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# Government Contracts: Service Contract Labor Standards Compliance

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A Practice Note addressing the Service Contract Labor Standards (SCLS), which address wage and fringe benefit requirements for certain service employees. This Note discusses the scope and coverage of the SCLS, obligations of federal government contractors and subcontractors under contracts subject to the SCLS, and the consequences of failure to comply.

Companies performing service-based contracts for the federal government may be required to comply with the Service Contract Labor Standards (SCLS) (formerly the Service Contracts Act), which set out wage and fringe benefit requirements for certain service employees. Government prime contractors and subcontractors subject to the SCLS must understand their compliance obligations, including payment of minimum wages and fringe benefits, provision of sick leave, posting notices, and recordkeeping obligations. A failure to comply with the SCLS can result in the repayment of back wages, as well as criminal penalties, civil False Claims Act liability, and suspension or debarment.

This Note provides an overview of:

- The scope and coverage of the SCLS.
- Compliance obligations for federal prime contractors and subcontractors with contracts subject to the SCLS.
- Penalties and other consequences for failure to comply with the SCLS.

## SCLS Scope and Coverage

The SCLS applies to contracts issued by the federal government in an amount exceeding $2,500, when the principal purpose of the contract is to furnish services to the federal government in the United States using "service employees" (41 U.S.C. § 6702; 29 C.F.R. § 4.110; Federal Acquisition Regulation (FAR) 22.1003-1).

This requirement flows down to subcontracts at all tiers if the primary purpose of the subcontract is to perform services in the United States using service employees.

Services are performed in the United States if they are performed in:

- Any state of the United States.
- The District of Columbia.
- Puerto Rico.
- The Virgin Islands.
- Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act.
- American Samoa.
- Guam.
- The Commonwealth of the Northern Mariana Islands.
- Wake Island.
- Johnston Island.

(29 C.F.R. § 4.112.)

### Principal Purpose of the Contract

Whether the principal purpose of a federal prime contract or subcontract is the provision of services is a fact-specific determination. Even if performance of the contract involves the supply of tangible items of substantial value, and the items are important elements of the contract, they still may be of secondary importance to the furnishing of services, meaning the principal purpose of the contract may still be to provide services. Conversely, the inclusion of incidental services in a contract for the supply of products does not subject the contract to the SCLS. Further, the principal purpose of the contract, not

the nomenclature type or specific form of contract used, governs the applicability of the SCLS. (29 C.F.R. § 4.111(a).)

A contracting agency notifies federal prime contractors of its determination that the SCLS applies by:

- Including in the solicitation and contract the language in FAR 52.222-41.
- Attaching to the solicitation and contract, or incorporating by reference in the solicitation or contract, the applicable US Department of Labor (DOL) wage determination.

(48 C.F.R. 22.1006(a), (c).)

Examples of service contracts subject to the SCLS include, but are not limited to:

- Motor pool operation, parking taxicab, and ambulance services.
- Packing, crating, and storage.
- Custodial, janitorial, housekeeping, and guard services.
- Food service and lodging.
- Laundry, dry-cleaning, linen-supply, and clothing alteration and repair services.
- Snow, trash, and garbage removal.
- Aerial spraying and aerial reconnaissance for fire detection.
- Some support services at installations, including grounds maintenance and landscaping.
- Certain specialized services requiring specific skills, such as drafting, illustrating, graphic arts, stenographic reporting, or mortuary services.
- Electronic equipment maintenance and operation and engineering support services.
- Maintenance and repair of all types of equipment, for example, aircraft, engines, electrical motors, vehicles, and electronic, office, and related business and construction equipment (with some exemptions) (see Maintenance, Calibration, or Repair of Certain Equipment).
- Operation, maintenance, or logistics support of a federal facility.
- Data collection, processing, and analysis services.

(29 C.F.R. § 4.130; FAR 22.1003-5.)

Contracts for the repair of damaged or broken equipment that "does not require a complete teardown, overhaul, and rebuild" or for routine maintenance services are covered by the SCLS (FAR 22.1003-6(b)). Contracts for remanufacturing involving work so extensive that it is considered to be the equivalent of manufacturing are not subject to the SCLS (FAR 22.1003-6(a)).

