the Department of Defense Authorization Act, 1982 (Public Law 97-86, Dec. 1, 1981) raises DOD's small purchase limitation from $10,000 to $25,000. However, the $10,000 limit still applies to all other Federal agencies.

for services under a blanket purchase agreement as being the "contract" that might be subject to the act's wage determination requirements. Consequently, they would request SCA wage determinations only when the amount of the individual call or purchase order exceeded $2,500. For example, one procurement office issued 14 purchase orders between October 1979 and June 1980, averaging about $275 each, under an indefinite-amount agreement awarded without a wage determination.

In addition, procurement officials at three offices did not realize that, when modifications to procurement actions increase total costs over the $2,500 threshold, wage determinations are required.

AGENCY DECISIONS NOT TO REQUEST OR INCLUDE DETERMINATIONS IN OTHER PROCUREMENTS

Some procurement officials either did not request or did not include current wage determinations in other contracts or purchase orders because they:

--Considered, at three offices, that wage determinations Labor issued in response to SF-98's for similar work under earlier contracts were still current and included them in six procurements totaling about $450,500.

--Issued two contracts, totaling about $58,300, at two offices without wage determinations after Labor failed to respond to followup requests for correct wage data--Labor had furnished rates for the wrong locality and for a classification that had no relationship to the contract work.

--Determined, at two offices, that work under two procurement actions for construction-related services, totaling about $28,000, involved labor standards coverage under the Davis-Bacon Act rather than SCA.

--Awarded a contract for $12,775 without a wage determination because an earlier determination for similar work provided that the minimum wage under the Fair Labor Standards Act should apply.

--Issued a purchase order for $3,880 without a wage determination because Labor had said, in responding to an earlier SF-98 for similar work, that no wage determination applicable to the specified locality and classes of employees was in effect.

In addition, procurement officials at two offices did not include wage determinations in five purchase orders valued at about $33,800 because they believed that section 10 of SCA did

not clearly mandate that Labor furnish wage determinations for contracts involving five employees or less. The procurement officials apparently relied on a provision of section 10 which requires the Secretary of Labor to make wage determinations for contracts entered into on or after July 1, 1976, under which more than five employees are to be employed. However, section 10 also requires the Secretary to make wage determinations for all service contracts in excess of $2,500, regardless of the number of service employees, as soon as it is administratively feasible to do so. In our review, we noted instances where Labor has, in fact, issued determinations covering five or fewer employees.

ADMINISTRATIVE OVERSIGHT

Of the 1,125 procurements totaling $90.6 million which, under Labor's rulings and interpretations, were subject to SCA, procurement officers did not obtain or include wage determinations in 55 procurements totaling about $740,000 as a result of administrative oversight. This noncompliance represented less than 5 percent of the total number of procurements and less than 1 percent of the total dollar amount of the procurements reviewed.

Procurement officials generally agreed that the contracts and purchase orders required wage determinations and, where appropriate, agreed to take corrective actions to assure future compliance. Procurement staff at only one office attributed their noncompliance to not being generally aware of SCA requirements.

CONCLUSIONS

Our review at 22 Federal agency procurement offices disclosed that many procurement officials did not comply with all wage determination requirements of SCA, under the regulations, rulings, and interpretations Labor had issued on SCA coverage of contracts and purchase orders. Noncompliance by procurement offices resulted primarily from (1) reliance on the language of the act and regulations without knowledge of the varying interpretations developed by Labor since the regulations were first issued in 1968 and (2) misinterpretation and misunderstanding of the act's coverage in the current regulations and of other prevailing wage and procurement laws.

AGENCY COMMENTS AND OUR EVALUATION

In a May 18, 1982, letter commenting on a draft of this report (see app. IV), Labor said that, except for issues raised on emergency procurements and timely submission of wage determinations (see ch. 3), it could provide "only general observations" because the report's lack of documentation of the basis of the findings made comments extremely difficult.

