

**INTERACTION AMONG  
PCA & SCA & DBA  
ON  
FEDERAL CONTRACTS**

**STANDARD CONTRACT CLAUSES (DOL & FAR CITATIONS)  
& FAR 48 CFR 22.402(b)**

**DISTINGUISHING BETWEEN PCA AND SCA**

**DISTINGUISHING BETWEEN SCA AND DBA**

**CONTRACTS REQUIRING PCA AND DBA**

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**Standard Contract Clauses**

◇	DBA/DBRA	29 C.F.R. § 5.5(a)	FAR: 48 C.F.R. §§ 52.222-5 through 52.222-15.
◇	SCA	29 C.F.R. § 4.6.	FAR: 48 C.F.R. §§ 52.222.41 through 52.222-44, 52.222-48 52.222-49, & 52.222-51 through 52.222.53.
◇	PCA	41 C.F.R. § 50-201.3	FAR: 48 C.F.R. §52.222-20.
◇	CWHSSA	29 C.F.R. § 5.5(b)	FAR: 48 C.F.R. §52.222-4.

**FAR 48 C.F.R. § 22.402(b)**

**Subpart 22.4—Labor Standards for Contracts Involving Construction**

**22.402 Applicability.**

- (b) *Nonconstruction contracts involving some construction work.*
- (1) The requirements of this subpart apply to construction work to be performed as part of nonconstruction contracts (supply, service, research and development, etc.) if—
- (i) The construction work is to be performed on a public building or public work;
- (ii) The contract contains specific requirements for a substantial amount of construction work exceeding the monetary threshold for application of the Davis-Bacon Act (the word *substantial* relates to the type and quantity of construction work to be performed and not merely to the total value of construction work as compared to the total value of the contract); and
- (iii) The construction work is physically or functionally separate from, and is capable of being performed on a segregated basis from, the other work required by the contract.
- (2) The requirements of this subpart do not apply if—
- (i) The construction work is incidental to the furnishing of supplies, equipment, or services (for example, the requirements do not apply to simple installation or alteration at a public building or public work that is incidental to furnishing supplies or equipment under a supply contract; however, if a substantial and segregable amount of construction, alteration, or repair is required, such as for installation of heavy generators or large refrigerator systems or for plant modification or rearrangement, the requirements of this subpart apply); or
- (ii) The construction work is so merged with nonconstruction work or so fragmented in terms of the locations or time spans in which it is to be performed, that it is not capable of being segregated as a separate contractual requirement.

## **DISTINGUISHING BETWEEN PCA AND SCA**

- ◇ The PCA applies to federal contracts in excess of \$15,000 for the manufacture or furnishing of materials, supplies, articles or equipment.
  - ◇ Contracts principally for remanufacturing of equipment that is so extensive as to be equivalent to manufacturing are subject to PCA (not SCA).
  - ◇ Manufacturing is deemed to include remanufacturing, and PCA applies when certain criteria are met. Thus, PCA applies to:
    - ◇ Major overhaul, in a facility owned or operated by the contractor, of an item, equipment, or materiel that is degraded or inoperable and which is required to be substantially torn down into its individual component parts to be reworked, rehabilitated, altered, and/or replaced, and reassembled (usually commingling the disassembled parts with inventory parts) to furnish a rebuilt item or piece of equipment restored to its original life expectancy or nearly so by manufacturing processes similar to those used in manufacturing the item or equipment; or,
    - ◇ Major modification, in a facility owned or operated by the contractor, of an item, equipment, or materiel that is wholly or partially obsolete, and is required to be substantially torn down, have outmoded parts replaced, and then be rebuilt or reassembled, so that the contract work results in a substantially modified item in a usable and serviceable condition.
- 29 C.F.R. §§ 4.117(b)(1), (b)(2).
- ◇ Manufacturing does not include the repair of damaged or broken equipment that does not require such complete teardown, overhaul and rebuild of the item(s), equipment, or materiel. 29 C.F.R. § 4.117(b)(3).
  - ◇ In contrast with PCA application to manufacturing, including remanufacturing, SCA covers contracts for periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. 29 C.F.R. § 4.117(b)(3).
    - ◇ Such contracts typically are billed on an hourly rate basis – labor plus materials and parts.
    - ◇ A contract principally for work listed at 29 C.F.R. § 4.117(b)(3) is subject to SCA (not PCA). Examples of such work include:

