SCA-120

July 30, 1980

It has recently come to our attention that the Headquarters Air Training Command, Mission Support Branch, Randolph Air Force Base, Texas, has issued the referenced solicitation for flight training and related services, including aircraft refueling, inspection, maintenance, and repair services, grounds and facilities maintenance services, and administrative services, and that this solicitation contains neither the stipulations of the Service Contract Act nor an applicable wage determination issued thereunder.

As you know, a Government contract the principal purpose of which is the furnishing of services is covered by the SCA if such services are furnished "through the use of service employees". In the general case, a service contract otherwise subject to the Act will meet this condition if any of the services which it is the principal purpose of the contract to obtain will be furnished through the use of any service employee or employees (section 4.113(a)(1) of Regulations, 29 CFR Part 4). Regarding contracts for professional services, such contracts which are performed essentially by professional employees (as defined in Regulations, 29 CFR Part 541), with the use of service employees being only a minor or incidental factor in the performance thereof, are not covered by the Act. However, a contract which requires more than a minor or incidental use of service employees would be covered even though there is also substantial use of professional employees in the performance of the contract (section 4.113(a)(2) of the Regulations).

With respect to the proposed contract in question, it is our understanding that the referenced solicitation requires that the contractor's establishment be certified as an approved flight school under the Federal Aviation Administration Regulations, 14 CFR Part 141, and that the individual flight instructors be certified in accordance with FAA Regulations, Part 61. If this is in fact the case, then such flight instructors would qualify as professional employees (i.e., as teachers in an educational establishment) under section 541.3(a)(3) of Regulations, 29 CFR Part 541 pursuant to the Administrator's opinion letter of April 2, 1970 (Enclosure 1). It follows that the individual flight instructors would not be service employees for purposes of the Service Contract Act (section 4.156 of Regulations, 29 CFR Part 4). However, as noted in Enclosure 2, an employment profile based on information furnished by the incumbent contractor regarding its workforce on the current contract for these services, only 24 of the 52 employees performing on the contract are flight instructors, and a maximum of 36 of the employees, or approximately 69 percent of the total workforce, qualify as professional employees under 29 CFR Part 541. The profile also shows that a minimum of 16 employees performing maintenance, repair, and administrative services, or approximately 31 percent of the total workforce, are service employees within the meaning of section 8(b)

of the SCA. Thus, it appears that service employees would be used to a substantial extent under the proposed contract, and that the contract is, therfore, subject to the SCA.

Accordingly, we request that you look into this matter and, if our information is correct, take all necessary steps in accordance with section 4.5(c) of Regulations, 29 CFR Part 4, to submit an SF-98 for the solicitation in question and include the SCA stipulations and applicable wage

determination in the resultant contract. In addition, we request that appropriate corrective actions be taken with respect to any other contracts for flight training and related services, under which service employees are used to a substnatial extent, that do not presently contain the proper SCA provisions.

Please advise us of the corrective actions taken in this matter as soon as possible.

Sincerely,

Dorothy P. Come
Assistant Administrator

NOTE: The opinions expressed in this letter pre-date the 1983 regulatory amendments which redefined the principal purpose test under SCA.