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 elements 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...
in the statement of President Johnson upon signing the Act (1 Weekly Com-
pilation of Presidential Documents, p. 428).

§ 4.112 Contracts to furnish services “in the United States.”

(a) The Act and the provisions of this part apply to contract services fur-
nished “in the United States,” including any State of the United States, the
District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf
lands as defined in the Outer Continental Shelf Lands Act, American
Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Is-
land, and Johnston Island. The definition expressly excludes any other terri-
tory under the jurisdiction of the United States and any United States
base or possession within a foreign country. Services to be performed ex-
clusively on a vessel operating in international waters outside the geographic
areas named in this paragraph would not be services furnished “in the
United States” within the meaning of the Act.

(b) A service contract to be per-
formed in its entirety outside the geographical limits of the United States as
thus defined is not covered and is not subject to the labor standards of the
Act. However, if a service contract is to be performed in part within and in
part outside these geographic limits, the stipulations required by §4.6 or
§4.7, as appropriate, must be included in the invitation for bids or negotia-
tion documents and in the contract, and the labor standards must be ob-
served with respect to that part of the contract services that is performed
within these geographic limits. In such a case the requirements of the Act and
of the contract clauses will not be applicable to the services furnished out-
side the United States.

[61 FR 68664, Dec. 30, 1996]

§ 4.113 Contracts to furnish services “through the use of service employ-
ees.”

(a) Use of “service employees” in a con-
tract performance. (1) As indicated in
§4.110, the Act covers service contracts
only where “service employees” will be
used in performing the services which
it is the purpose of the contract to pro-
cure. A contract principally for serv-
ices ordinarily will meet this condition
if any of the services will be furnished
through the use of any service em-
ployee or employees. Where it is con-
templated that the services (of the
kind performed by service employees)
will be performed individually by the
contractor, and the contracting officer
knows when advertising for bids or
concluding negotiations that service
employees will in no event be used by
the contractor in providing the con-
tract services, the Act will not be
deemed applicable to the contract and
the contract clauses required by §4.6 or
§4.7 may be omitted. The fact that the
required services will be performed by
municipal employees or employees of a
State would not remove the contract
from the purview of the Act, as this
Act does not contain any exemption for
contracts performed by such employ-
ees. Also, as discussed in paragraph
(a)(3) of this section, where the services
the Government wants under the con-
tract are of a type that will require the
use of service employees as defined in
section 8(b) of the Act, the contract is
not taken out of the purview of the Act
by the fact that the manner in which
the services of such employees are per-
formed will be subject to the con-
tinuing overall supervision of bona fide
executive, administrative, or profes-
sional personnel to whom the Act does
not apply.

(2) The coverage of the Act does not
extend to contracts for services to be
performed exclusively by persons who
are not service employees, i.e., persons
who are bona fide executive, adminis-
trative or professional personnel as de-
fined in part 541 of this title (see para-
graph (b) of this section). A contract
for medical services furnished by pro-
fessional personnel is an example of
such a contract.

(3) In addition, the Department does
not require application of the Act to
any contract for services which is per-
formed essentially by bona fide execu-
tive, administrative, or professional
employees, with the use of service em-
ployees being only a minor factor in
the performance of the contract. How-
ever, the Act would apply to a contract
for services which may involve the use