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- ◇◇◇ repair of an automobile, truck, other vehicle, aerospace, air conditioning and refrigeration equipment, ground powered industrial or vehicular equipment; and inspecting , testing, calibration, painting, packaging, lubrication, tune-up, or replacement of internal parts of such equipment;
  - ◇◇◇ repair of electronic equipment or appliances; inspecting, testing, calibration, painting, packaging, lubrication, tune-up, or replacement of internal parts of equipment (if not exempt under 29 C.F.R. § 4.123(e)); and reupholstering, reconditioning, repairing, and refinishing furniture.
  - ◇◇◇ WHD may decide on application of SCA or PCA to a similar type of contract not addressed in 29 C.F.R. § 4.117(b)(1)-(3) on a case-by-case basis. 29 C.F.R. § 4.117(b)(4).
- ◇ “Any work required to be done in accordance” with PCA provisions is exempt from SCA requirements.
  - ◇◇ This SCA exemption, at 41 U.S.C. § 6702(b)(2), applies to “work”, i.e., specifications or requirements, rather than “contracts,” subject to the PCA.
  - ◇◇ The purpose of the SCA exemption of work subject to the PCA is to eliminate possible overlapping of the differing labor standards of the two laws.
  - ◇◇ If the principal purpose of a contract is the manufacture or furnishing of materials, supplies, etc., rather than the furnishing of services of the character referred to in the SCA, there is no overlap because such a contract is covered by PCA and is not covered by the SCA.
- 29 C.F.R. § 4.117(a).
- ◇ PCA applicability to work under an SCA contract
  - ◇◇ 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 SCA so long as the contract is chiefly for services and the furnishing of such tangible items is of secondary importance. 29 C.F.R. § 4.131(a). (The use or furnishing of such items may be an important element in the furnishing of the services called for by the contract.)
  - ◇◇ On the other hand, if as a matter of convenience in procurement, the service specifications are combined in a single contract document with specifications

for the procurement of different or unrelated items, and the principal purpose of the contract is for services warranting SCA coverage, SCA would apply to the service specifications but PCA would apply to specifications, if any, requiring the manufacture or furnishing of materials, supplies, articles or equipment to the Government. 29 C.F.R. § 4.132.

## **DISTINGUISHING BETWEEN SCA AND DBA**

- ◇ An important coverage concern is distinguishing DBA and SCA work under federal contracts. This is particularly important because federal contracting agencies are responsible to designate application of DBA and SCA requirements to different work under single contracts. The potential for cost adjustment changes for the agency, as well as administrative inconvenience for the agency and its contractor(s), also may result from failure to apply the DBA and SCA labor standards appropriately.
  - ◇◇ Routine and recurring maintenance work is covered by SCA and typically involves the activity of keeping something in such a condition that it may be continuously utilized.
  - ◇◇ By contrast, DBA typically covers activities such as rehabilitation or restoration of a facility.
  - ◇◇ Determining whether the activity is continuous in nature (SCA), as opposed to a single incident repair or replacement job (DBA), will often resolve the SCA/DBA coverage question.
- ◇ SCA covered maintenance work vs. DBA repair work:
  - ◇◇ SCA covered maintenance work – Work is typically scheduled, routine, and recurring. The workers are typically engaged in performing ongoing activities needed to keep something in such a condition that it may be continuously utilized. Thus, the SCA, rather than the DBA, will normally apply when the:
    - ◇◇◇ Activities are continuous in nature (such as daily or weekly);
  - ◇◇ DBA repair work – Typically covers activities such as the restoration of a facility by replacement, overhaul, or reprocessing of constituent parts or materials. Thus, the DBA, rather than the SCA, will normally apply when the:
    - ◇◇◇ Activity is a one-time fix to something not functioning;
    - ◇◇◇ Activity involves a service or repair order that generally takes 32 or more work hours to perform, such as for repair of a particular building component; or

- ◇◇◇ Activity involves the alteration, relocation, or rearrangement of architectural and structural components of a facility that affects the structural strength, stability, safety, capacity, efficiency, or usefulness of the facility.
- ◇ An important factor in determining coverage is whether the activity is undertaken as **part of a construction** project. For example:
  - ◇◇ **DBA** applies when cleanup, landscaping, carpet laying, and drapery installation activities are undertaken as an integral part of or in conjunction with new construction, such as under a construction contract where they precede and are conditional to acceptance of a building or public work by the owner.
  - ◇◇ The **SCA** applies when the same activities are performed after the construction contractor and subcontractors have finished, left the site and the contracting agency has accepted the building.
- ◇ Demolition work 29 C.F.R. § 4.116(b):
  - ◇◇ **SCA** applies where the contract is for the demolition or dismantling of buildings or other structures, and does not contemplate further construction activity at the site;
  - ◇◇ **DBA** applies where contract is for demolition and/or clearing of the site and contemplates subsequent construction of a public building or public work at the same location.
  - ◇◇ AAM No. 190 discusses the application of these labor standards to demolition contracts.
- ◇ Exploratory drilling and well drilling:
  - ◇◇ **SCA** applies when the drilling is for a purpose other than part of construction, such as exploratory drilling to obtain data to be used in engineering studies. 29 C.F.R. § 4.130(a)(16).
  - ◇◇ **SCA** may apply to a federal contract for drilling to obtain data to be used in planning of a construction project that has not been authorized or for which no funds have been appropriated.

- ◇◇ **DBA** applies to drilling holes for wells and other structures and improvements that fall within the term “work” as defined by 29 C.F.R. § 5.2(i).

