COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-200149

June 27, 1986

The Honorable Gordon J. Humphrey
United States Senate

Dear Senator Humphrey:

On March 27, 1986, you and several cosponsors introduced in the Senate S. 2261, the Service Contract Reform Act of 1986. This bill would amend the Service Contract Act (SCA) by revising the procedures the Department of Labor uses for determining prevailing wage rates under the act. In response to your request of April 22, 1986, we are providing our comments on S. 2261.

The SCA, which was enacted in 1965, protects the wages and benefits of employees of contractors and subcontractors furnishing services to the federal government. Specifically, the SCA requires that service employees working under federal contracts totaling more than $2,500 be paid wages and fringe benefits based upon the rates the Secretary of Labor determines as prevailing for service workers in the locality.

Over the past several years, we have made several reviews of the SCA. We have examined the economic and social bases for the act, the factors which influenced its passage and made a comprehensive review of the problems and impacts of SCA and its implementing regulations and procedures as administered and enforced by Labor. We have also developed information showing the inflationary and economic impact of the act.

In our most recent report on the SCA, which we issued in January 1983,[1] we recommended that the Congress consider repeal of the act because inherent problems existed in the act's administration; i.e., wage rates and fringe benefits set under the act are generally inflationary to the government; accurate determinations of prevailing wage rates and fringe benefits could not be made using existing data sources; and the data needed to accurately determine prevailing wage rates and fringe benefits would be very costly to develop.

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[1]The Congress Should Consider Repeal of the Service Contract Act (GAO/HRD-83-4, Jan. 31, 1983).

We recommended that the Congress consider repealing the act and amending the Fair Labor Standards Act to ensure continued federal minimum wage coverage for all employees on federal service contracts. We further recommended that, if the SCA were repealed, the administrator for federal procurement policy implement administrative procedures to protect the wages and fringe benefits of employees working on federal service contracts. Furthermore, if the administrator determined that repeal had an adverse impact on service workers, we recommended that he or she develop administrative policies or legislative remedies to correct the problem.

In an earlier report issued in September 1980,[2] we stated that the SCA should not apply to service employees of automated data processing and high-technology companies because the act was not intended to cover maintenance services related to commercial products acquired by the government. We recommended that the Congress act to exclude federal contracts for automated data processing and other high-technology commercial product-support services from SCA coverage.

Legislation would be required either to repeal or to modify the SCA in the ways we previously recommended. In the 97th, 98th, and 99th Congresses, several bills to amend the SCA were introduced; all but two and S. 2261 would have expanded SCA's coverage of either service employees or contracts. The Congress has not acted on any of these bills.

S. 2261

The bill would (1) increase the threshold of contracts covered from $2,500 to $200,000, (2) clearly state the act only covers contracts which, as a whole, are principally for services, (3) limit the applicability of the SCA successor contractor provisions, (4) define the terms "prevailing rates" and "locality" which are not now defined in the act, and (5) increase the contracts exempt from the act's wage determination requirements from contracts with 5 employees or less to contracts with 25 employees or less.

The proposed changes, if enacted by the Congress, would alleviate longstanding contract coverage and other problems we discussed in our September 1980 and January 1983 reports, such as noted below. S. 2261 would:

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[2]Service Contract Act Should Not Apply to Service Employees of ADP and High-Technology Companies (HRD-80-102, Sept. 16, 1980).

--Codify Labor's revised regulations that became effective January 27, 1984, which strictly interpret the act as applying only to contracts, the principal purpose of which are to furnish services in the United States through service employees. Under the regulations a contract will not be covered by the SCA unless the principal purpose of the contract, as a whole, is to provide services. Prior to the revised regulations, Labor applied the act to separate line items and specifications for services in contracts which were not otherwise principally for the purpose of furnishing services.

--Simplify and make the successor contract provision meaningful by permitting the successor contract wages to take effect--even if they are not the same as the union or collectively bargained rates in the predecessor contract--unless the successor contract wages are not prevailing, as determined by the Secretary of Labor, within the locality where the work is performed (Section 4). The current language of the act (Section 3(c)) operates in practice to require that union wage or collectively bargained rates in an existing service contract become the floor for all succeeding contracts.

--Define "prevailing rate" to mean the entire range of wages and benefits paid for similar jobs in the area where the service contract is performed (Section 5(c)). Thus, if the contract rate falls within the range of wages shown to be paid, the rate is deemed to be prevailing for purposes of the SCA. For example, if it is shown that the rates paid to food service workers within an area range from $4.50 to $6.50 an hour, any contract rate within that range would be considered prevailing. It should be noted that this is a minimum rate. Thus, in the example any rate less than $4.50 would not qualify as prevailing, but any rate over $6.50 would qualify if the service contract was awarded to the contractor paying such rates. Also, by defining the term "locality" (Section 5(b)) to mean "the particular urban or rural subdivision of a state in which work is performed," the bill will prevent the application of traditionally higher urban wage rates to a rural division and vice versa. The definition should also help to ensure that local prevailing rates are applied.

According to an analysis of S. 2261 by the Congressional Budget Office (CBO), substantial savings should result if the bill is enacted. CBO estimates a 5-year savings of $244 million

because the bill raises the contract threshold to $200,000 and a 5-year savings of $1 billion because the bill modifies the successor contractor provision.

We believe the bill's provisions should be enacted and that the dollar savings can be obtained without affecting the basic purposes of the SCA, which are to (1) protect service employees from being exploited and "wage busted" by unscrupulous employers and (2) ensure wages prevailing in the locality are paid to service contract employees.

Sincerely yours,

Charles A. Bowsher

Charles A. Bowsher
Comptroller General
of the Unites States