U.S. DEPARTMENT OF LABOR
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS
WASHINGTON, D.C. 20210

January 28, 1970

SCA 303.44
SCA 401
6 PC 227.1

Subject: Service Contract Act

This is in further reference to your letter of November 24, 1969, concerning the application of the sections 7(2) and 7(3) exemptions of the Service Contract Act to Department of Defense contracts which call for packing and crating services.

Section 7(3) provides an exemption for any contract for the carriage of freight or personnel where published tariff rates are in effect. After careful review of your submission, we find that this contract in question is one essentially for packing and crating and related services (such as appliance servicing and temporary storage) and not for transportation. The regulated local drayage or carriage is only an incidental part of the contract work. The legislative history of the act indicates a clear intention to apply the standards of the act to packing and crating contracts. The language of the exemption is carefully limited to contracts for the carriage of goods or personnel under published tariff rates. It is our belief, therefore, that the exemption must be confined to contracts which are for the procurement of carriage service, as such. Where, as here, the contract is primarily for packing and crating, the exemption cannot apply. See section 4.117 of Regulations, 29 CFR 4.

With respect to the application of section 7(2) which provides an exemption for any work (not contract) required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act, it does not appear from the contract documents submitted that the furnishing of materials in a substantial amount is required of the contractor (we note that Government-owned containers will be supplied) or is an independent or significant purpose of the contract. Nor does it appear that the contract is essentially for the manufacture or furnishing of a packaged end product specified by the Government. It would appear that materials may be furnished only in such probably insubstantial amounts as may be required in performing the services which constitute the principal purpose of the contract (e.g. protective materials or supplies incidentally required such as paper, straw, cartons, marking materials, etc.). This is not, in our opinion,

sufficient to bring any of the work on the contract within the purview of the Walsh-Healey Act or to make that act, as well as the Service Contract Act, applicable to the contract. 29 CFR 4.122.

It is, accordingly, our conclusion that the stipulation stating that the contract is subject to the Service Contract Act is proper.

Sincerely,

s/Robert D. Moran

Administrator

Enclosure