

§9.3

Contractor means a prime contractor and all of its first or lower tier subcontractors on a Federal service contract.

Contracting Officer means the individual, a duly appointed successor, or authorized representative who is designated and authorized to enter into procurement contracts on behalf of the Federal contracting agency.

Day means, unless otherwise specified, a calendar day.

Employee or *service employee* means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541. The term *employee* or *service employee* includes all such persons, as defined in the McNamara-O'Hara Service Contract Act of 1965, as amended, regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

Employment opening means any vacancy in a position on the contract, including any vacancy caused by replacing an employee from the predecessor contract with a different employee.

Federal Government means an agency or instrumentality of the United States that enters into a procurement contract pursuant to authority derived from the Constitution and the laws of the United States.

Managerial employee and *supervisory employee* mean a person engaged in the performance of services under the contract who is employed in a bona fide executive, administrative, or professional capacity, as those terms are defined and delimited in 29 CFR part 541.

Month means a period of 30 consecutive days, regardless of the day of the calendar month on which it begins.

Office of Administrative Law Judges means the Office of Administrative Law Judges, U.S. Department of Labor.

Secretary means the U.S. Secretary of Labor or an authorized representative of the Secretary.

Same or similar service means a service that is either identical to or has one or more characteristics that are alike in substance to a service performed at the same location on a contract that is being replaced by the Federal Govern-

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ment or a contractor on a Federal service contract.

Service contract or *contract* means any contract or subcontract for services entered into by the Federal Government or its contractors that is covered by the McNamara-O'Hara Service Contract Act of 1965, as amended, and its implementing regulations.

Solicitation means any request to submit offers or quotations to the Government.

United States means the United States and all executive departments, independent establishments, administrative agencies, and instrumentalities of the United States, including corporations of which all or substantially all of the stock is owned by the United States, by the foregoing departments, establishments, agencies, instrumentalities, and including non-appropriated fund instrumentalities.

Wage and Hour Division means the Wage and Hour Division, U.S. Department of Labor.

§9.3 Coverage.

This part applies to all service contracts and their solicitations, except those excluded by §9.4 of this part, that succeed contracts for the same or similar service at the same location.

§9.4 Exclusions.

(a) *Small contracts.* (1) *General.* The requirements of this part do not apply to contracts or subcontracts under the simplified acquisition threshold set by the Office of Federal Procurement Policy Act, as amended.

(2) *Application to subcontracts.* While the §9.4(a)(1) exclusion applies to subcontracts that are less than the simplified acquisition threshold, the prime contractor must comply with the requirements of this part, if the prime contract is at least the threshold amount. When a contractor that is subject to the nondisplacement requirements of this part discontinues the services of a subcontractor at any time during the contract and performs those services itself at the same location, the contractor shall offer employment on