We believe that Labor's observation is without merit and that this report fully documents the bases for our findings and conclusions on the extent of and reasons for Federal agency noncompliance with SCA's wage determination requirements. The table on page 9 summarizes the extent of compliance and noncompliance, and appendixes II and III present data on the numbers and dollar values of contracts and purchase orders reviewed and those found in compliance or noncompliance, by procurement agency reviewed--on the basis of Labor's criteria for agency compliance as stipulated in its current regulations and interpretations. The records at the procurement agencies were clear on whether SCA requirements were met. For example, for 381 of the 1,125 procurements we reviewed, the procuring agencies did not request wage determinations or include current determinations. Thus, the degree of compliance with SCA by Federal agencies is clear from the data in our report, and further details, in our view, are unnecessary.

Regarding emergency service procurements, Labor disagreed with our view that such procurements should be exempted from the wage determination requirements of SCA. Labor believes that current procedures and existing cooperative arrangements with a number of Federal agencies have worked very well over the years in dealing with emergency procurements. According to Labor, under these procedures Federal agencies frequently award emergency contracts with a provision stipulating that a wage determination has been requested and will be incorporated by contract modification upon receipt. Under such circumstances, Labor stated, it typically is able to fulfill requests for wage determinations on a priority basis, usually within 1 to 5 days.

We recognize that these procedures exist and believe they may be adequate for emergency procurements which, once awarded, may take a long time to complete the services involved. However, for emergency services of short duration, such as those identified in our review, the contractors frequently completed the required services before the agency could have received and incorporated an appropriate wage determination in the contract or purchase order. Including such a determination after the work has been completed would be of little value in protecting the labor standards of the service workers who had performed on the contract or purchase order. We continue to believe such emergency procurements should be exempted from SCA's wage determination requirements.

Labor expressed its belief that, with few exceptions, the allegations of inconsistency in its SCA coverage rulings since its regulations were issued in 1968 are not supported by the information in our report. Except for SCA's application to equipment overhaul contracts, which would be corrected by proposed revisions to the regulations, Labor said the current regulations provide

"accurate guidance for the proper application of the Act by the contracting agencies."

Contrary to Labor's views, we believe that our report illustrates that varying interpretations by Labor since 1968 have contributed to noncompliance by procurement offices. For example, as discussed on pages 10 to 12, Labor's rulings and interpretations over the years regarding application of SCA, versus the Walsh-Healey Public Contracts Act, to specific procurements have been confusing and inconsistent.

Labor also questioned, in light of our findings of extensive agency noncompliance with SCA's wage determination and other administrative requirements (see ch. 3), our report's lack of recommendations for corrective action by the agencies involved. We are deferring recommendations on SCA because our overall review of the problems and impacts of the act and its implementing regulations and procedures, as administered and enforced by Labor, is nearing completion. We believe it will be more appropriate to consider recommendations on agency compliance in the context of the act's overall administration. However, at each agency installation reviewed, responsible procurement officials were apprised of the results of our work and the extent of any noncompliance found. These officials generally agreed with our findings and agreed to take, and in some instances had already taken, corrective action to bring current or future service procurements into compliance with SCA and Labor's current regulations.

CHAPTER 3

FEDERAL AGENCY NONCOMPLIANCE WITH OTHER SCA ADMINISTRATIVE REQUIREMENTS

We evaluated Federal agency compliance with other SCA administrative requirements and found that procurement officials did not:

--Timely request wage determinations from Labor for about 60 percent of the contracts and purchase orders reviewed.

--Submit copies of the incumbent contractors' collective bargaining agreements to Labor for 5 of 81 procurements where submission was required.

--Require 23 of 87 contractors reviewed to conform employee wages to rates in wage determinations provided by Labor.

--Send notices of SCA contract and purchase order awards to Labor for 39 percent of the awards made.

However, we did not find that lack of agency compliance with these administrative requirements had any adverse impact on the labor standards protection for the service workers involved.

TIMELINESS OF WAGE DETERMINATION REQUESTS

In about 60 percent of the contracts and purchase orders reviewed, agency officials did not comply with the requirement that SF-98's be sent to Labor at least 30 days prior to the estimated date for soliciting bids, requesting proposals, or commencing negotiations for procurements that may be subject to SCA. At individual procurement offices, SF-98 submissions averaged from 8 to 80 days before the estimated date, with an overall unweighted average for all 22 offices of 29 days. However, we found that the estimated dates furnished Labor on the submitted SF-98's were not always firm estimates. In fact, in the majority of cases, procurement offices did not meet their estimated solicitation dates--for reasons unrelated to the wage determination. In other cases, they subsequently modified the solicitation documents or amended the contracts or purchase orders to incorporate the wage determinations when received.

