

SCA-110

May 15, 1981

This is in reply to your letter of March 5, 1981, regarding the application of the Service Contract Act (SCA) to the referenced contract which calls for engineering services necessary for the preparation of motor vehicle specifications.

You do not consider the SCA to be applicable to this contract because it is your opinion that the contract is being performed essentially by professional employees with the services of service employees constituting only a minor portion of the total contract labor effort. While you are correct in your understanding that the Act does not apply to contracts performed almost exclusively by exempt, professional employees and under which service employees perform work which can be characterized as incidental to the successful completion of the contract (section 4.113(a)(2) of Regulations, 29 CFR Part 4), we cannot agree with your conclusion in this case that the services of services employees are incidental to this contract's performance.

In this regard, you indicate in your letter that service employees are needed under this contract to furnish at least 7 man-years or 14,560 hours of labor out of the total labor effort of 28 man-years (58,240 hours). In other words, service employees are required under this procurement to provide 25% of the total labor effort. On the face of this information alone, we would consider the services of service employees to be significant and more than a minor part of the contract's performance. Moreover, our Compliance Officer found in this case that out of the 16 employees used on the contract, 7 clearly are service employees (a draftsman, a typist, flexowriters, and engineering technicians), and that an additional number of engineers also qualify as service employees in that they do not meet all of the tests for exemption as professional employees within the meaning of Regulation, 29 CFR Part 541. In view of the foregoing, we find this contract to be principally for the furnishing of services through the use of service employees and accordingly, subject to the SCA.

Therefore, it is again requested that your agency take corrective actions to incorporate the SCA stipulations and an applicable SCA wage determination in this and all other current and future contracts of this nature in order that the affected employees may receive the benefits to which they are lawfully entitled.

We would appreciate being advised of your further actions in this matter.

Sincerely,

Henry T. White, Jr.
Deputy Administrator