SCA-19

March 6, 1973

Your letter of January 25, 1973, to *** regarding the application of the Service Contract Act and Wage Determination 72-340 (Rev.-1) issued thereunder to the engineering support service contract at that installation has been referred to this office for reply. You question the failure to include wage rates for all labor classification to be used on this contract in this determination.

You are correct in your understanding that the Department of Labor considers this contract subject to the Service Contract Act and has accordingly issued an applicable wage determination. The rationale for asserting the Act's coverage in this case is outlined below.

It is the position of the Department of Labor that where the principal purpose of a contract is to furnish services, as in the instant case, and the use of service employees is essential or important to the furnishing of the very services which the Government seeks to obtain thereby, as distinguished from being merely incidental to the furnishing of such services, coverage by the Act is not negated by the fact that the proportion of service employees to be used in its performance is small compared to total employment under the contract.. The determination of whether the principal purpose of a particular contract is the furnishing of services through the use of service employees can only be made on the basis of all the facts in each particular case (see section 4.111(a) of Regulations, 29 CFR Part 4.)

After analyzing all the material before us, we feel that the engineering support service contract in question is subject to the Service Contract Act, even though the ratio of service employees to professional personnel is not preponderant. We do not regard the purpose of the contract to be limited to the furnishing of professional services "with the use of service employees being only a minor factor in the performance of the contract," as discussed in section 4.113(a)(2) of the Regulations. Since approximately 18 percent of the total personnel performing on the contract are service employees, this would represent more than a "minor factor" and amount, on the contrary, to the use of service employees to an extent that is "substantial" or important enough to bring the contract within the Act's coverage.

Having made the decision discussed above, the Department, pursuant to the requirements of the Act and the Regulations, issued Wage Determination 72-340(Rev.-1). This wage determination contains rates for four classifications out of a total of approximately 14 classifications to be employed on the contract. The four classifications for which rates were issued were the only classes of service employees to be employed on the contract and consequently the only classes for which the status authorizes the determination of prevailing rates. This Department did not, pursuant to established policy, issue wage rates in the wage determination for those employees or groups of employees who appear to qualify individually as executive, administrative, or professional employees under the section 13(a)(1) exemption of the Fair Labor Standards Act and Regulations, 29 CFR Part 541 issued pursuant thereto, since such employees are not deemed to be service employees covered by the Act. (Sections 4.113(b) and 4.156 of Part 4.)

Sincerely,

Warren D. Landis
Assistant Administrator

Enclosures