

SCA-106

April 15, 1982

This is in reply to your letter of October 23, 1981, regarding the applicability of the Service Contract Act (SCA) to the referenced procurements and to all other similar U.S. Geological Survey (USGS) contracts for cartographic mapping services.

Although we have carefully considered the information which you have presented describing the requirements of USGS contracts for mapping services, we cannot agree with your conclusion that such contracts are supply contracts covered by the Walsh-Healey Public Contracts Act (PCA) rather than service contracts subject to the SCA. As you know, the SCA applies to Government contracts principally for the furnishing of services through the use of service employees. While section 7(2) of the SCA provides that work subject to the Public Contracts Act shall not be covered by the SCA, the fact that tangible items may be furnished as part of a procurement does not necessarily mean that the procurement is automatically subject to the PCA and exempt from SCA coverage. As indicated by the types of contracts listed in section 4.130 of the Regulations, there are numerous covered service contracts which may require the furnishing of material items as part of the contract's performance. For example, as part of the performance of contracts for chemical testing and analysis, geological field surveys, or even drafting and illustrating, a report or other tangible end item may be furnished.

In this instance, it appears clear from the available information that these contracts are principally for the furnishing of cartographic data transcription services and that service employees, such as cartographic technicians, cartographic aides, and map scribes, are required to perform these services. You have contended that a finished product ultimately results from these procurements, thereby rendering the contracts subject to the PCA. However, we note, as you have tacitly acknowledged in your letter, that no material goods actually were furnished by the contractor under these procurements. As discussed in section 4.131 of the Regulations and as noted above, even if material items were furnished by this contractor and were an important part of the performance of these procurements, these contracts would be covered by the Service Contract Act as long as the facts show that the contracts are chiefly for the furnishing of services through the use of service employees and that the provision of tangible items is of secondary importance. In this regard, the accomplishment of the data transcription services by service employees clearly appears to be the primary objective of these contracts and the furnishing of the transcribed end items, while important, appears to be incidental to the provision of the required services. Accordingly, we wish to reaffirm our opinion that these contracts are subject to the SCA.

Neither the terms and conditions of payment which a contractor may receive for performing covered services nor the form in which a contract may be drafted is dispositive with regard to whether a particular contract is covered by the SCA. (See also section 4.131 of the Regulations). While payment on a labor-hour basis may be indicative that a certain contract is a labor-intensive service contract, payment by some other means, such as on a map quadrangle by quadrangle basis, would not, in and of itself, remove a contract from the purview of the Act, nor would it

affect our coverage decision on this matter when the contract is found to be principally for services.

With respect to your reference to the Standard Industrialization Code (SIC), we wish to point out that this document, which is published by the Office of Management and Budget, was not intended to represent coverage determinations under the SCA or PCA and the SIC does not even purport to be a guideline for coverage under the SCA and/or PCA. However, the Department of Labor's authority to render final coverage determinations under the SCA and all other Government contract labor standards laws is well established and the courts and the Comptroller General have consistently deferred to such determinations unless clearly contrary to law. The Attorney General recently confirmed our authority in this area in an opinion dated March 9, 1979, a copy of which is enclosed for your consideration.

Therefore, it is again requested that your agency take all necessary action in order to include the SCA stipulations and any applicable SCA wage determination in all current and future cartographic mapping service contracts of this type so that the affected employees may receive the benefits to which they are entitled by law.

We would appreciate being notified of your corrective actions in this matter.

Sincerely,

William M. Otter
Administrator

Enclosure