## Exemptions

Federal prime contracts and subcontracts for the following services are exempt from the SCLS:

- Construction, alteration, or repair of public buildings or public works, including painting and decorating. These services are covered by the Davis-Bacon Act (40 U.S.C. §§ 3141 to 3148). For more information on the Davis-Bacon Act, see Practice Note, Davis-Bacon Act: Overview.
- The transportation of freight or personnel by vessel, aircraft, bus, truck, express, railroad, or oil and gas pipeline, when published tariff rates apply.
- The provision of services by radio, telephone, or cable companies subject to the Communications Act of 1934.
- Public utility services.
- Direct services to a federal agency under an employment contract by an individual or individuals.
- The operation of postal contract stations for the US Postal Service.

(FAR 22.1003-3.)

### Maintenance, Calibration, or Repair of Certain Equipment

The DOL has exempted from the SCLS contracts for the maintenance, calibration, or repair of:

- Automated data processing equipment and office information/word processing systems.
- Certain scientific equipment and medical apparatus or equipment.
- Certain other office or business machines if the manufacturer or supplier of the equipment performs the services.

To meet the requirements of this exemption, a contractor must certify that:

- The equipment that the contractor will service is regularly used for other than government purposes.
- The equipment is sold by the contractor in substantial quantities to the general public in the normal course of the contractor's business operations.

- The services are furnished at catalog or market prices.
- The employees performing the services for the government have the same compensation plan (wage and fringe benefits) that the contractor uses for its other employees who service the same equipment for commercial customers.

(FAR 22.1003-4(c).)

The contractor makes this certification in its proposal or in its System for Award Management (SAM) registration to comply with FAR 52.222-48. If the agency's contracting officer accepts the exemption, the awarded contract will contain the language in FAR 52.222-51 (exempting the contractor from the SCLS).

### Other Specified Services

The DOL has also exempted from the SCLS contracts for:

- Automobile or other vehicle maintenance services, including aircraft maintenance services.
- Financial services that involve the issuance and servicing of cards, such as credit cards and debit cards.
- Hotel and motel services for conferences, including lodging and meals for the conference.
- Maintenance, calibration, repair, or installation services performed by the manufacturer or supplier of the equipment, when the contract is awarded on a sole-source basis.
- Transportation services by common carrier by air, motor vehicle, rail, or marine vessel on regularly scheduled routes.
- Real estate services, such as appraisal services or disposition of government-owned property.
- Relocation services for federal employees or military personnel buying and selling homes, including real estate broker and appraisal services, but excluding services to move or store household goods.

(FAR 22.1003-4(d).)

To qualify for this exemption, the contract must be awarded on factors other than price or cost alone, or the contract must be awarded on a sole-source basis. Additionally, the contractor must certify that:

- The services are offered and sold on a regular basis to commercial (non-government) customers.
- The services are provided by the contractor to the general public in substantial quantities as part of the contractor's normal course of business.
- The services are based on established catalog or market prices.
- Each service employee performing services for the government under the contract must spend less than a monthly average of 20% of their time, on an annualized basis, performing work on the government contract.
- The contractor uses the same compensation plan for the service employees working on the government contract as for the employees working on the commercial contracts.

(FAR 22.1003-4(d).)

The contractor makes this certification in its proposal or in its SAM registration to comply with FAR 52.222-52. If the contracting officer accepts the exemption, the awarded contract will contain the language in FAR 52.222-53 (exempting the contractor from the SCLS).

The contracting officer is required to determine the applicability of these exemptions before making an award, but if the DOL later determines that the exemption does not apply, the contract becomes subject to the SCLS effective on the date the DOL makes the determination. (FAR 22.1003-4(c), (d).)

## Service Employees

The SCLS applies only to services performed by "service employees." Service employees are employees, including independent contractors, who perform services within the United States and its outlying areas under a service contract. Employees and independent contractors who perform services in a bona fide executive, administrative, or professional capacity and who are exempt from the Fair Labor Standards Act (FLSA) are not service employees under the SCLS. (41 U.S.C. § 6701(3); 29 C.F.R. § 4.113; FAR 22.001.) For more information about the FLSA, see Practice Note, Fair Labor Standards Act (FLSA) for Federal Sector Employees.

