

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3812.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
6702(a)	41:351(a) (words before par. (1) related to applicability).	Pub. L. 89-286, §2(a) (words before par. (1) related to applicability), Oct. 22, 1965, 79 Stat. 1034; Pub. L. 94-489, §1(a), Oct. 13, 1976, 90 Stat. 2358.
6702(b)	41:356.	Pub. L. 89-286, §7, Oct. 22, 1965, 79 Stat. 1035.

In subsection (b)(2), the words “the Walsh-Healey Public Contracts Act (49 Stat. 2036)”, which appear in section 7(2) of Public Law 89-286 (79 Stat. 1036), are treated as a reference to the Act of June 30, 1936 (ch. 881, 49 Stat. 2036), which was known as the Walsh-Healey Act and which was subsequently designated as the Walsh-Healey Act by section 12 of the Act of June 30, 1936, which was added by section 10005(f)(5) of Public Law 103-355 (108 Stat. 3409).

In subsection (b)(7), the words “United States Postal Service” are substituted for “Post Office Department” because of sections 4(a) and 6(o) of the Postal Reorganization Act (Public Law 91-375, 84 Stat. 773, 783, 39 U.S.C. note prec. 101, 201 note).

REFERENCES IN TEXT

The Communications Act of 1934, referred to in subsec. (b)(4), is act June 19, 1934, ch. 652, 48 Stat. 1064, which is classified principally to chapter 5 (§151 et seq.) of Title 47, Telecommunications. For complete classification of this Act to the Code, see section 609 of Title 47 and Tables.

§ 6703. Required contract terms

A contract, and bid specification for a contract, to which this chapter applies under section 6702 of this title shall contain the following terms:

(1) MINIMUM WAGE.—The contract and bid specification shall contain a provision specifying the minimum wage to be paid to each class of service employee engaged in the performance of the contract or any subcontract, as determined by the Secretary or the Secretary’s authorized representative, in accordance with prevailing rates in the locality, or, where a collective-bargaining agreement covers the service employees, in accordance with the rates provided for in the agreement, including prospective wage increases provided for in the agreement as a result of arm’s length negotiations. In any case the minimum wage may not be less than the minimum wage specified in section 6704 of this title.

(2) FRINGE BENEFITS.—The contract and bid specification shall contain a provision specifying the fringe benefits to be provided to each class of service employee engaged in the performance of the contract or any subcontract, as determined by the Secretary or the Secretary’s authorized representative to be prevailing in the locality, or, where a collective-bargaining agreement covers the service employees, to be provided for under the agreement, including prospective fringe benefit increases provided for in the agreement as a result of arm’s-length negotiations. The 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 fide fringe benefits not otherwise required by Federal, State, or local law to be provided by the contractor or subcontractor. The obligation under this paragraph may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under regulations established by the Secretary.

(3) WORKING CONDITIONS.—The contract and bid specification shall contain a provision specifying that no part of the services covered by this chapter may 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 provide the services.

(4) NOTICE.—The contract and bid specification shall contain a provision specifying that on the date a service employee begins work on a contract to which this chapter applies, the contractor or subcontractor will deliver to the employee a notice of the compensation required under paragraphs (1) and (2), on a form prepared by the Federal agency, or will post a notice of the required compensation in a prominent place at the worksite.

(5) GENERAL SCHEDULE PAY RATES AND PREVAILING RATE SYSTEMS.—The contract and bid specification shall contain a statement of the rates that would be paid by the Federal agency to each class of service employee if section 5332 or 5341 of title 5 were applicable to them. The Secretary shall give due consideration to these rates in making the wage and fringe benefit determinations specified in this section.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3812.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
6703	41:351(a) (words before par. (1) related to required contract terms), (1)-(5).	Pub. L. 89-286, §2(a) (words before par. (1) related to required contract terms), (1)-(5), Oct. 22, 1965, 79 Stat. 1034; Pub. L. 92-473, §§1, 2, Oct. 9, 1972, 86 Stat. 789; Pub. L. 94-489, §2, Oct. 13, 1976, 90 Stat. 2358.

