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THE WHITE HOUSE

WASHINGTON

January 3, 1977

ADMINISTRATIVELY CONFIDENTIAL

MEMORANDUM FOR:

JAMES T. LYNN

FROM:

JAMES E. CONNOR J E C

SUBJECT:

Implementation of the Service  
Contract Act

The President reviewed your recent undated memorandum on the above subject and approved the following recommendation:

"Approve Option One, which provides that the Administrator for Federal Procurement Policy issue a procurement policy directive that would implement the proposed amendment agreed to by OMB and the procuring agencies and override the current Labor Department regulations."

In addition, the following notation was made:

"However, if Secretary of Labor wishes to appeal to me I will take time."

Please follow-up with appropriate action.

cc: Dick Cheney



THE PRESIDENT HAS SEEN.

**EXECUTIVE OFFICE OF THE PRESIDENT**  
**OFFICE OF MANAGEMENT AND BUDGET**  
WASHINGTON, D.C. 20503

ACTION

MEMORANDUM FOR: THE PRESIDENT

FROM: JAMES T. LYNN

SUBJECT: Implementation of the Service Contract Act

I. BACKGROUND

Secretary Usery and I have a disagreement over the administration of the Service Contract Act, which in general provides that contractors who are providing services to the Government must pay their employees the wages prevailing for similar work in the locality, as determined by the Department of Labor. Amendments to the Act passed in 1972 also require that a contractor taking over a services job from a previous contractor must pay at least wages provided by the previous contractor's collective bargaining agreement.

The disagreement has persisted for some time. Proposed solutions to five problems resulting from implementation of the Service Contract Act were forwarded to the Secretary of Labor in February, 1975 by an interagency task force consisting of DOL, OMB, and the contracting agencies. However, after holding public hearings and receiving written comments, Secretary Dunlop decided to accept only two of the five recommendations.

Secretary Usery believes that the Department's current practices are necessary to protect existing labor standards for service employees. I believe these practices are wrong not only because they unnecessarily disrupt the Government's procurement process, which is the responsibility of OMB's Office of Federal Procurement Policy, but also because they artificially distort wage patterns in the Nation. The General Accounting Office has been fully supportive of our position in this controversy.

Briefly stated, the opposing positions may be summarized as follows:

Secretary Usery states that the three proposed changes would not both aid the procurement process and protect existing labor

standards for service employees. I believe that the changes would definitely aid the procurement process and protect essential labor standards. The "existing labor standards" that would be changed exist only because of the current implementation of the law and involve setting wages which are higher than those set in a collective bargaining agreement freely arrived at by an employer and his employee.

A. There are three substantive issues and two relatively less significant procedural issues about which we disagree. Briefly, the specific substantive issues are:

1. The applicable wage rates for a service contract when the place of performance is not known at the time of bid advertising.

DOL regulations now require that when the place of performance of a service contract is unknown at the time that bids are sought for the work, the labor rates are to be those prevailing in the locality of the procuring activity. For example, if bids are to be advertised for the overhaul of aircraft engines (the work on which can be performed anywhere in the country depending upon the location of the ultimately successful bidder) and the contracting officer is located in the Washington, D.C. area, since the place where the work will be performed is unknown, DOL's regulations would require Washington, D.C. rates to be applied. Secretary Usery believes that to have different wage rates for the various bidders would automatically drive procurements to the lowest wage areas.

The interagency task force developed a two-stage system which would result in each bidder being able to bid on the basis of the wages prevailing in his locality. I believe this two-stage approach is best since to do otherwise discourages bidders who would be required to pay wages higher than prevailing in their locality, drives up the cost of procurements and drives the procurements to higher wage areas.

2. The use of collectively bargained wage rates when bidding on new services.

Secretary Usery believes this approach is contrary to the express terms of the Act and its legislative history. I believe it is explicitly allowed by the express terms of the Act, and makes more policy sense. The Federal Government should not have policies that require employers to set aside collectively bargained labor agreements to get Government contracts. Since many contractors serve others besides the Government, such a policy discourages bidders who would have to pay different wage rates depending on the person worked for, and tends to raise Government costs.