# Compliance Obligations for Federal Prime Contractors and Subcontractors

If a service contract is subject to the SCLS, federal prime contractors and subcontractors must comply with certain requirements for:

- Wage and fringe benefits in accordance with the applicable DOL wage determination (see Minimum Wages, Fringe Benefits, and DOL Wage Determinations).

- Federal minimum wage (see Federal Minimum Wage).
- Paid sick leave (see Paid Sick Leave).
- Safe and sanitary working conditions (see Safe and Sanitary Working Conditions).
- Posting of notices (see Notice Requirements).
- Recordkeeping (see Recordkeeping Requirements).

## Minimum Wages

Under a government contract that is subject to the SCLS, federal prime contractors and subcontractors must pay their service employees working on the contract minimum monetary wages specified in the DOL wage determination applicable to the contract. DOL wage determinations provide different minimum monetary wage requirements based on both:

- The labor category of the employee performing the services.
- The location in which the services are performed.

(FAR 52.222-41(c).)

A key element of complying with the SCLS involves mapping each employee to the appropriate labor category in the DOL wage determination. The DOL has a published list of occupations to assist contractors in properly categorizing employees.

Determining the right labor category is a fact-specific inquiry. If a contractor does not find an appropriate labor category in a wage determination for the services to be performed by one or more of its employees, the contractor can request a conformance from the contracting officer before the employees begin work on the contract. The conformance identifies the labor category that the contractor can use for its employees.

The contracting officer then submits the request for conformance to the DOL. (FAR 52.222-41(c)(2)(ii).) This is a lengthy process and the DOL may not accept the contractor's requested conformance. Contractors should keep detailed records of their rationale for their mapping decisions when the mapping is unclear or ambiguous.

Federal prime contractors and subcontractors subject to the SCLS must pay the wages specified in the DOL wage determination starting on the first day the service employee performs work on the covered contract. Contractors may not:

- Pay wages to their services employees later than one pay period following the end of the pay period in which the service employee earned the wages.
- Deduct from wages, except as otherwise provided by law or regulation.

(FAR 52.222-41(j).)

Contractors are required to pay a service employee the minimum wages specified in the DOL wage determination only for the work the employee performs on an SCLS-covered contract. If a contractor compensates employees differently for the time they spend on the SCLS and non-SCLS covered contracts, the contractor must require their employees to closely track the time they spend on SCLS-covered and non-SCLS-covered contracts.

## Fringe Benefits

Contractors subject to the SCLS must also pay their service employees minimum fringe benefits, including health and welfare benefits, vacation time, and paid holidays, as specified in the applicable DOL wage determination (29 C.F.R. §4.170(a)). Some labor categories may also be subject to hazardous pay differentials or uniform allowances.

Contractors may furnish fringe benefits in kind or in cash, or a combination of the two (29 C.F.R. §4.170(a)). If a contractor chooses to furnish fringe benefits in cash, the contractor must:

- Pay the employee the "cash equivalent" of the fringe benefits identified in the applicable DOL wage determination.
- Ensure that payments for fringe benefits are separately identified in the contractor's pay records to ensure the contractor is not offsetting any part of the employee's wages to accommodate the fringe benefit payments.

(29 C.F.R. §§ 4.170(a) and 4.177.) Further, federal prime contractors and subcontractors may pay certain fringe benefits, such as pension, retirement, or health insurance, to an existing bona fide plan or fund rather than directly to the employee (29 C.F.R. § 4.170(b)).

## DOL Wage Determinations

The contracting officer must identify the DOL wage determination applicable to a government prime contract depending on the location where the work will be performed (FAR 22.1009-2). If the contract involves the performance of services in multiple locations, the contracting officer must obtain from DOL a wage determination for each location where services may be performed (FAR 22.1009-3). Contractors can request that the contracting officer obtain DOL wage determinations for additional performance locations and should ensure

these wage determinations are incorporated in the resulting solicitation and contract (FAR 22.1009-4).

If the SCLS-covered contract has a term longer than one year, the contractor must adjust the wages and fringe benefits paid to service employees consistent with updated DOL wage determinations (FAR 52.222-43). These adjustments can occur after one year and will occur at least every two years (FAR 52.222-41(c)(3)).

