APPENDIX B

U.S. Department of Labor

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

MAR 21 1989

MEMORANDUM NO. 149

MEMORANDUM FOR ALL CONTRACTING AGENCIES OF THE FEDERAL GOVERNMENT AND THE DISTRICT OF COLUMBIA

FROM: PAULA V. SMITH PVS
Administrator

SUBJECT: Exemption from the McNamara-O'Hara Service Contract Act for Contracts for Maintenance or Repair of Automated Data Processing Equipment

Contracts entered into by agencies of the Federal government or the District of Columbia that are principally for the furnishing of services through the use of service employees are subject to the McNamara-O'Hara Service Contract Act of 1965, as amended ("SCA"), 41 U.S.C. 351 et seq., and implementing regulations, 29 CFR Part 4, Labor Stanards for Federal Service Contracts. An administrative exemption from the provisions of the SCA is codified at 29 CFR 4.123(e) for certain contracts for the maintenance, calibration and/or repair of automated data processing (ADP) equipment and certain other related high technology equipment under specified conditions. It has been brought to our attention that clarifying guidance is needed to achieve consistent interpretations among contracting agencies on the intended scope of the exemption. The purpose of this memorandum is to provide such clarifying guidance on the application of the exemption set forth in 29 CFR 4.123 (e).

The codified exemption does not expressly define the types of ADP equipment that are considered to be within the scope of the exemption. As originally proposed in 1981, the exemption was limited to ADP equipment "procured pursuant to Public Law 89-306. (40 U.S.C. 759)," known as the Brooks Act (46 Fed. Reg. 41403, August 14,1981). (The Brooks Act is part of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 751 et seq., which, among other provisions, directs the General Services Administration to coordinate and provide for the purchase, lease, and maintenance of ADP equipment by Federal agencies.) The -reference to equipment "procured pursuant to" the Brooks Act was deleted from the final rule, not because of any definitional inconsistency between the Brooks Act and the SCA ADP exemption, but because various 'exemptions in the Brooks Act would have had an unintended limiting effect on the scope of the SCA (exemption (see 48 Fed. Reg. 49748-50, October 27, 1983).