The offices also did not generally submit required detailed explanations to Labor for requests submitted late. However, we noted that, for 62 percent of the SF-98's reviewed, Labor furnished wage determinations before the estimated solicitation dates and did not cite in its responses to the agencies any problems that untimely SF-98 submissions may have caused.

SUBMISSION OF INCUMBENT CONTRACTORS' COLLECTIVE BARGAINING AGREEMENTS WITH WAGE DETERMINATION REQUESTS

When employees of incumbent contractors are paid wages in accordance with collective bargaining agreements, the Federal agencies--in requesting wage determinations--are required to submit copies of the agreements to Labor with their requests. Our review disclosed that Federal agencies should have submitted agreements to Labor for 81 of the procurements. We found that two procurement offices did not submit the agreements with five SF-98's--one at a GSA regional office and four at a VA medical center.

However, during our review at Labor headquarters, we noted that many unions routinely furnish Labor with copies of their agreements, especially those that relate to work on Government contracts. Thus, Labor already has the agreements in its files in many cases.

In all five cases where the agencies had not submitted the agreements, Labor responded with wage determinations reflecting the collectively bargained rates.

LABOR'S SCA CONFORMANCE REQUIREMENTS

If the wage determination Labor issues to a Federal agency does not list some of the classes of employees to be used on the contract, Labor's SCA regulations require the contractor to classify and set wage and fringe benefit rates for the unlisted positions in such a way as to provide a reasonable relationship with the classes listed. This is referred to as "conformance." This action must be initiated by the contractor and be documented in the agency contract file by a written agreement between the interested parties--the contracting agency, the contractor, and the service workers or their representatives. If the interested parties cannot reach agreement, the contracting officer is required to submit the question, together with his or her recommendation to Labor for final determination.

We examined procurement files at all 22 procurement offices to determine whether conformance procedures had been documented. Fifteen files at five offices contained documentation of wage conformance for nine National Aeronautics and Space Administration, three Air Force, one Navy, and two GSA contracts. In addition, we contacted or visited 87 selected incumbent service contractors to determine if these contractors had employed any classes of workers not listed in their service contract wage determinations and, if so, whether the required conformance procedures had been adequately documented.

We found that 23 of the 87 contractors, about 26 percent, employed one or more workers whose wages and fringe benefits should have been, but were not "conformed" as specified in Labor's regulations. However, in each of these cases, compliance with Labor's conformance procedures would have generated additional paperwork to document the employers' existing wage rates and would not have resulted in any adjustments to those rates. The wage rates paid the employees, in our opinion, reasonably conformed to those in the wage determinations.

Many employers, in fact, paid their workers at rates higher, sometimes substantially higher, than any rate in the determinations. For example, one contractor, who was not aware of the conformance requirements in his contract, believed that the work of a class of worker he employed as a "photogrammetrist" would be equivalent in skill level to that of a "draftsman, class A," the highest skilled classification listed on the determination at $8.50 an hour. He paid the worker $13.00 an hour. Similarly, the wage determination listed the classification of "rodman," with a rate of $4.89 an hour. The contractor employed on the contract a "laboratory technician/rodman" at $9.00 an hour.

On another contract for preventive maintenance of an automated energy conservation system, the wage determination Labor furnished listed 20 diversified classes of employees such as: carpenter-maintenance, forklift operator, laborer-grounds maintenance, light fixture servicer, painter-maintenance, plumber-maintenance, security guard, truckdriver, and stationary engineer. The security guard and laborer had the lowest wage rates on the determination at $4.48 an hour; the stationary engineer had the highest rate at $8.77 an hour. The contractor told us he used three classes of employees in performing the work: an automatic systems representative, a journeyman pipefitter, and a refrigeration pipefitter, each paid at $13.00 an hour.

In our opinion, compliance with Labor's SCA wage conformance regulations in these examples, and in the other contracts reviewed, would have generated more paperwork for the contractors and the procuring agencies without providing any additional benefits to the workers involved.

