

# THE WALSH-HEALEY PUBLIC CONTRACTS ACT, AS AMENDED

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U.S. Department of Labor  
Employment Standards Administration  
Wage and Hour Division

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# THE WALSH-HEALEY PUBLIC CONTRACTS ACT, AS AMENDED<sup>1</sup>

AN ACT To provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacture or furnishing of materials, supplies, articles, and equipment in any amount exceeding \$10,000, there shall be included the following representations and stipulations:

(a) That the contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract;

(b) That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract;

(c) That no person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of forty hours in any one week: *Provided*, That the provisions of this subsection shall not apply to any employer who shall have entered into an agreement with his employees pursuant to the provisions of paragraphs 1 or 2 of subsection (b) of section 7 of an Act entitled "Fair Labor Standards Act of 1938".<sup>2</sup>

(d) That no male persons under sixteen years of age and no female person under eighteen years of age and no convict labor will be employed by the contractor in the

manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract; and

(e) That no part of such contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of said contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

SEC. 2. That any breach or violation of any of the representations and stipulations in any contract for the purposes set forth in section 1 hereof shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of such contract, the sum of \$10 per day for each male person under sixteen years of age or each female person under eighteen years of age, or each convict laborer knowingly employed in the performance of such contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of such contract; and, in addition, the agency of the United States entering into such contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of said contract set forth in section 1 hereof may be withheld from any amounts due on any such contracts or may be recovered in suits brought in the name of the United States of America by the Attorney General thereof.<sup>3</sup> All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided*, That no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

<sup>1</sup>Public Law 846, 74th Cong., 2d Sess. (49 Stat. 2036), as amended by Section 12 of the Act of May 17, 1938 (52 Stat. 403); by Section 8 of the Act of June 14, 1940 (54 Stat. 394); by Section 13 of Public Law 671 76th Cong., 3rd Sess. (54 Stat. 681); by Public Law 552, 77th Cong. 2d Sess., (56 Stat. 277); by the Portal-to-Portal Act of 1947, approved May 14, 1947 (61 Stat. 94); by the Act of May 24, 1949 (63 Stat. 107); by the Act of Oct. 28, 1949 (63 Stat. 972), by Section 301 of the Defense Production Act Amendments of 1952, approved June 30, 1952 (66 Stat. 308); and by Section 1241 of Public Law 99-145 (99 Stat. 734).

<sup>2</sup>Section 12 of the Act of May 17, 1938, and Section 8 of the Act of June 14, 1940, as codified under the Act of August 10, 1956, and as amended by the Act of August 25, 1958, enlarged the application of the Public Contracts Act by providing that each contract for the construction, alteration, furnishing, or equipping of a naval vessel is subject to the Public Contracts Act, as amended, unless the President determines that this requirement is not in the interest of national defense. See text of statute printed following the text of this Act."

<sup>3</sup>Proviso added by Public Law 552, 77th Cong., 2d Sess., approved May 13, 1942 (56 Stat. 277); Public Law 99-145, Sec. 1241 (b) (99 Stat. 734) eliminated the words "eight hours in any one day or in excess of;" effective January 1, 1986.

<sup>3</sup>The Portal-to-Portal Act of 1947 imposes a two-year statute of limitations and relieves contractors from certain liabilities and punishments under this Act in circumstances specified in that Act.

SEC. 3. The Comptroller General is authorized and directed to distribute a list to all agencies of the United States containing the names of persons or firms found by the Secretary of Labor to have breached any of the agreements or representations required by this Act. Unless the Secretary of Labor otherwise recommends no contracts shall be awarded to such persons or firms or to any firm, corporation, partnership, or association in which such persons or firms have a controlling interest until three years have elapsed from the date the Secretary of Labor determines such breach to have occurred.

SEC. 4. The Secretary of Labor is hereby authorized and directed to administer the provisions of this Act and to utilize such Federal officers and employees and, with the consent of the State, such State and local officers and employees as he may find necessary to assist in the administration of this Act and to prescribe rules and regulations with respect thereto. The Secretary shall appoint, without regard to the provisions of the civil-service laws but subject to the Classification Act of 1949,<sup>4</sup> an administrative officer, and such attorneys and experts, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as he may from time to time find necessary for the administration of this Act. The Secretary of Labor or his authorized representatives shall have power to make investigations and findings as herein provided, and prosecute any inquiry necessary to his functions in any part of the United States. The Secretary of Labor shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act.

SEC. 5. Upon his own motion or on application of any person affected by any ruling of any agency of the United States in relation to any proposal or contract involving any of the provisions of this Act, and on complaint of a breach or violation of any representation or stipulation as herein provided, the Secretary of Labor, or any impartial representative designated by him, shall have the power to hold hearings and to issue orders requiring the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal of any person to obey such an order, any District Court of the United States or of any Territory or possession, or the United States Court for the District of Columbia,<sup>5</sup> within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person who is guilty of contumacy, failure, or refusal is found, or resides or transacts business, upon the application by the Secretary of Labor or representative designated by him, shall have jurisdiction to issue to such person an order requiring such person to appear before him or representative designated by him, to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question: and any failure to obey such order of the court may be punished by said

<sup>4</sup>Act of Oct. 28, 1949 (63 Stat. 972) amended section by substituting reference to "Classification Act of 1949" for "Classification Act of 1923."