## **CONTRACTS REQUIRING PCA AND DBA**

- ◇ If a PCA-covered contract involves a substantial amount of construction work on a public building or work (exceeding the monetary threshold for DBA application), it is also subject to the DBA if the construction work is physically or functionally separate from, and is capable of being performed on a segregated basis from, the other work required by the contract. (The word *substantial* relates to the type and quantity of construction work to be performed and not merely to the total value of construction work as compared to the total value of the contract.) See FAR 48 C.F.R. § 22.402 (b).

For example:

- ◇◇ Contract for the supply and installation of a security system that requires:
  - ◇◇◇ Replacement of existing conduit,
  - ◇◇◇ Laying cable, and
  - ◇◇◇ Tearing out and replacing walls.
  
- ◇◇ Contract for the supply and installation of modular furniture or energy-efficient lighting fixtures that requires:
  - ◇◇◇ Bolting furniture or fixtures to floors, walls and/or ceilings,
  - ◇◇◇ Modifying walls, floors and/or ceilings to accommodate shelving,
  - ◇◇◇ Installing electrical connections for desk area outlets, or
  - ◇◇◇ Installing new ballasts and/or lighting fixtures.
  
- ◇◇ Contract that provides for the supply and installation of equipment requiring construction activity, such as:
  - ◇◇◇ Reconfiguration or alteration of building space,
  - ◇◇◇ Upgrade to utilities, or
  - ◇◇◇ Bolting or affixing equipment to floors, walls and/or ceiling.

## CONTRACTS REQUIRING SCA AND DBA

- ◇ The DBA applies to an SCA-covered contract principally for the furnishing of services in the United States through the use of service employees if a **substantial** amount of construction work is also necessary for performance of the contract and the construction work is physically or functionally **segregable** from the other contract work.
  - ◇◇ **Substantial** relates to the type and quantity of construction work to be performed, not merely its value in dollars or the value of the construction work as compared to the total contract value, and
  - ◇◇ **Segregable** means that as a practical matter the construction work is functionally separate from, and is capable of being performed on a segregated basis from, the other work called for by the contract.

29 C.F.R. § 4.116(c)(2); FAR 48 C.F.R. § 22.402(b).

### Examples:

- ◇◇ Contract for furnishing cafeteria and food services that includes requirements to renovate and paint the cafeteria and kitchen. While this is an SCA contract, the construction specifications of the contract are DBA-covered.
- ◇◇ Base maintenance and support contract that provides services for operation of a military base and requires substantial and segregable construction work orders such as:
  - ◇◇◇ Painting base housing and buildings.
  - ◇◇◇ Refinishing floors.
  - ◇◇◇ Reroofing buildings.
- ◇ Questions sometimes arise as to whether the work required under an individual work order, task order or service call is for SCA maintenance or DBA painting/repairs.
  - ◇◇ DFARS guidance regarding installation support contracts advises that where the distinction is unclear:

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- ◇◇◇ Individual service calls or orders which will require a total of 32 or more work-hours to perform shall be considered to be repair work subject to the DBA. DFARS 48 C.F.R. § 222.402-70(d)(1).
- ◇◇◇ Painting work of 200 square feet or more to be performed under an individual service call or order shall be considered to be subject to the DBA regardless of the total work-hours required. DFARS 48 C.F.R. § 222.402-70(d)(3).
- ◇◇◇ Also, contracting officers may not avoid application of the DBA by splitting individual tasks between orders or contracts. DFARS 48 C.F.R. § 222.402-70(f).

## **DISPUTES CONCERNING COVERAGE DETERMINATIONS**

- ◇ The contracting agency has the initial responsibility for determining the labor standards statutes applicable to a contract. This is important because many federal agency procurement officials are responsible, in the first instance, to designate application of PCA, DBA, and/or SCA requirements appropriately to federal contracts and multiple work elements of contracts that warrant the application of different labor standards. (See FAR 48 C.F.R. Subparts 22.3, 22.4, 22.6, 22.10, and 22.12.)
- ◇ Agency procurement personnel and contracting officers should seek guidance from their agency labor advisors when there are questions regarding coverage determinations.
- ◇ In addition, WHD may provide compliance assistance regarding appropriate application of the federal prevailing wage statutes.
- ◇ If an agency is found to have erred in its determination(s), substantial cost adjustment expenses and administrative burdens may result from failure to apply the PCA, DBA and SCA labor standards appropriately. For example, *see* FAR 48 C.F.R. § 22.404-6(b)(5), § 22.404-9 and § 22.1015.
- ◇ WHD has the authority for issuing final determinations on coverage. Each final ruling is based on the facts of a specific situation and how those facts relate to the coverage principles set forth by regulation, statute, and pertinent case law.
- ◇ In making coverage determinations, WHD generally solicits input from interested parties.
- ◇ Final WHD rulings may be appealed to the Administrative Review Board (ARB) under 29 C.F.R. Part 7 regarding DBA and DBRA cases, and 29 C.F.R. Part 8 regarding SCA cases.
- ◇ The members of the ARB are appointed by the Secretary of Labor to review final rulings and interpretations on wage determinations, coverage, and enforcement issues under the DBRA and SCA. The Board has the full authority of the Secretary of Labor in such matters.