SUBMISSION OF CONTRACT AWARD NOTICES

Procurement offices may not have furnished Labor copies of the Notice of Award of Contract (SF-99) as required by SCA regulations for as much as 39 percent of the contracts and purchase orders we reviewed. However, this noncompliance had no adverse impact because of Labor's limited use of these documents.

SCA regulations require all procurement offices to submit to Labor an original and one copy of the SF-99 on all awarded contracts or purchase orders in excess of $2,500 that are subject

to SCA. However, the Defense Acquisition Regulation requires that defense activities send the SF-99 to Labor only for awards between $2,500 and $10,000. Awards over $10,000 are to be reported to Labor by the Office of the Secretary of Defense from information contained in DOD's "Individual Procurement Action Report" (DD Form 350).

Four of the 22 procurement offices we reviewed submitted the documents on 95 percent or more of the procurements awarded. Percentages at other offices, however, were less. Three offices had no evidence in the procurement files to indicate that the forms had been prepared or submitted on any procurement subject to SCA. Overall, we did not find copies of the documents in 39 percent of the procurement files reviewed.

These figures, however, may be somewhat overstated because the criteria we used for determining that the offices submitted the forms was whether we found a copy of the document in the procurement file. Some contracting officials told us that the forms had been sent to Labor, but copies had been misplaced or were not yet put in the files. In one office, copies were not in the files, according to the officials we contacted, due to a then-current project to automate certain contract administration functions.

Considering the ultimate use and disposition of the forms at the Labor area offices visited, we believe additional efforts to verify agency compliance with this reporting requirement would have been unproductive. In our opinion, agency failure to submit award notices to Labor was caused by oversight--at only one office was the staff generally unaware of the requirement.

We contacted a DOD headquarters official responsible for sending the DD Form 350 information to Labor. Apparently, DOD and Labor had agreed several years ago that DOD headquarters would furnish data from these forms to Labor on a quarterly basis. However, for unknown reasons, this distribution apparently has been overlooked; no data have been sent to Labor from the DD Form 350's for the past several years.

During our review, a Wage and Hour Division official told us that the forms could be useful for planning and management control purposes, but that staff were not available to do anything more than send them to the division's area offices for their possible use in the labor standards enforcement program. We interviewed officials at eight area offices to determine the ultimate use of the forms. Comments received ranged from "useless" and "immediately discarded" to "useful" in scheduling self-initiated reviews of service industry contracts, under the region's enforcement strategy plan.

One area director told us that the forms were immediately discarded because (1) the area office did not have sufficient storage space and (2) the forms did not serve a useful purpose. Most of the area office officials we contacted, however, said that the SF-99's are useful for scheduling self-initiated investigations, but that investigations resulting from employee complaints receive a higher priority. Officials at three offices said that they had never recommended a compliance review on the basis of screening the SF-99's.

Two other Labor agencies--the Employment Standards Administration's Office of Federal Contract Compliance Programs and the Employment and Training Administration's U.S. Employment Service--also use copies of the forms in their enforcement programs relating to required affirmative action clauses in the Federal contracts. The Office of Federal Contract Compliance Programs uses these forms as additional data input to its universe lists of contractors with Government contracts, which regional enforcement staff can use in planning and implementing reviews. The U.S. Employment Service sends copies to affiliated State employment security agencies for use in determining if Government contractors and subcontractors are complying with reporting requirements of the affirmative action clause, in their Federal contracts and subcontracts of $10,000 or more, relating to the employment and advancement in employment of disabled and Vietnam Era veterans.

In our opinion, data from the SF-99's are not crucial to these Labor agencies' operations because more complete and accurate data are available from the Federal Procurement Data System. This system, operated by GSA, was established in 1978 to provide a comprehensive mechanism for assembling, organizing, and presenting contract placement data for the Federal Government. It is a uniform system, whereby all Federal agencies report procurement data to the Federal Procurement Data Center which processes and disseminates official statistical data on Federal procurements. The data in this system are based on information available at the time of contract awards, and can be used for any required recurring and special reports to the President, the Congress, the Federal executive agencies (such as Labor), and the public.

CONCLUSION

Our review at 22 Federal agency procurement offices disclosed that many procurement officials did not comply with Labor's SCA administrative requirements. However, we believe that the lack of agency compliance with the administrative requirements did not have any adverse impact on the labor standards protection for the service workers.