Contracting officers are required to obtain new or updated DOL wage determinations for each contract modification that extends the contract or changes the scope of work under the contract in a manner that affects labor requirements (FAR 22.1007). Contracting officers are not always diligent about modifying government contracts to incorporate updated wage determinations, but the DOL can still require the contractor to comply with the adjusted wage and fringe benefit amounts (FAR 22.1015). Contractors should request that the government incorporate updated DOL wage determinations at the time the government exercises options to extend the contract and as part of other contract modifications.

As the DOL updates wage determinations, contractors may seek an equitable adjustment to their contract prices to reflect the changes. Contractors must notify the contracting officer within thirty days of receiving a new wage determination of any claimed increase in wages or fringe benefits and the resulting changes in hourly rates or contract price. (FAR 52.222-43 and 52.222-44.)

### Collective Bargaining Agreements

A collective bargaining agreement (CBA) sometimes serves as the basis for a wage determination under the SCLS when:

- There is a predecessor contract subject to the SCLS.
- The incumbent prime contractor or its subcontractors and any of their employees have a CBA.
- The successor contractor is performing on a contract over $2,500 for substantially the same services in the same locality as the predecessor contract.

(41 U.S.C. § 6707(c); FAR 22.1002-3 and 22.1008-2.)

Under these circumstances, the successor contractor must pay wages and fringe benefits at least equal to those in the CBA entered into under the predecessor contract (FAR 22.1008-2(b)). These wage and fringe benefit requirements are self-executing, and the government is not required to incorporate the wage determination or the predecessor contractor's CBA in the successor's contract (FAR 22.1002-3).

The obligation of the successor contractor is limited to the wage and fringe benefit requirements of the predecessor's CBA and does not extend to other items, such as seniority, grievance procedures, work rules, or overtime. Some exceptions to this requirement apply, including if the DOL determines that the wages and fringe benefits are substantially different from prevailing wages and fringe benefits for similar services in the locality, or that the wages and fringe benefits are not the result of arm's-length negotiations. (41 U.S.C. § 6707(c); FAR 22.1002-3 and 22.1008-2.)

## Federal Minimum Wage

In addition to paying the minimum wages and fringe benefits specified in DOL wage determinations, contractors must ensure that service employees working under SCLS-covered contracts are paid no less than the FLSA minimum wage and the federal minimum wage established in Executive Orders 13658 (Establishing a Minimum Wage for Contractors, 79 Fed. Reg. 9851 (Feb. 12, 2014)) and 14026 (Increasing the Minimum Wage for Federal Contractors, 86 Fed. Reg. 22,835 (Apr. 27, 2021)). (FAR 22.1002-4 and 22.1002-5.) Contracts subject to the SCLS include language from FAR 52.222-55 and Executive Order 14026, which requires contractors to pay employees working in the United States on or in connection with the contract the federal minimum hourly wage (FAR 22.1901).

Employees work "on a contract" if they directly perform the services required by the contract. The phrase "in connection with" the contract includes services of employees who perform work "necessary to the performance of the contract" but who are not directly engaged in performing the work required by the contract. (FAR 22.1901.)

Contractors do not need to pay the federal minimum wage to FLSA-covered individuals who perform work in connection with the contract and spend less than 20% of their hours in a work week performing work in connection with the covered contract. Contractors are not required to pay the federal minimum wage to employees exempt from the minimum wage requirements of the FLSA, including those employed in a bona fide executive, administrative, or professional capacity. (FAR 52.222-55(c).)

If the federal minimum wage increases during the period of performance for a service contract subject to the SCLS, the minimum payable wage for service employees also increases on the date the new federal minimum wage becomes effective (FAR 52.222-55(b)(2)). Contractors can

seek price adjustments following the effective date of the new minimum wage determination based on the increase in the minimum wage and associated labor costs for subcontractors. These adjustments:

- Can include increases or decreases in social security or unemployment taxes and workers' compensation insurance.
- Do not include any amounts for general and administrative costs, overhead, or profit.

(FAR 52.222-55(b)(3).)

Through its acceptance of a contract containing FAR 52.222-43 or FAR 52.222-44 clauses, a contractor warrants to the government that its prices do not include any contingencies for potential increases in minimum wages.

