SCA-38

August 27, 1982

This is in reply to your letters of July 30 and August 10, 1982, concerning sick leave benefits accrued by employees of ... in the performance of a Government service contract at ***. Specifically, you question whether the liability for these accrued benefits rests with *** the incumbent (predecessor) contractor, or with a successor contractor awarded the follow-on contract beginning October 1, 1982.

Wage Determination 75-1262 (Rev. 8), incorporated in the successor contract solicitation DABTO1-82-0120, was issued in accordance with section 4(c) of the Service Contract Act (SCA) to reflect the wage rates and fringe benefits contained in the collective bargaining agreement between *** and ***. One of the provisions of this wage determination (and the collective bargaining agreement) is that employees engaged in the performance of the contract are entitled to one day of sick leave for each month of employment with all sick leave accumulated in excess of 30 or, by employee request, 45 days to be paid on June 30 of each year. I would be possible, therefore, for current employees to carry 33 or 48 days total sick leave into the contract year commencing October 1, 1982 (3 months after the June 30 pay out.)

If *** does not succeed itself on the referenced contract, it would be liable, by the terms of its collective bargaining agreement and the wage determination applicable to the current contract, for the sick leave accrued by its employees who are not hired by the successor contractor. However, those *** employees hired by the successor for performance on the follow-on contract are not considered to be terminated by *** (the predecessor contractor), and the accrued sick leave benefits of such employees become the liability of the successor contractor. Section 4(c) of the SCA requires, among other things, that a successor contractor pay its employees no less that the wage rates and fringe benefits, including accrued wages and fringe benefits, provided for in a collective bargaining agreement as a result of arm's-length negotiations, to which such employees would have been entitled if they were employed under the predecessor contract.

With respect to the Trinity Services, Inc. case cited in your letters, the U. S. Court of Appeals determined that a successor contractor would not be responsible for the payment of severance to former employees of the predecessor who were not hired by the successor since no employment relationship ever existed between the successor and such employees. However, in instances where a successor contractor does hire the predecessor's employees, the successor becomes bound by the terms of section 4(c) and becomes responsible for the fringe benefits accrued by such employees under the predecessor contract(s).

Since you do not allege that *** currently is in violations of the SCA, and since *** accrued fringe benefit liabilities will not be determined until a successor contractor assumes performance on the follow-on contract and any terminated employees are identified, this Department has no basis for requesting that contract funds currently due *** be withheld. If *** does not fulfill its obligations with respect to terminated employees, we will take appropriate administrative actions at that time.

Sincerely,

Sylvester L. Green
Director
Division of Government
Contract Enforcement