

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210



AUG 29 2002

Mr. Marshall Woodard
Central Region Labor Advisor
HQ AFMC/PKMC
1050 E. Stewart, Building 2025
Peterson AFB, Colorado 80914-2902

Dear Mr. Woodard:

Re: Raytheon Aerospace Services, Inc.
Madison, Mississippi
Contract No. F34601-94-C-0950
Scott AFB, Illinois and 8 other locations in the United States
Our File No. 2000-335-00030

This is in reference to our letter of April 14, 2000, concerning the applicability of the McNamara-O'Hara Service Contract Act (SCA) to the referenced contract, awarded by Tinker AFB, Oklahoma, for maintenance and logistical support for C-21A aircraft in the United States and abroad. Your agency included in the contract only the provisions of the Walsh-Healey Public Contracts Act (PCA), which applies to contracts in excess of \$10,000 for the manufacture or furnishing of materials, supplies, articles, or equipment. There is no dispute that such provisions were appropriately included in the contract. However, the SCA may also be applicable if the "principal purpose" of the contract was the furnishing of services. It is your agency's position that because the clear majority of the funds expended on this contract to date have been for PCA related activities, this contract is not principally for services and thus was properly classified as being subject only to the PCA.

The Department's regulations indicate that the question of whether the "principal purpose" standard is met is "largely a question to be determined on the basis of all of the facts in each particular case," that the SCA is a "remedial Act ... intended to be applied to a wide variety of contracts," and that "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". (29 C.F.R. 4.111 (a)). Additional relevant regulatory provisions provide that if the contract's principal purpose is to furnish services, the Act will apply "even though the use or furnishing of nonlabor items may be an important element in the furnishing of the services," and that "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." (29 C.F.R. 4.131 (a)). Pursuant to these regulations, factors for consideration which are clearly relevant in

determining if the contract is subject to the SCA include the stated purpose(s) of the contract, the amount and percentage of service labor hours performed on the contract, and the amount and percentage of contract costs attributable to services.

An examination of the facts concerning this specific contract reveals the following information. You have stated that this contract is for maintenance and logistical support for the C-21A fleet at various locations in the United States and abroad. It includes a base year (FY 95) and nine one-year options (through FY 2004). The contract as awarded included PCA labor standards provisions and did not contain the SCA provisions. This contract encompasses all necessary support functions to keep the fleet of C-21A aircraft mission capable. The scope of work includes organizational level maintenance, depot repair, purchase of spare parts, overhaul of spare parts and major modifications to the aircraft. Raytheon Aerospace Services as prime contractor is responsible under the subject contract for furnishing Contractor Logistical Support (CLS) and Contractor Operated and Maintained Base Supply (COMBS) operations at various military installations in the United States and abroad. The CLS includes providing organizational-level maintenance services for the C-21A fleet at each site, such as fueling, washing, and towing the aircraft, servicing, testing, and repairing avionics, cleaning the interior and exterior of the aircraft, inspections of the aircraft, replacement of the aircraft wheels, tires, and lights, and removing broken aircraft components and replacing them with new or overhauled components. In addition, the contract also includes a provision for the management and operation of a COMBS facility at each air base. The COMBS is essentially a parts supply store that is staffed by service personnel. The CLS and the COMBS work performed under this function involves the periodic and routine maintenance, preservation, care, adjustment, upkeep, servicing, warehousing, and storage of the C-21A and its equipment to keep it in usable, serviceable, working order. There is no dispute that these are service activities.

In addition to the above, the contract also calls for a number of other functions. If a component of the aircraft needs to be repaired, replaced or overhauled, the work is typically performed and materials and equipment provided by various subcontractors at their own facilities. Most of these contract requirements are clearly subject to the PCA. Other major modifications to the aircraft, including the installation of new global positioning systems, flight phones, guided landing systems, and replacement of aircraft interiors are also performed at subcontractor facilities.

As you are aware, Wage and Hour conducted investigations of three of the C-21A sites to assist us in gathering relevant information regarding this contract. These sites were the Scott Air Force Base (AFB), Illinois, Offutt AFB, Nebraska, and Maxwell AFB, Alabama. The day-to-day work performed at these facilities involves work such as aircraft washing, fueling, flight line towing, servicing, testing and repairing avionics, interior cleaning, interior and exterior inspections, and replacement of lights, tires, wheels, and other engine parts. These investigations confirmed that

virtually all of the work performed at these locations constitutes "services" within the meaning of the SCA.

As a result of the information obtained during the investigations, we have determined that these contract requirements involve approximately 91 full time employees performing service-related duties at 9 locations in the United States. This amounts to approximately 189,280 hours of service work per year. In addition, about 50 employees annually perform approximately 104,000 hours of the same service-related duties at several locations outside of the United States. We recognize that the 50 employees performing service work overseas would not be covered by the SCA provisions based on their location of performance. However, these activities are services and it is appropriate to include these hours in determining whether the principal purpose of the contract is to provide services. Accordingly, we estimate that a total of approximately 293,280 hours is performed annually on service work at all of the C-21A locations under this contract.

