

(iii)(A) If the Administrator determines after award of the prime contract that any of the requirements in paragraph (e)(2) of this section for exemption has not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act. In such case, the corrective procedures in § 4.5(c) shall be followed.

(B) The prime contractor is responsible for compliance with the requirements of the Service Contract Act by its subcontractors, including compliance with all of the requirements of this exemption (see § 4.114(b)). If the Department of Labor determines that any of the requirements in paragraph (e)(2) for exemption has not been met with respect to a subcontract, the exemption will be deemed inapplicable, and the prime contractor may be responsible for compliance with the Act, as of the date of contract award.

(iv) The exemption set forth in this paragraph (e)(2) does not apply to solicitations and contracts:

(A) Entered into under the Javits-Wagner-O'Day Act, 41 U.S.C. 47;

(B) For the operation of a Government facility or portion thereof (but may be applicable to subcontracts for services set forth in paragraph (e)(2)(ii) that meet all of the criteria of paragraph (e)(2)(ii)); or

(C) Subject to section 4(c) of the Service Contract Act, as well as any options or extensions under such contract.

[48 FR 49762, Oct. 27, 1983, as amended 66 FR 5134, Jan. 18, 2001; 70 FR 50899, Aug. 26, 2005]

§§ 4.124–4.129 [Reserved]

PARTICULAR APPLICATION OF CONTRACT COVERAGE PRINCIPLES

§ 4.130 Types of covered service contracts illustrated.

(a) The types of contracts, the principal purpose of which is to furnish services through the use of service employees, are too numerous and varied to permit an exhaustive listing. The following list is illustrative, however, of the types of services called for by such contracts that have been found to come within the coverage of the Act. Other examples of covered contracts

are discussed in other sections of this subpart.

- (1) Aerial spraying.
- (2) Aerial reconnaissance for fire detection.
- (3) Ambulance service.
- (4) Barber and beauty shop services.
- (5) Cafeteria and food service.
- (6) Carpet laying (other than part of construction) and cleaning.
- (7) Cataloging services.
- (8) Chemical testing and analysis.
- (9) Clothing alteration and repair.
- (10) Computer services.
- (11) Concessionaire services.
- (12) Custodial, janitorial, and housekeeping services.
- (13) Data collection, processing, and/or analysis services.
- (14) Drafting and illustrating.
- (15) Electronic equipment maintenance and operation and engineering support services.
- (16) Exploratory drilling (other than part of construction).
- (17) Film processing.
- (18) Fire fighting and protection.
- (19) Fueling services.
- (20) Furniture repair and rehabilitation.
- (21) Geological field surveys and testing.
- (22) Grounds maintenance.
- (23) Guard and watchman security service.
- (24) Inventory services.
- (25) Key punching and key verifying contracts.
- (26) Laboratory analysis services.
- (27) Landscaping (other than part of construction).
- (28) Laundry and dry cleaning.
- (29) Linen supply services.
- (30) Lodging and/or meals.
- (31) Mail hauling.
- (32) Mailing and addressing services.
- (33) Maintenance and repair of all types of equipment, e.g., aircraft, engines, electrical motors, vehicles, and electronic, telecommunications, office and related business, and construction equipment (See § 4.123(e)).
- (34) Mess attendant services.
- (35) Mortuary services.
- (36) Motor pool operation.
- (37) Nursing home services.
- (38) Operation, maintenance, or logistic support of a Federal facility.
- (39) Packing and crating.

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- (40) Parking services.
- (41) Pest control.
- (42) Property management.
- (43) Snow removal.
- (44) Stenographic reporting.
- (45) Support services at military installations.
- (46) Surveying and mapping services (not directly related to construction).
- (47) Taxicab services.
- (48) Telephone and field interview services.
- (49) Tire and tube repairs.
- (50) Transporting property or personnel (except as explained in §4.118).
- (51) Trash and garbage removal.
- (52) Tree planting and thinning, clearing timber or brush, etc. (See also §§4.116(b) and 4.131(f).)
- (53) Vending machine services.
- (54) Visual and graphic arts.
- (55) Warehousing or storage.

§4.131 Furnishing services involving more than use of labor.

(a) If the principal purpose of a contract is to furnish services in the performance of which service employees will be used, the Act will apply to the contract, in the absence of an exemption, even though the use or furnishing of nonlabor items may be an important element in the furnishing of the services called for by its terms. The Act is concerned with protecting the labor standards of workers engaged in performing such contracts, and is applicable if the statutory coverage test is met, regardless of the form in which the contract is drafted. The proportion of the labor cost to the total cost of the contract and the necessity of furnishing or receiving tangible nonlabor items in performing the contract obligations will be considered but are not necessarily determinative. A procurement that requires tangible items to be supplied to the Government or the contractor as a part of the service furnished is covered by the Act so long as the facts show that the contract is chiefly for services, and that the furnishing of tangible items is of secondary importance.

(b) Some examples of covered contracts illustrating these principles may be helpful. One such example is a contract for the maintenance and repair of typewriters. Such a contract may re-

quire the contractor to furnish typewriter parts, as the need arises, in performing the contract services. Since this does not change the principal purpose of the contract, which is to furnish the maintenance and repair services through the use of service employees, the contract remains subject to the Act.

(c) Another example of the application of the above principle is a contract for the recurrent supply to a Government agency of freshly laundered items on a rental basis. It is plain from the legislative history that such a contract is typical of those intended to be covered by the Act. S. Rept. 798, 89th Cong., 1st Sess., p. 2; H. Rept. 948, 89th Cong., 1st Sess., p. 2. Although tangible items owned by the contractor are provided on a rental basis for the use of the Government, the service furnished by the contractor in making them available for such use when and where they are needed, through the use of service employees who launder and deliver them, is the principal purpose of the contract.

(d) Similarly, a contract in the form of rental of equipment with operators for the plowing and reseeded of a park area is a service contract. The Act applies to it because its principal purpose is the service of plowing and reseeded, which will be performed by service employees, although as a necessary incident the contractor is required to furnish equipment. For like reasons the contracts for aerial spraying and aerial reconnaissance listed in §4.130 are covered, even though the use of airplanes, an expensive item of equipment, is essential in performing such services. In general, contracts under which the contractor agrees to provide the Government with vehicles or equipment on a rental basis with drivers or operators for the purpose of furnishing services are covered by the Act. Such contracts are not considered contracts for furnishing equipment within the meaning of the Walsh-Healey Public Contracts Act. On the other hand, contracts under which the contractor provides equipment with operators for the purpose of construction of a public building or public work, such as road resurfacing or dike repair, even where the