

SCA-104

August 24, 1978

This is in reply to your letter of July 21, 1978 regarding the application of the requirements of section 4(c) of the Service Contract Act to a NASA contract with *** Inc., Kennedy Space Center, Florida.

Before answering your specific question, we wish to reiterate the principle expressed in our letter of July 17, 1978. Section 4(c) of the Service Contract Act provides that "no contractor or subcontractor under a contract, which succeeds a contract subject to this Act and under which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits, including accrued wages and fringe benefits, and any prospective increases in wages and fringe benefits provided for in a collective bargaining agreement as a result of arm's-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract." In situations where specific contract requirements from one contract are broken out and placed in a new contract or combined with other requirements in a consolidated contract, the important protections afforded service employees under section 4(c) of the Act are not lost because of such shifts in contract requirements, and the successor contractor's obligation to pay no less than the rates which were collectively bargained under the predecessor contract follows the identifiable contract requirements into the new or consolidated contract.

In the specific example described in your letter, the air conditioning work previously performed by ... employees was consolidated into a new contract which combines the prior *** contract with air conditioning work previously performed by ***. However, the prior *** and *** air conditioning work is geographically identifiable under the consolidated contract. Thus, if a former *** employee performs air conditioning work which was previously performed under the *** contract, then the successor contractor must pay this employee no less than the wage rate and fringe benefits required for such work under the ... collective bargaining agreement and vice-versa. Your conclusion regarding *** obligations under the Service Contract Act, therefore, appears to be correct. We wish to emphasize, however, that the wage determination rate under the Service Contract Act is a minimum rate, and a contractor is not precluded from compensating employees at a rate in excess of that required by the wage determination. (See section 4.165(e) of Regulations, 29 CFR 4.)

Sincerely,

Xavier M. Vela
Administrator