Upon completion of the investigations of the various AFB locations mentioned above, your staff suggested Wage and Hour also review the performance of a major subcontractor on this project, Garrett Aviation. Accordingly, Wage and Hour staff met with Air Force personnel and contractor representatives at the Garrett Aviation facility in Houston, Texas. The work performed at the Garrett facility involves major aircraft engine overhaul and repair. These efforts include Core Zone Inspections (CZI) and Hot Zone Inspections (HZI). These inspections always involve a substantial tear down, and then reworking, rehabilitation and/or replacement of the engine's component parts. The engines are then reassembled into a totally rebuilt engine. Based on the information presented, we do not dispute that the work being performed for this contract at the Garrett facilities is remanufacturing work as defined by Department of Labor Regulations, 29 CFR Part 4.117 and would be subject to the PCA labor standards provisions. Information provided reveals that, on average, this subcontractor performs 51 C-21A engine inspections and overhauls annually. As provided by the terms of the contract, these engines undergo Major Periodic Inspections (MPI), CZI, or both. It is our understanding that up to 10 technicians are involved in the remanufacturing process and that each MPI or CZI can require up to 350 hours per engine. This results in approximately 17,850 hours of remanufacturing work per year at all of the Garrett facilities.

In addition to the above-mentioned work involving major engine overhauls, other subcontractors perform a variety of work and furnish aircraft components as indicated previously. Unfortunately, after extensive discussions with your agency, you were unable to provide specific information regarding the hours spent in the performance of these contract work items. In an effort to obtain this information, we contacted representatives from the prime contractor and requested their assistance in providing our office with information regarding the nature of these work items and annual performance hours. Our inquiry resulted in very limited information.

While a large portion of this work appears to be subject to the PCA, there is no evidence to suggest that the number of labor hours performed by these subcontractors when engaged in non-SCA work is substantial. Accordingly, based on the information available, it appears that only the major aircraft engine overhaul performed at Garrett Aviation facilities, approximately 17,850 hours annually, involves a substantial amount of PCA labor hours.

Your agency believes that the principal purpose of this contract is for remanufacturing and providing aircraft parts and supplies because more funds are allocated for these items than for the service component of the contract. In a memorandum from Milton Watkins, Chief of the Air Force Acquisition Law Services Division, dated June 2, 2000, the view was expressed that as of that date, at least 57% of expended contract sums were attributable to PCA activities and 17 % to SCA activities. Subsequent information from your agency reflecting a more recent date in the contract performance indicated that over \$55,000,000 (20 %) was attributable to service activities, approximately \$203,000,000 (73 %) to "non-SCA" items, and the remaining \$20,000,000 (7%) was for undetermined items.

We now turn to application of these specific facts to the three factors cited in the second paragraph of this letter as relevant to determining SCA coverage in this instance. First, you have indicated that the purpose of the contract is maintenance and logistical support for the C-21 aircraft at various locations – in other words, all work and materials necessary to keep the aircraft in excellent flying condition. This is essentially a service, and our regulations specifically list the maintenance and repair of aircraft among the examples of covered SCA contracts (29 C.F.R. 4.130 (a) (33)). In order to provide this service over a lengthy ten-year period, it is no doubt necessary to engage in overhaul and replacement of equipment and parts, as well as provide for certain major modifications to the aircraft. While much of this subcontractor work does not constitute "services," it does not change the basic service nature of the contract as a whole. Consistent with the regulations, many contracts have traditionally been treated as covered by SCA, even though services do not comprise a majority of contract costs.

As to the remaining two factors cited earlier, the service labor hours under the contract are very substantial both in absolute terms (293,000 hours annually) and as a percentage of the labor hours worked on the contract (in excess of 90 %). If the non-service labor hours had constituted a majority of the work on this contract, it clearly would not be subject to the SCA. Finally, the contract costs attributable to service activity according to your own figures are quite significant – approximately \$55,000,000 and 20 % of total contract costs.

After having given careful consideration of these three factors as applied to the specific facts of this particular contract, I conclude that the principal purpose of the contract is to furnish services, and that the contract is therefore subject to the SCA. Accordingly, please take appropriate action

to ensure that the applicable wage determinations and labor standard clauses referenced in section 4.6 are included in the contract for the next option year beginning October 1, 2002. Although 29 C.F.R. 4.5(c) affords the Administrator the discretion to require retroactive application of such wage determinations, I have determined that it is appropriate not to require such action with respect to this contract. In this regard, among the factors I considered were that the agency's coverage determination does not appear to have been unreasonable in this instance, that almost eight years of work has been completed on the contract, and our earlier investigation disclosed that many of the affected workers were receiving combined wages and fringe benefits comparable to the combined wages and fringe benefits required by our prevailing wage determinations.

This letter constitutes a final ruling in this matter. Pursuant to 29 C.F.R. 8.7, you or any aggrieved party may file a petition for review of this final determination with the Administrative Review Board within 60 days. Any appeal should be addressed to the Administrative Review Board, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S4309, Washington, D.C. 20210.

Sincerely,

A handwritten signature in black ink, appearing to read "Tammy D. McCutchen". The signature is stylized and cursive.

Tammy D. McCutchen
Administrator