## Paid Sick Leave

Contractors subject to the SCLS must also provide employees working on or in connection with the SCLS-covered contract paid sick leave under Executive Order 13706 (Establishing Paid Sick Leave for Federal Contractors, 80 Fed. Reg. 54,697 (Sept. 7, 2015)):

- If the employees are governed by the SCLS.
- Regardless of whether the employees are exempt from the FLSA.

(FAR 22.2102 and 22.2103.)

Employees performing work in connection with the contract and spending less than 20% of the work hours in a given work week on the contract are not entitled to paid sick leave. This exclusion does not apply to employees performing work on the contract (see Federal Minimum Wage for the definitions of work "on a contract" and work "in connection with" a contract). (FAR 22.2104.) Contracts subject to the SCLS contain the clause in FAR 52.222-62.

Employees entitled to paid sick leave accrue no less than 1 hour of paid sick leave for every 30 hours worked on or in connection with an SCLS-covered contract (FAR 22.2105 and 52.222-62). Contractors can provide employees with at least 56 hours of paid sick leave at the beginning of each accrual year instead of allowing the accrual of paid sick leave based on hours worked over time. Contractors can limit the accrual of paid sick leave to 56 hours in each accrual year, and paid sick leave must carry over from one year to the next without the carryover counting towards the following year's annual limit. (FAR 22.2105 and 52.222-62.)

Contractors also can limit an employee to having no more than 56 hours of paid sick leave at a given time. Contractors must permit employees to use their accrued sick leave on request, if the employee provides the contractor with information sufficient to identify an acceptable basis for the absence and, if feasible, the expected duration of the leave. If the leave extends beyond three consecutive full workdays, the contractor can require the employee to request certification from a health care professional to justify the leave. (FAR 22.2105 and 52.222-62.)

Contractors are prohibited from:

- Interfering with an employee's accrual or use of paid sick leave.
- Discharging or otherwise discriminating against an employee for:
  - using, or attempting to use, paid sick leave;
  - filing any complaint, initiating any proceeding, or otherwise asserting any claim under Executive Order 13706;
  - cooperating in an investigation or testifying in a proceeding under Executive Order 13706; or
  - informing another person about their rights under Executive Order 13706.

(29 C.F.R. § 13.6; FAR 22.2106.)

## Safe and Sanitary Working Conditions

Contractors subject to the SCLS may permit service employees to perform services only in safe buildings and under safe working conditions. Working conditions cannot be unsanitary, hazardous, or dangerous to the health or safety of service employees. (FAR 52.222-41(h).)

## Notice Requirements

Under the SCLS, federal prime contractors and subcontractors must also provide notices to their services employees regarding:

- Wage and fringe benefits (FAR 52.222-41(g)).
- Federal minimum wage (FAR 52.222-55(d)).
- Paid sick leave (FAR 52.222-62(k)).

Specifically, federal prime contractors and subcontractors must notify service employees of the minimum wage and fringe benefits and federal minimum wages to which they are entitled on the date the service employees begin performing work on a service contract subject to the SCLS by either:

- Providing the service employee with individual notice.
- Posting a copy of the wage determination in an accessible and prominent place at the worksite.

(FAR 52.222-41(g) and 52.222-55(d).)

Federal prime contractors and subcontractors must also post DOL Publication WH 1313 poster in a prominent and accessible place at the worksite. If the contractor routinely publishes notices electronically, the DOL notice can also be posted electronically if it is displayed prominently on the website maintained by the contactor and customarily used by employees to access similar information about terms and conditions of employment. (FAR 52.222-41(g) and 52.222-55(d).)

Federal prime contractors and subcontractors must also notify their service employees of their amount of accrued paid sick leave:

- At least once per pay period or month, whichever is shorter.
- When the service employee leaves employment with the federal prime contractor or subcontractor.
- When a federal prime contractor or subcontractor reinstates paid sick leave for a service employee.

(FAR 22.2105.)

Contractors must also post a notice provided by the DOL in a prominent and accessible place at the worksite. If the contractor routinely publishes notices electronically, the DOL notice also can be posted electronically if it is displayed prominently on the website maintained by the contactor and customarily used by employees to access similar information about terms and conditions of employment. (FAR 52.222-62(k).)

