

## Office of the Secretary of Labor

## §4.110

(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 contract 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. However, service contracts entered into by State or local public bodies with purveyors of services are not deemed to be entered into by the United States merely because such services are paid for with funds of the public body which have been received from the Federal Government as a grant under a Federal program. For example, a contract entered into by a municipal housing authority for tree trimming, tree removal, and landscaping for an urban renewal project financed by Federal funds is not a contract entered into by the United States and is not covered by the Service Contract Act. Similarly, contracts let under the Medicaid program which are financed by federally-as-

sisted grants to the States, and contracts which provide for insurance benefits to a third party under the Medicare program are not subject to the Act.

### §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 by the District of Columbia 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 section 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.

[48 FR 49762, Oct. 27, 1983; 48 FR 50529, Nov. 2, 1983]

### §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

#### §4.111

agency pursuant to various preferential set-aside programs, such as the 8(a) program, are covered by the Act. It makes no difference in the coverage of a contract whether the contract services are procured through negotiation or through advertising for bids. Also, the mere fact that an agreement is not reduced to writing does not mean that the contract is not within the coverage of the Act. The amount of the contract is not determinative of the Act's coverage, although the requirements are different for contracts in excess of \$2,500 and for contracts of a lesser amount. The Act is applicable to the contract if the principal purpose of the contract is to furnish services, if such services are to be furnished in the United States, and if service employees will be used in providing such services. These elements of coverage will be discussed separately in the following sections.

##### §4.111 Contracts "to furnish services."

(a) "*Principal purpose*" as criterion. Under its terms, the Act applies to a "contract \* \* \* the principal purpose of which is to furnish services \* \* \*." If the principal purpose is to provide something other than services of the character contemplated by the Act and any such services which may be performed are only incidental to the performance of a contract for another purpose, the Act does not apply. However, as will be seen by examining the illustrative examples of covered contracts in §§4.130 *et seq.*, no hard and fast rule can be laid down as to the precise meaning of the term *principal purpose*. This remedial Act is intended to be applied to a wide variety of contracts, and the Act does not define or limit the types of services which may be contracted for under a contract the principal purpose of which is to furnish services. Further, the nomenclature, type, or particular form of contract used by procurement agencies is not determinative of coverage. Whether the principal purpose of a particular contract is the furnishing of services through the use of service employees is largely a question to be determined on the basis of all the facts in each particular case. Even where tangible items of substantial value are important ele-

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ments of the subject matter of the contract, the facts may show that they are of secondary import to the furnishing of services in the particular case. This principle is illustrated by the examples set forth in §4.131.

(b) *Determining whether a contract is for "services", generally.* Except indirectly through the definition of *service employee* the Act does not define, or limit, the types of *services* which may be contracted for under a contract "the principal purpose of which is to furnish services". As stated in the congressional committee reports on the legislation, the types of service contracts covered by its provisions are varied. Among the examples cited are contracts for laundry and dry cleaning, for transportation of the mail, for custodial, janitorial, or guard service, for packing and crating, for food service, and for miscellaneous housekeeping services. Covered contracts for services would also include those for other types of services which may be performed through the use of the various classes of service employees included in the definition in section 8(b) of the Act (see §4.113). Examples of some such contracts are set forth in §§4.130 *et seq.* In determining questions of contract coverage, due regard must be given to the apparent legislative intent to include generally as contracts for *services* those contracts which have as their principal purpose the procurement of something other than the construction activity described in the Davis-Bacon Act or the materials, supplies, articles, and equipment described in the Walsh-Healey Act. The Committee reports in both the House and Senate, and statements made on the floor of the House, took note of the labor standards protections afforded by these two Acts to employees engaged in the performance of construction and supply contracts and observed: "The service contract is now the only remaining category of Federal contracts to which no labor standards protections apply" (H. Rept. 948, 89th Cong., 1st Sess., p. 1; see also S. Rept. 798, 89th Cong., 1st Sess., p. 1; daily Congressional Record, Sept. 20, 1965, p. 23497). A similar understanding of contracts principally for *services* as embracing contracts other than those for construction or supplies is reflected