

§4.114

type of work performed by service employees, how necessary the work is to contract performance, the amount of contract work performed by service employees vis-a-vis professional employees, and the total number of service employees employed on the contract.

(b) *“Service employees” defined.* In determining whether or not any of the contract services will be performed by service employees, the definition of *service employee* in section 8(b) of the Act is controlling. It provides:

The term *service employee* means any person engaged in the performance of a contract entered into by the United States and not exempted under section 7, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

It will be noted that the definition expressly excludes those employees who are employed in a bona fide executive, administrative, or professional capacity as defined in part 541 of this title and as discussed further in §4.156. Some of the specific types of service employees who may be employed on service contracts are noted in other sections which discuss the application of the Act to employees.

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§4.114 Subcontracts.

(a) *“Contractor” as including “subcontractor.”* Except where otherwise noted or where the term *Government prime contractor* is used, the term *contractor* as used in this part 4 shall be deemed to include a subcontractor. The term *contractor* as used in the contract clauses required by subpart A in any subcontract under a covered contract shall be deemed to refer to the subcontractor, or, if in a subcontract entered into by such a subcontractor, shall be deemed to refer to the lower level subcontractor. (See §4.1a(f).)

(b) *Liability of prime contractor.* When a contractor undertakes a contract subject to the Act, the contractor agrees to assume the obligation that

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the Act’s labor standards will be observed in furnishing the required services. This obligation may not be relieved by shifting all or part of the work to another, and the prime contractor is jointly and severally liable with any subcontractor for any underpayments on the part of a subcontractor which would constitute a violation of the prime contract. The prime contractor is required to include the prescribed contract clauses (§§4.6–4.7) and applicable wage determination in all subcontracts. The appropriate enforcement sanctions provided under the Act may be invoked against both the prime contractor and the subcontractor in the event of failure to comply with any of the Act’s requirements where appropriate under the circumstances of the case.

SPECIFIC EXCLUSIONS

§4.115 Exemptions and exceptions, generally.

(a) The Act, in section 7, specifically excludes from its coverage certain contracts and work which might otherwise come within its terms as procurements the principal purpose of which is to furnish services through the use of service employees.

(b) The statutory exemptions in section 7 of the Act are as follows:

(1) Any contract of the United States or District of Columbia for construction, alteration, and/or repair, including painting and decorating of public buildings or public works;

(2) Any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036);

(3) Any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line, or oil or gas pipeline where published tariff rates are in effect;

(4) Any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;

(5) Any contract for public utility services, including electric light and power, water, steam, and gas;

(6) Any employment contract providing for direct services to a Federal agency by an individual or individuals;