### Recordkeeping Requirements

For at least three years from the completion of work under a SCLS-covered contract, federal prime contractors and subcontractors must keep and make available for inspection records for each service employee that include:

- The employee's name, address, and social security number.
- The correct labor category or categories.
- The rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily or weekly compensation.
- The number of daily and weekly hours worked.
- Any deductions, rebates, or refunds from total daily or weekly compensation.
- A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to the contract.
- Any list of predecessor contractor employees furnished to the contractor.
- A copy of notifications to employees of the amount of paid sick leave accrued by the employee.
- Copies of employees' requests to use paid sick leave, if in writing, or other records reflecting an employee's request to use paid sick leave.
- Dates and amounts of paid sick leave taken by employees, including explanations for any denials of requests to use paid sick leave.
- Any health care documentation provided to support extended use of paid sick leave.
- Any financial payments made to an employee for unused paid sick leave at the employee's separation from employment.
- A certified list of the names of all service employees on the contractor's or subcontractor's payroll during the last month of the contract and the employees' anniversary dates for employment.
- The relevant SCLS-covered contract, contract modifications, and wage determinations.

(FAR 52.222-41, 52.222-55, and 52.222-62.)

### Flow-down Requirements

Prime contractors and higher-tier subcontractors must flow down all applicable FAR clauses to lower-tier service subcontracts if the principal purpose of the subcontract is the performance of services in the United States by service employees (FAR 52.222-41(l), 52.222-55(k), and 52.222-62(m)). Prime contractors and higher-tier subcontractors are responsible for their subcontractors' compliance with federal minimum wage requirements and can be held liable for unpaid wages due to subcontractor workers (FAR 52.222-55(j)).

## Failure to Comply and Penalties

### Common SCLS Violations

Some of the most common SCLS violations include:

- Underpayment of service workers due to misclassification.
- Misclassification of employees as exempt under the FLSA.

- Failure to make timely payment of wages or fringe benefit contributions.
- Lack of proper recordkeeping when cash payments are made to satisfy fringe benefit requirements.
- Failure to notify service employees of the applicable wage and fringe benefit requirements or failure to post other required notices in a prominent and accessible place at the worksite or electronically.
- Failure to use the conformance procedure for unlisted classes of employees.
- Failure to segregate and keep records on hours spent on contract work and non-contract work for employees who work on both.
- Failure to implement rate increases and a new wage determination in a multi-year contract subject to annual appropriations.

## Penalties and Other Consequences

Federal prime contractors and subcontractors can face several consequences for failure to comply with the SCLS, including:

- Repayment of back wages and fringe benefits (29 C.F.R. § 4.187; FAR 52.222-41(c)(2)(vi)).
- Withholding of money due to the federal prime contractor in an amount sufficient to cover back wages due employees, together with sanctions (29 C.F.R. § 4.187; FAR 22.1022).
- Termination of the contract for default (29 C.F.R. § 4.190; FAR 22.1023).
- Loss of eligibility for award of contracts for three years (29 C.F.R. § 4.188; FAR 22.1025).
- Criminal penalties under 18 U.S.C. § 1001 and FAR 52.222-41, which cover all false statements (oral and written) that might support fraudulent claims or that might pervert or corrupt the authorized functions of a government agency to which the statement is made. For there to be liability, the false statement must be made knowingly and willfully with an intent to deceive (but not necessarily an intent to defraud). Penalties can include:
  - imprisonment; and
  - fines for individuals and for companies.

  (18 U.S.C. § 1001.)
- Civil liability under the False Claims Act (31 U.S.C. § 3729). Claims under the civil False Claims Act include any attempt to get money from the government that is misleading or incorrect (for example, inaccurate certifications, claims, statements, or the like). Penalties for violating the civil False Claims Act include:
  - treble damages (three times the amount of the false claim); and
  - approximately $25,000 per false claim.

  (31 U.S.C. § 3729.) Private citizens with evidence of fraud against the government may file lawsuits in their own name, on behalf of themselves and the government, and keep up to 30% of the government's recovery (31 U.S.C. § 3730).
- If there are aggravated or willful violations, debarment for up to three years or suspension, which both:
  - prohibit the contractor's receipt of new federal government contracts for a specified period of time; and
  - may also affect state or local government and commercial contracts.

  (FAR 9.406-1 and 9.407-1.)