EX. ORD. NO. 13495. NONDISPLACEMENT OF QUALIFIED WORKERS UNDER SERVICE CONTRACTS

Ex. Ord. No. 13495, Jan. 30, 2009, 74 F.R. 6103, provided: When a service contract expires, and a follow-on contract is awarded for the same service, at the same location, the successor contractor or its subcontractors often hires the majority of the predecessor’s employees. On some occasions, however, a successor contractor or its subcontractors hires a new work force, thus displacing the predecessor’s employees.

The Federal Government’s procurement interests in economy and efficiency are served when the successor contractor hires the predecessor’s employees. A carry-over work force reduces disruption to the delivery of services during the period of transition between contractors and provides the Federal Government the benefits of an experienced and trained work force that is familiar with the Federal Government’s personnel, facilities, and requirements.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.*, and in order to promote economy and efficiency in Federal Government procurement, it is hereby ordered as follows:

SECTION 1. Policy. It is the policy of the Federal Government that service contracts and solicitations for such contracts shall include a clause that requires the contractor, and its subcontractors, under a contract that succeeds a contract for performance of the same or similar services at the same location, to offer those employees (other than managerial and supervisory employees) employed under the predecessor contract whose employment will be terminated as a result of the award of the successor contract, a right of first refusal of employment under the contract in positions for which they are qualified. There shall be no employment openings under the contract until such right of first refusal has been provided. Nothing in this order shall be construed to permit a contractor or subcontractor to fail to comply with any provision of any other Executive Order or law of the United States.

SEC. 2. Definitions.

(a) "Service contract" or "contract" means any contract or subcontract for services entered into by the Federal Government or its contractors that is covered by the Service Contract Act of 1965, as amended, 41 U.S.C. 351 *et seq.*, and its implementing regulations.

(b) "Employee" means a service employee as defined in the Service Contract Act of 1965, 41 U.S.C. 357(b).

SEC. 3. Exclusions. This order shall not apply to:

(a) contracts or subcontracts under the simplified acquisition threshold as defined in 41 U.S.C. 403;

(b) contracts or subcontracts awarded pursuant to the Javits-Wagner-O'Day Act, 41 U.S.C. 46-48c;

(c) guard, elevator operator, messenger, or custodial services provided to the Federal Government under contracts or subcontracts with sheltered workshops employing the severely handicapped as described in section 505 of the Treasury, Postal Services [sic] and General Government Appropriations Act, 1995, Public Law 103-329;

(d) agreements for vending facilities entered into pursuant to the preference regulations issued under the Randolph-Sheppard Act, 20 U.S.C. 107; or

(e) employees who were hired to work under a Federal service contract and one or more nonfederal service contracts as part of a single job, provided that the employees were not deployed in a manner that was designed to avoid the purposes of this order.

SEC. 4. Authority to Exempt Contracts. If the head of a contracting department or agency finds that the application of any of the requirements of this order would not serve the purposes of this order or would impair the ability of the Federal Government to procure services on an economical and efficient basis, the head of such department or agency may exempt its department or agency from the requirements of any or all of the provisions of this order with respect to a particular contract, subcontract, or purchase order or any class of contracts, subcontracts, or purchase orders.

SEC. 5. Contract Clause. The following contract clause shall be included in solicitations for and service contracts that succeed contracts for performance of the same or similar work at the same location:

"NONDISPLACEMENT OF QUALIFIED WORKERS"

"(a) Consistent with the efficient performance of this contract, the contractor and its subcontractors shall, except as otherwise provided herein, in good faith offer those employees (other than managerial and supervisory employees) employed under the predecessor contract whose employment will be terminated as a result of award of this contract or the expiration of the contract under which the employees were hired, a right of first refusal of employment under this contract in positions for which employees are qualified. The contractor and its subcontractors shall determine the number of employees necessary for efficient performance of this contract and may elect to employ fewer employees

than the predecessor contractor employed in connection with performance of the work. Except as provided in paragraph (b) there shall be no employment opening under this contract, and the contractor and any subcontractors shall not offer employment under this contract, to any person prior to having complied fully with this obligation. The contractor and its subcontractors shall make an express offer of employment to each employee as provided herein and shall state the time within which the employee must accept such offer, but in no case shall the period within which the employee must accept the offer of employment be less than 10 days.

