§ 4.106

AGENCIES WHOSE CONTRACTS MAY BE COVERED

§ 4.107 Federal contracts.

(a) Section 2(a) of the Act covers contracts (and any bid specification therefor) “entered into by the United States” and section 2(b) applies to contracts entered into “with the Federal Government.” Within the meaning of these provisions, contracts entered into by the United States and contracts with the Federal Government include generally all contracts to which any agency or instrumentality of the U.S. Government becomes a party pursuant to authority derived from the Constitution and laws of the United States. The Act does not authorize any distinction in this respect between such agencies and instrumentalities on the basis of their inclusion in or independence from the executive, legislative, or judicial branches of the Government, the fact that they may be corporate in form, or the fact that payment for the contract services is not made from appropriated funds. Thus, contracts of wholly owned Government corporations, such as the Postal Service, and those of nonappropriated fund instrumentalities under the jurisdiction of the Armed Forces, or of other Federal agencies, such as Federal Reserve Banks, are included among those subject to the general coverage of the Act. (Brinks, Inc. v. Board of Governors of the Federal Reserve System, 466 F. Supp. 116 (D DC 1979); 43 Atty. Gen. Ops. _____ (September 26, 1978).) Contracts with the Federal Government and contracts entered into “by the United States” within the meaning of the Act do not, however, include contracts for services entered into on their own behalf by agencies or instrumentalities of other Governments within the United States, such as those of the several States and their political subdivisions, or of Puerto Rico, the Virgin Islands, Guam, or American Samoa.

(b) Where a Federal agency exercises its contracting authority to procure services desired by the Government, the method of procurement utilized by the contracting agency is not controlling in determining coverage of the
contracts as one entered into by the United States. Such contracts may be entered into by the United States either through a direct award by a Federal agency or through the exercise by another agency (whether governmental or private) of authority granted to it to procure services for or on behalf of a Federal agency. Thus, sometimes authority to enter into service contracts of the character described in the Act for and on behalf of the Government and on a cost-reimbursable basis may be delegated, for the convenience of the contracting agency, to a prime contractor which has the responsibility for all work to be done in connection with the operation and management of a Federal plant, installation, facility, or program, together with the legal authority to act as agency for and on behalf of the Government and to obligate Government funds in the procurement of all services and supplies necessary to carry out the entire program of operation. The contracts entered into by such a prime contractor with secondary contractors for and on behalf of the Federal agency pursuant to such delegated authority, which have such services as their principal purpose, are deemed to be contracts entered into by the United States and contracts with the Federal Government within the meaning of the Act.

The legislative history indicates no intent to distinguish District of Columbia contracts from the other contracts made subject to the Act, and traditionally, under other statutes, District Government contracts have been made subject to the same labor standards provisions as contracts of agencies and instrumentalities of the United States.

§ 4.108 District of Columbia contracts.

Section 2(a) of the Act covers contracts (and any bid specification therefor) in excess of $2,500 which are “entered into by the District of Columbia.” The contracts of all agencies and instrumentalities which procure contract services for or on behalf of the District or under the authority of the District Government are contracts entered into with the Federal Government or the United States within the meaning of this provision. Such contracts are also considered contracts entered into with the Federal Government or the United States within the meaning of sections 2(b), section 5, and the other provisions of the Act. The legislative history indicates no intent to distinguish District of Columbia contracts from the other contracts made subject to the Act, and traditionally, under other statutes, District Government contracts have been made subject to the same labor standards provisions as contracts of agencies and instrumentalities of the United States.

§ 4.109 [Reserved]

COVERED CONTRACTS GENERALLY

§ 4.110 What contracts are covered.

The Act covers service contracts of the Federal agencies described in §§ 4.107–4.108. Except as otherwise specifically provided (see §§4.115 et seq.), all such contracts, the principal purpose of which is to furnish services in the United States through the use of service employees, are subject to its terms. This is true of contracts entered into by such agencies with States or their political subdivisions, as well as such contracts entered into with private employers. Contracts between a Federal or District of Columbia agency and another such agency are not within the purview of the Act; however, “subcontracts” awarded under “prime contracts” between the Small Business Administration and another Federal agency pursuant to various preferential set-aside programs, such as the 8(a) program, are covered by the