<sup>5</sup>Act of May 24, 1949, (63 Stat. 107), substituted the term "United States District Court for the District of Columbia" for the term "District Court of the United States for the District of Columbia."

Court as a contempt thereof; and shall make findings of fact after notice and hearing, which findings shall be conclusive upon all agencies of the United States, and if supported by the preponderance of the evidence, shall be conclusive in any court of the United States; and the Secretary of Labor or authorized representative shall have the power, and is hereby authorized, to make such decisions, based upon findings of fact, as are deemed to be necessary to enforce the provisions of this Act.

SEC. 6. Upon a written finding by the head of the contracting agency or department that the inclusion in the proposal or contract of the representations or stipulations set forth in section 1 will seriously impair the conduct of Government business, the Secretary of Labor shall make exceptions in specific cases or otherwise when justice or public interest will be served thereby. Upon the joint recommendation of the contracting agency and the contractor, the Secretary of Labor may modify the terms of an existing contract respecting minimum rates of pay and maximum hours of labor as he may find necessary and proper in the public interest or to prevent injustice and undue hardship. The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act respecting minimum rates of pay and maximum hours of labor or the extent of the application of this Act to contractors, as hereinbefore described. Whenever the Secretary of Labor shall permit an increase in the maximum hours of labor stipulated in the contract, he shall set a rate of pay for any overtime, which rate shall be not less than one and one-half times the basic hourly rate received by any employee affected: *Provided*, That whenever in his judgment such course is in the public interest, the President is authorized to suspend any or all the representations and stipulations contained in section 1 of this Act.<sup>6</sup>

SEC. 7. Whenever used in this Act, the word "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

SEC. 8. The provisions of this Act shall not be construed to modify or amend title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes," approved May 3, 1933, (commonly known as the Buy American Act), nor shall the provisions of this Act be construed to modify or amend the Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes," approved March 3, 1931, (commonly known as the Davis-Bacon Act), as amended from time to time, nor the labor provisions of title 11 of the National Industrial Recovery Act, approved June 16, 1933, as extended, or of section 7 of the Emergency Relief Appropriation Act, approved April 8, 1935; nor shall the provisions of this Act be construed to modify or amend the Act entitled "An Act to provide for the

<sup>6</sup>Proviso added by Public Law 67 1, Sec. 13, 76th Cong., 3rd Sess., approved June 28, 1940 (54 Stat. 681).

diversification of employment of Federal prisoners, for their training and schooling in trades and occupations, and for other purposes," approved May 27, 1930, as amended and supplemented by the Act approved June 23, 1934.

SEC. 9. This Act shall not apply to purchases of such materials, supplies, articles, or equipment as may usually be bought in the open market; nor shall this Act apply to perishables, including dairy, livestock and nursery products, or to agricultural or farm products processed for first sale by the original producers; nor to any contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof. Nothing in this Act shall be construed to apply to carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect or to common carriers subject to the Communications Act of 1934.

SEC. 10.<sup>7</sup> (a) Notwithstanding any provision of section 4 of the Administrative Procedure Act, such Act shall be applicable in the administration of section 1 to 5 and 7 to 9 of this Act.

(b) All wage determinations under section 1 (b) of this Act shall be made on the record after opportunity for a hearing. Review of any such wage determination, or of the applicability of any such wage determination, may be had within ninety days after such determination is made in the manner provided in section 10 of the Administrative Procedure Act by any person adversely affected or aggrieved thereby, who shall be deemed to

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<sup>7</sup> Section added by Section 301 of the Defense Production Act Amendments of 1952, approved June 30, 1952 (66 Stat. 308).

include any manufacturer of, or regular dealer in, materials, supplies, articles or equipment purchased or to be purchased by the Government from any source, who is in any industry to which such wage determination is applicable.

(c) Notwithstanding the inclusion of any stipulations required by any provision of this Act in any contract subject to this Act, any interested person shall have the right of judicial review of any legal question which might otherwise be raised, including, but not limited to, wage determinations and the interpretation of the terms "locality," "regular dealer," "manufacturer," and "open market."

#### SEPARABILITY CLAUSE

SEC. 11.<sup>8</sup> If any provision of this Act, or the application thereof to any persons or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

SEC. 12. This Act shall apply to all contracts entered into pursuant to invitations for bids issued on or after ninety days from the effective date of this Act: *Provided, however*, that the provisions requiring the inclusion of representations with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

Approved, June 30, 1936.

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<sup>8</sup> Sections 11 and 12 were redesignated from sections 10 and 11 respectively by Section 301 of the Defense Production Act Amendments of 1952.

(PUBLIC LAW 1028 - 84TH CONGRESS)

(CHAPTER 1041, 70A STAT. 449, 10 U.S.C. SEC. 7299.)

SEC. 7299 Contracts: Application of Public  
Contracts Act

Each contract for the construction, alteration, furnishing, or equipping of a naval vessel is subject to the Act of June 30, 1936, chapter 881 (49 Stat. 2036), as amended, unless the President determines that this requirement is not in the interest of national defense.<sup>9</sup>

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<sup>9</sup>As amended by the Act of August 25, 1958 (72 Stat. 839).