"(b) Notwithstanding the obligation under paragraph (a) above, the contractor and any subcontractors (1) may employ under this contract any employee who has worked for the contractor or subcontractor for at least 3 months immediately preceding the commencement of this contract and who would otherwise face lay-off or discharge, (2) are not required to offer a right of first refusal to any employee(s) of the predecessor contractor who are not service employees within the meaning of the Service Contract Act of 1965, as amended, 41 U.S.C. 357(b), and (3) are not required to offer a right of first refusal to any employee(s) of the predecessor contractor whom the contractor or any of its subcontractors reasonably believes, based on the particular employee's past performance, has failed to perform suitably on the job.

"(c) In accordance with Federal Acquisition Regulation 52.222-41(n), the contractor shall, not less than 10 days before completion of this contract, furnish the Contracting Officer a certified list of the names of all service employees working under this contract and its subcontracts during the last month of contract performance. The list shall also contain anniversary dates of employment of each service employee under this contract and its predecessor contracts either with the current or predecessor contractors or their subcontractors. The Contracting Officer will provide the list to the successor contractor, and the list shall be provided on request to employees or their representatives.

"(d) If it is determined, pursuant to regulations issued by the Secretary of Labor (Secretary), that the contractor or its subcontractors are not in compliance with the requirements of this clause or any regulation or order of the Secretary, appropriate sanctions may be imposed and remedies invoked against the contractor or its subcontractors, as provided in Executive Order (No.) _____ [13495], the regulations, and relevant orders of the Secretary, or as otherwise provided by law.

"(e) In every subcontract entered into in order to perform services under this contract, the contractor will include provisions that ensure that each subcontractor will honor the requirements of paragraphs (a) through (b) with respect to the employees of a predecessor subcontractor or subcontractors working under this contract, as well as of a predecessor contractor and its subcontractors. The subcontract shall also include provisions to ensure that the subcontractor will provide the contractor with the information about the employees of the subcontractor needed by the contractor to comply with paragraph 5(c), above. The contractor will take such action with respect to any such subcontract as may be directed by the Secretary as a means of enforcing such provisions, including the imposition of sanctions for non-compliance: provided, however, that if the contractor, as a result of such direction, becomes involved in litigation with a subcontractor, or is threatened with such involvement, the contractor may request that the United States enter into such litigation to protect the interests of the United States."

SEC. 6. Enforcement. (a) The Secretary of Labor (Secretary) is responsible for investigating and obtaining compliance with this order. In such proceedings, the Secretary shall have the authority to issue final orders prescribing appropriate sanctions and remedies, including, but not limited to, orders requiring employment and payment of wages lost. The Secretary also may provide that where a contractor or subcontractor has

failed to comply with any order of the Secretary or has committed willful violations of this order or the regulations issued pursuant thereto, the contractor or subcontractor, and its responsible officers, and any firm in which the contractor or subcontractor has a substantial interest, shall be ineligible to be awarded any contract of the United States for a period of up to 3 years. Neither an order for debarment of any contractor or subcontractor from further Government contracts under this section nor the inclusion of a contractor or subcontractor on a published list of noncomplying contractors shall be carried out without affording the contractor or subcontractor an opportunity for a hearing.