AGENCY COMMENTS AND OUR EVALUATION

Labor said that, despite implications in our report that untimely submission of SF-98's places no burden on the Department, such late submissions do cause significant problems. First, it has been Labor's experience that wage determinations are never included in some contracts, leaving employees without statutorily required prevailing labor standards protections. Second, modifying solicitations and contracts to incorporate wage determinations places a burden on contracting agencies, bidders who must refigure costs, and contractors who must negotiate contract price changes. Third, Labor's orderly administration of its wage determination functions is disrupted and made extremely difficult when numerous determinations must be issued in a short period of time.

We agree that untimely submissions of SF-98's may result in such problems. However, these problems were not apparent at the agency procurement offices in our review. As we pointed out earlier, although about 60 percent of the SF-98's we reviewed were submitted late, the overall unweighted average was 29 days before the estimated solicitation date or, on the average, only about 1 day late. Moreover, despite the late submissions, in 62 percent of the cases Labor furnished a wage determination to the agency before the estimated date, and in most cases, these were included in the solicitation packages sent to the bidders or in the awarded contracts or purchase orders.

Labor questioned our conclusion that the lack of agency compliance with the administrative requirements did not adversely affect the labor standards protection for the service workers. Labor said it could find no proof in our report for such a conclusion.

We disagree. As discussed in this report, in each of the four identified areas of administrative noncompliance, our reviews of agency records and our discussions with Labor, contracting agency, or contractor officials showed that the noncompliance had no adverse impact on the labor standards protection of the service workers. For example, in all five cases where Federal agencies did not submit required collective bargaining agreements with their requests for wage determinations, Labor responded with determinations reflecting the collectively bargained rates because unions routinely furnished Labor with copies of their agreements. Also, for the procurements where the contractors were required to conform wages but did not do so, the wage rates the contractors paid reasonably conformed to those in Labor's wage determinations and, in some cases, were substantially higher.

In addition, the notices of contracts and purchase orders awarded (SF-99's) are not generally used by Labor. Other more reliable data, if needed, are available. In this regard, Labor

said that it was nearing completion of a project begun a number of months ago that would result in submission to Labor of contract award information through the Federal Procurement Data System, thereby eliminating the need for agencies to submit individual award notices to Labor. According to Labor, the data generated by the Government-wide system would also enable it to identify contracts subject to SCA which were awarded without wage determinations and to direct the Federal agencies to take appropriate corrective action.

FEDERAL AGENCY INSTALLATIONS COVERED BY GAO'S REVIEW

Department of Defense

U.S. Air Force:

--Maxwell Air Force Base, Alabama.

--Headquarters, Space Division, Los Angeles Air Force Station, Los Angeles, California.

--Lowry Air Force Base, Colorado.

--Carswell Air Force Base, Texas.

U.S. Army:

--U.S. Army Engineer District, Los Angeles, California.

--Fitzsimons Army Medical Center, Denver, Colorado.

--Fort McPherson, Atlanta, Georgia.

--U.S. Army Engineer District, Fort Worth, Texas.

U.S. Navy:

--U.S. Naval Air Station, Dallas, Texas.

--U.S. Naval Supply Center, Norfolk, Virginia.

Civilian Departments

Department of Commerce:

--National Oceanic and Atmospheric Administration, Boulder, Colorado.

Department of Health and Human Services:

--U.S. Public Health Service, Center for Disease Control, Atlanta, Georgia.

Department of the Interior:

--Bureau of Mines, Denver, Colorado.

Department of Justice:

--Immigration and Naturalization Service, Western Regional Office, Terminal Island, San Pedro, California.

Department of Transportation:

--U.S. Coast Guard, 11th District, Long Beach, California.

Independent Agencies

General Services Administration:

--Regional Headquarters, Region 4, Atlanta, Georgia.

--Regional Headquarters, Region 7, Fort Worth, Texas.

--Regional Headquarters, Region 8, Denver, Colorado.

National Aeronautics and Space Administration:

--Langley Research Center, Hampton, Virginia.

Veterans Administration:

--VA Medical Center, Montgomery, Alabama.