3. The use of the "successor provisions" of the Act where similar work is performed at a different location.

The amendments of 1972 to the Act were designed to prevent the practice of a contractor underbidding the one providing services (e.g., custodial services) and then paying the same workers lower wages. The DOL regulations, however, do not distinguish between this and a procurement performed at a different location where there is not a "captive" work force which remains from contract to contract. The DOL regulations require the wages of a successor contractor to be not lower than his predecessor's regardless of where the work is actually performed. Secretary Usery believes that the Act requires this interpretation. I believe that the Act does not require this result. The current DOL regulations on this issue also increase procurement costs, result in artificial wages above those prevailing in a bidder's locality and above those applicable to identical private sector work of the bidder, and drives procurements to higher wage areas.

Attached is an OMB staff draft sent to Secretary Usery and his June 1976 reply.

## II. OPTIONS

Option 1. Direct the Administrator of the Office of Federal Procurement Policy, pursuant to his authority to issue policy and regulations concerning procurement policy, to issue policies or regulations to effect changes in all or any of the issues noted above. This should be combined with direction to the Secretary of Labor to follow the Administrator's action.

Option 2. Direct the Secretary of Labor to amend his regulations to change DOL's policies on any or all of the issues noted above.

Option 3. Continue the policies reflected in the DOL regulations and pursue legislative remedies to DOL's interpretations.

## III. PRO'S AND CON'S

### Option 1.

#### PRO:

- . Will alter the DOL regulations which the procuring activities claim have an adverse effect on procurement costs.
- . OFPP has the requisite authority to effect the changes and reliance upon that authority will enhance its future use.
- . Direction to the Secretary of Labor will preclude the possibility of inconsistent postures being assumed between OFPP and DOL, especially in view of the likelihood of litigation.
- . Direction to DOL would not require DOL to change its position by itself and would alleviate DOL's difficulties with the strong labor interests involved.

#### CON:

- . Will probably result in vociferous complaints from certain labor and congressional circles and may bring litigation.

- . May cause DOL and outside complaints well beyond the benefits to be gained - Secretary Usery claims relatively few contracts would be covered.

Option 2.

PRO:

- . (Same as the first two PRO points listed under Option 1.)
- . Would not introduce the issue of OFPP's authority over or the propriety of their involvement in a matter primarily related to the DOL.

CON:

- . (Same as the first two CON points under Option 1.)
- . Would not support the involvement of OFPP in the resolution of procurement problems or regulations which may collaterally effect procurement policy.

Option 3.

PRO:

- . Would not cause complaints from Labor interests and some congressional committees
- . Would not overrule Secretary of Labor.
- . Would not foreclose resolution of the issue but would direct attention towards a legislative resolution.

CON:

- . Would not quickly resolve the problems about which the procuring activities feel strongly, especially since prospects for a legislative resolution appear dim.
- . Would not enhance OFPP's role in resolving these types of issues.

## IV. DISCUSSION

The problems caused by the Service Contract Act interpretations by DOL are significant. Despite criticism from the Comptroller General and the procuring agencies, DOL has not amended its regulations, and a change in those regulations without your involvement is not probable. Option One would effect the needed changes and would involve OFPP in this and future similar situations and would not require that the Secretary of Labor reverse himself. Justice officials have informally agreed with OMB's General Counsel that the OFPP Act authorizes this action to be taken by the Administrator, and your direction to the Secretary of Labor would avoid within branch differences that could prove difficult during litigation.

## V. RECOMMENDATION

That you approve Option One, which provides that the Administrator for Federal Procurement Policy issue a procurement policy directive that would implement the proposed amendment agreed to by OMB and the procuring agencies and override the current Labor Department regulations.

Approve

MR 7

Disapprove

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Attachments

*However, if Sec of Labor wishes to appeal to me I will take time.*