(b) This order creates no rights under the Contract Disputes Act [of 1978] [see 41 U.S.C. 7101 et seq.], and disputes regarding the requirement of the contract clause prescribed by section 5 of this order, to the extent permitted by law, shall be disposed of only as provided by the Secretary in regulations issued under this order. To the extent practicable, such regulations shall favor the resolution of disputes by efficient and informal alternative dispute resolution methods. The Secretary shall, in consultation with the Federal Acquisition Regulatory Council, issue regulations, within 180 days of the date of this order, to the extent permitted by law, to implement the requirements of this order. The Federal Acquisition Regulatory Council shall issue, within 180 days of the date of this order, to the extent permitted by law, regulations in the Federal Acquisition Regulation to provide for inclusion of the contract clause in Federal solicitations and contracts subject to this order.

SEC. 7. *Revocation.* Executive Order 13204 of February 17, 2001, is revoked.

SEC. 8. *Severability.* If any provision of this order, or the application of such provision or amendment to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstances shall not be affected thereby.

SEC. 9. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) authority granted by law to an executive department, agency, or the head thereof; or
- (ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. This order is not intended, however, to preclude judicial review of final decisions by the Secretary in accordance with the Administrative Procedure Act, 5 U.S.C. 701 et seq.

SEC. 10. *Effective Date.* This order shall become effective immediately and shall apply to solicitations issued on or after the effective date for the action taken by the Federal Acquisition Regulatory Council under section 6(b) of this order.

BARACK OBAMA.

§ 6704. Limitation on minimum wage

(a) IN GENERAL.—A contractor that makes a contract with the Federal Government, the principal purpose of which is to furnish services through the use of service employees, and any subcontractor, may not pay less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) to an employee engaged in performing work on the contract.

(b) VIOLATIONS.—Sections 6705 to 6707(d) of this title are applicable to a violation of this section.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3813.)

HISTORICAL AND REVISION NOTES

<i>Revised Section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
6704	41:351(b).	Pub. L. 89-286, §2(b), Oct. 22, 1965, 79 Stat. 1034; Pub. L. 94-489, §1(b), Oct. 13, 1976, 90 Stat. 2358.

§ 6705. Violations

(a) LIABILITY OF RESPONSIBLE PARTY.—A party responsible for a violation of a contract provision required under section 6703(1) or (2) of this title or a violation of section 6704 of this title is liable for an amount equal to the sum of any deduction, rebate, refund, or underpayment of compensation due any employee engaged in the performance of the contract.

(b) RECOVERY OF AMOUNTS UNDERPAID TO EMPLOYEES.—

(1) WITHHOLDING ACCRUED PAYMENTS DUE ON CONTRACTS.—The total amount determined under subsection (a) to be due any employee engaged in the performance of a contract may be withheld from accrued payments due on the contract or on any other contract between the same contractor and the Federal Government. The amount withheld shall be held in a deposit fund. On order of the Secretary, the compensation found by the Secretary or the head of a Federal agency to be due an underpaid employee pursuant to this chapter shall be paid from the deposit fund directly to the underpaid employee.

(2) BRINGING ACTIONS AGAINST CONTRACTORS.—If the accrued payments withheld under the terms of the contract are insufficient to reimburse a service employee with respect to whom there has been a failure to pay the compensation required pursuant to this chapter, the Federal Government may bring action against the contractor, subcontractor, or any sureties in any court of competent jurisdiction to recover the remaining amount of underpayment. Any amount recovered shall be held in the deposit fund and shall be paid, on order of the Secretary, directly to the underpaid employee. Any amount not paid to an employee because of inability to do so within 3 years shall be covered into the Treasury as miscellaneous receipts.

(c) CANCELLATION AND ALTERNATIVE COMPLETION.—In addition to other actions in accordance with this section, when a violation of any contract stipulation is found, the Federal agency that made the contract may cancel the contract on written notice to the original contractor. The Federal Government may then make other contracts or arrangements for the completion of the original contract, charging any additional cost to the original contractor.

(d) ENFORCEMENT OF SECTION.—In accordance with regulations prescribed pursuant to section 6707(a)–(d) of this title, the Secretary or the head of a Federal agency may carry out this section.

(Pub. L. 111-350, §3, Jan. 4, 2011, 124 Stat. 3814.)