--VA Medical Center, Long Beach, California.

--VA Medical Center, Dallas, Texas.

SUMMARY OF CONTRACTS REVIEWED, BY LOCATION, AND WHETHER IN COMPLIANCE OR NONCOMPLIANCE WITH SCA REQUIREMENTS

Procurement office	SCA contracts reviewed		Contracts found in compliance with SCA requirements		Contracts not in compliance with SCA requirements	
	Number	Amount	Number	Amount	Number	Amount
Maxwell Air Force Base, AL	35	$ 4,975,099	33	$4,907,174	2	$ 67,925
Space Division, Los Angeles Air Force Station, CA	8	6,935,585	8	6,935,585	-	-
Lowry Air Force Base, CO	17	1,044,657	15	984,457	2	60,200
Carswell Air Force Base, TX	15	1,259,240	14	1,247,436	1	11,804
Army Engineer District, Los Angeles, CA	29	6,162,257	6	524,731	23	5,637,526
Fitzsimons Army Medical Center, Denver, CO	26	596,268	26	596,268	-	-
Fort McPherson, GA	16	2,040,285	15	2,001,780	1	38,505
Army Engineer District, Fort Worth, TX	23	1,514,128	23	1,514,128	-	-
Naval Air Station, Dallas, TX	4	61,632	4	61,632	-	-
Naval Supply Center, Norfolk, VA	40	14,277,799	27	13,980,686	13	297,113
National Oceanic and Atmospheric Administration, Boulder, CO	31	1,634,754	10	563,073	21	1,071,681
Center for Disease Control, Atlanta, GA	15	543,477	4	126,321	11	471,156

APPENDIX II

Procurement office	SCA contracts reviewed Number	SCA contracts reviewed Amount	Contracts found in compliance with SCA requirements Number	Contracts found in compliance with SCA requirements Amount	Contracts not in compliance with SCA requirements Number	Contracts not in compliance with SCA requirements Amount
Bureau of Mines, Denver, Co	15	$ 757,278	14	$ 727,278	1	$ 30,000
Immigration and Naturalization Service, San Pedro, CA	26	536,225	26	536,225	-	-
U.S Coast Guard, Long Beach, CA	19	736,182	1	41,750	18	694,432
GSA, Region 4, Atlanta, GA	114	7,619,628	107	7,158,814	7	460,814
GSA, Region 7, Fort Worth, TX	105	4,918,408	102	4,906,057	3	12,351
GSA, Region 8, Denver, CO	119	6,066,038	119	6,066,038	-	-
NASA, Langley Research Center, Hampton, VA	27	25,752,365	13	23,294,387	14	2,457,978
VA Medical Center, Montgomery, AL	14	316,745	13	303,970	1	12,775
VA Medical Center, Long Beach, CA	58	613,549	52	563,115	6	50,434
VA Medical Center, Dallas, TX	51	456,381	45	154,555	6	301,826
Total	807	$88,817,980	677	$77,195,460	130	$11,622,520
Percent	100	100	83.9	86.9	16.1	13.1

APPENDIX II

SUMMARY OF PURCHASE ORDERS REVIEWED, BY LOCATION, AND WHETHER IN COMPLIANCE OR NONCOMPLIANCE WITH SCA REQUIREMENTS

Procurement office	SCA purchase orders reviewed		Purchase orders found in compliance with SCA requirements		Purchase orders not in compliance with SCA requirements	
	Number	Amount	Number	Amount	Number	Amount
Maxwell Air Force Base, AL	-	-	-	-	-	-
Space Division, Los Angeles Air Force Station, CA	9	$ 53,271	7	$47,060	2	$ 6,211
Lowry Air Force Base, CO	26	127,744	10	58,117	16	69,627
Carswell Air Force Base, TX	16	71,070	15	68,403	1	2,667
Army Engineer District, Los Angeles, CA	33	180,905	-	-	33	180,905
Fitzsimons Army Medical Center, Denver, CO	17	65,640	16	62,211	1	3,429
Fort McPherson, GA	3	9,301	1	3,500	2	5,801
Army Engineer District, Fort Worth, TX	33	178,947	1	6,901	32	172,046
Naval Air Station, Dallas, TX	1	3,833	-	-	1	3,833
Naval Supply Center, Norfolk, VA	1	6,551	-	-	1	6,551
National Oceanic and Atmospheric Administration, Boulder, CO	94	612,495	1	3,999	93	608,496
Center for Disease Control, Atlanta, GA	7	31,067	7	31,067	-	-

APPENDIX III

Procurement office	SCA purchase orders reviewed		Purchase orders found in compliance with SCA requirements		Purchase orders not in compliance with SCA requirements	
	Number	Amount	Number	Amount	Number	Amount
Bureau of Mines, Denver, CO	12	$ 76,286	3	$ 20,498	9	$ 55,788
Immigration and Naturalization Service, San Pedro, CA	-	-	-	-	-	-
U.S. Coast Guard, Long Beach, CA	18	97,379	1	8,120	17	89,259
GSA, Region 4, Atlanta, GA	2	10,159	2	10,159	-	-
GSA, Region 7, Fort Worth, TX	-	-	-	-	-	-
GSA, Region 8, Denver, CO	-	-	-	-	-	-
NASA, Langley Research Center, Hampton, VA	11	68,296	-	-	11	68,296
VA Medical Center, Montgomery, AL	4	14,099	-	-	4	14,099
VA Medical Center, Long Beach, CA	1	3,133	1	3,133	-	-
VA Medical Center, Dallas, TX	30	168,133	2	18,872	28	149,261
Total	318	$1,778,309	67	$342,040	251	$1,436,269
Percent	100	100	21.1	19.2	78.9	80.8

APPENDIX III

APPENDIX IV

U.S. Department of Labor

Deputy Under Secretary for
Employment Standards
Washington, D.C. 20210

MAY 18 1982

Mr. Gregory J. Ahart
Director
Human Resources Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Mr. Ahart:

This is in reply to your letter to the Secretary requesting comments on the draft GAO report entitled "Assessment of Federal Agency Compliance With The Service Contract Act."

The Department's response is enclosed.

The Department appreciates the opportunity to comment on this report.

Sincerely,

Robert B. Collyer
Deputy Under Secretary

Enclosure

U.S. Department of Labor's Response
to the Draft General Accounting Office
Report Entitled --

Assessment of Federal Agency Compliance
with the Service Contract Act

The Department has reviewed the draft GAO report and has found that the lack of documentation of the basis of the findings makes comments extremely difficult. Accordingly the Department is providing only general observations. In this regard, it is hoped that GAO will provide more documentation of the basis for its conclusions before issuing its final report and that the Department will then be given an opportunity to furnish a more comprehensive response. The Department feels it can respond on two issues raised by GAO without further documentation: emergency procurements and the timely submission of requests for wage determinations.

First, in discussing the failure of contracting agencies to include wage determinations in emergency procurements, the GAO draft report states that the requirements for SF-98s to be submitted at least 30 days prior to bid solicitation is an impractical requirement to apply to emergency procurements, and that the Service Contract Act (SCA) regulations allow no exceptions for such procurements.

On the contrary, Section 4.4(e) of the SCA regulations provides that if "exceptional circumstances" prevent a timely notice, a notice shall be filed "as soon as practicable", and the instructions on the SF-98 itself state that where there "is urgent need for some expeditious handling", this should be explained on the notice. In addition, Section 4.5(c) of the regulations provides that where an SF-98 is not filed on a timely basis, the agency is to take appropriate steps to retroactively incorporate the applicable wage determination into the contract. Using these instructions and telephone contacts with Department of Labor personnel, Federal agencies frequently award emergency contracts with a provision that a wage determination has been requested and will be incorporated by contract modification upon receipt. The Department typically is able to fulfill requests for wage determinations under such circumstances on a priority basis, usually within 1-5 days. These procedures and other cooperative arrangements, have been established with a number of procurement agencies, including Air Force, HUD, FEMA, and EPA for such emergency situations and have, in our opinion, worked very well over the years.

Further, Section 4.4(f) of proposed revisions to the SCA regulations would advise the agencies, as GAO notes, to contact the Department of Labor by telephone in emergency situations for guidance. The Department believes that the current procedures and cooperative efforts as well as the clarifying instructions in the proposed regulations provide a practical means to accommodate those cases where the public exigency requires an immediate award. (See GAO note.)

GAO concludes that emergency procurements should be exempt from the SCA, apparently on the grounds of exigency, and cites in support of its conclusion, an exemption for such procurements under the "open market" provisions of Section 9 of the Walsh-Healey Public Contracts Act (PCA). The Department disagrees. As noted above, the Department believes that practical means for including SCA provisions in emergency procurements already exist and would be improved by pending regulatory changes. Moreover, since the SCA does not contain a statutory exemption for emergency procurements (as does the PCA) it can be reasonably assumed that Congress intended such contracts to be covered by the Act. It is also noted that the Department has not "concluded", as GAO alleges, that the PCA exemption in question "had no material effect on labor conditions." The Department's actions regarding the PCA open market exemption were limited to promulgating regulations implementing Congressional intent, clearly stated in the legislative history, that the PCA should not apply to those contracts where the public exigency requires the immediate delivery of goods. Thus, GAO's statement that "Labor" exempted such contracts is misleading. (See GAO note.)

It is extremely significant to note that the Department has never received any formal requests from an agency for an exemption for emergency contracts under Section 4(b) of the SCA.

With respect to the timely filing of wage determination requests, GAO found that in 60 percent of the procurements examined, SF-98s were not submitted on a timely basis. Even assuming, as GAO implies, that for a variety of reasons agencies were able to include wage determinations in most cases, untimely submission causes significant problems which GAO overlooks. First, our experience has been that in some cases, wage determinations are never included in the contract, leaving employees without statutorily required prevailing labor standards protections. Second, modifying solicitations and contracts to incorporate wage determinations places a burden on contracting agencies, bidders who must refigure costs, and contractors who must negotiate contract price adjustments. Third, the orderly administration by DOL of its wage determination functions is disrupted and made extremely difficult when large numbers of wage determinations

GAO note: Labor's proposed regulations, published on August 14, 1981, were discussed in various sections of a draft of this report which was submitted to Labor for review and comment. We have deleted discussion of the proposed regulations from this report because we will be addressing them in the broader context of the act's overall administration and impact in a proposed report to the Congress which is now in process.

APPENDIX IV

must be issued in a short period of time. Thus, GAO is incorrect in implying that untimely submissions place no burden on DOL just because it "did not cite in its responses to the agencies any problems that untimely SF-98 submission may have caused."

With respect to other aspects of the report, the Department believes that, with few exceptions, the allegations of inconsistency in DOL coverage rulings since the SCA regulations were issued in 1968 are not supported by the information in the report. In fact, except for the question of the application of the SCA to equipment overhaul contracts, which GAO acknowledges would be corrected by the proposed regulations, we feel that the current regulations do provide accurate guidance for the proper application of the Act by the contracting agencies. (See GAO note on p. 35.)

With respect to GAO's assertion that widespread noncompliance by Federal agencies with certain of their responsibilities in administering the Act has had no adverse impact on the labor standards protections for affected employees, the Department finds no proof offered in the report for such a conclusion.

The Department notes that GAO characterizes the current report as a partial follow-up to its 1978 report dealing with agency compliance with the Act and the regulations. The report also found widespread agency noncompliance, concluded that the SCA regulations provided adequate guidance, and that noncompliance resulted both from unfamiliarity of procurement personnel with the regulations and from carelessness, oversight and lack of management control. At the time, GAO made a number of recommendations for corrective action by agencies. In light of this, GAO does not explain the differences in its current conclusions regarding similar agency noncompliance and the current lack of recommendations for corrective actions by the agencies.

Finally, with regard to the issue of submission of contract award notices, the Department is nearing completion of a project begun a number of months ago that will result in the submission of contract award information to DOL through the Federal Procurement Data System (FPDS) rather than through the current procedure of the filing of SF-99s by contracting agencies. Upon completion of a test to verify the accuracy and utility of FPDS generated data, use of the SF-99 will be discontinued. In addition, the data generated by the FPDS may also enable DOL to identify contracts subject to the SCA which are awarded without wage determinations and to direct Federal agencies to take appropriate corrective action.

GAO note: Two pages of additional comments of a technical or editorial nature have been deleted from this appendix. However, changes were made throughout the report to recognize these comments.

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