22.1003-4 Administrative limitations, variations, tolerances, and exemptions.

(a) The Secretary of Labor *may* provide reasonable limitations and *may* make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of the *Service Contract* Labor Standards statute other than 41 U.S.C. 6707(f). These will be made only in special circumstances where it has been determined that the limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Government business, and is in accord with the remedial purpose of the *Service Contract* Labor Standards statute to protect prevailing labor standards (41 U.S.C. 6707(b)). See 29 CFR 4.123 for a listing of administrative exemptions, tolerances, and variations. Requests for limitations, variances, tolerances, and exemptions from the *Service Contract* Labor Standards statute *shall* be submitted *in writing* through *contracting* channels and the *agency labor advisor* to the Wage and Hour *Administrator*.

(b) In addition to the statutory exemptions cited in 22.1003-3 of this subsection, the Secretary of Labor has exempted the following types of contracts from all provisions of the *Service Contract* Labor Standards statute:

(1) Contracts entered into by the *United States* with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom.

(2) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service if it is not contemplated at the time the contract is made that the owner-operator will hire any *service employee* to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or *emergency* situations such as illness, or accident.

(3) Contracts for the carriage of *freight* or personnel if such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act.

(c) *Contracts for maintenance, calibration or repair of certain equipment.*-

(1) *Exemption*. The Secretary of Labor has exempted from the *Service Contract* Labor Standards statute contracts and subcontracts in which the primary purpose is to furnish maintenance, calibration, or repair of the following types of equipment, if the conditions at paragraph (c)(2) of this subsection are met:

(i) Automated data processing equipment and office information/word processing systems.

(ii) Scientific equipment and medical apparatus or equipment if the application of micro-electronic circuitry or other technology of at least similar sophistication is an essential element (for example, Product or Service Code (PSC) 6515, "Medical and Surgical Instruments, Equipment, and *Supplies*;" PSC 6525, "Imaging Equipment and *Supplies*: Medical, Dental, Veterinary;" PSC 6630, "Chemical Analysis Instruments;" and PSC 6655, "Geophysical Instruments," are largely composed of the types of equipment exempted in this paragraph).

(iii) Office/business machines not otherwise exempt pursuant to paragraph (c)(1)(i) of this

subsection, if such services are performed by the manufacturer or supplier of the equipment.

(2) *Conditions*. The exemption at paragraph (c)(1) of this subsection applies if all the following conditions are met for a contract (or a subcontract):

(i) The items of equipment to be serviced under the contract are used regularly for other than Government purposes and are sold or traded by the *contractor* in substantial quantities to the general public in the course of normal business operations.

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of such equipment. As defined at 29 CFR 4.123(e)(1)(ii)(B)-

(A) An established catalog price is a price included in a catalog price list, schedule, or other form that is regularly maintained by the manufacturer or the *contractor*, is either published or otherwise available for *inspection* by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.

(B) An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or *contractor*.

(iii) The *contractor* will use the same compensation (wage and fringe benefits) plan for all *service employees* performing work under the contract as the *contractor* uses for these employees and equivalent employees servicing the same equipment of commercial customers.

(iv) The apparent successful *offeror* certifies to the conditions in paragraph (c)(2)(i) through (iii) of this subsection. (See 22.1006(e).)

(3) *Affirmative determination and contract award*.

(i) For source selections where the *contracting officer* has established a competitive range, if the *contracting officer* determines that one or more of the conditions in paragraphs 22.1003-4(c)(2)(i) through (iii) of an *offeror*'s certification will not be met, the *contracting officer shall* identify the deficiency to the *offeror* before receipt of the final proposal revisions. Unless the *offeror* provides a revised *offer* acknowledging applicability of the Service Contract Labor Standards statute or demonstrating to the satisfaction of the *contracting officer* an ability to meet all required conditions for exemption, the *offer* will not be further considered for award.

(ii) The *contracting officer shall* determine *in writing* the applicability of this exemption to the contract before contract award. If the apparent successful *offeror* will meet all conditions in paragraph (c)(2) of this subsection, the *contracting officer shall* make an affirmative determination and award the contract without the otherwise applicable *Service Contract* Labor Standards clause(s).

(iii) If the apparent successful *offeror* does not certify to the conditions in paragraph (c)(2)(i) through (iii) of this subsection, the *contracting officer shall* incorporate in the contract the *Service Contract* Act clause (see 22.1006(a)) and, if the contract will exceed $2,500, the appropriate Department of Labor *wage determination* (see 22.1007).

(4) *Department of Labor determination*.

(i) If the Department of Labor determines after award of the contract that any condition for exemption in paragraph (c)(2) of this subsection has not been met, the exemption *shall* be deemed inapplicable, and the contract *shall* become subject to the *Service Contract* Labor Standards statute, effective as of the date of the Department of Labor determination. In such case, the procedures at 29 CFR 4.123(e)(1)(iv) and 29 CFR 4.5(c) *shall* be followed.

(ii) If the Department of Labor determines that any conditions in paragraph (c)(2) of this subsection have not been met with respect to a subcontract, the exemption *shall* be deemed inapplicable. The *contractor may* be responsible for ensuring that the subcontractor complies with the *Service Contract* Labor Standards statute, effective as of the date of the subcontract award.

(d) *Contracts for certain services*.-

(1) *Exemption*. Except as provided in paragraph (d)(5) of this subsection, the Secretary of Labor has exempted from the Service Contract Labor Standards statute contracts and subcontracts in which the primary purpose is to provide the following services, if the conditions in paragraph (d)(2) of this subsection are met:

(i) Automobile or other vehicle (*e.g.*, aircraft) maintenance services (other than contracts or subcontracts to operate a Government motor pool or similar facility).

(ii) Financial services involving the issuance and servicing of cards (including credit cards, debit cards, purchase cards, smart cards, and similar card services).

(iii) Hotel/motel services for conferences, including lodging and/or meals, that are part of the contract or subcontract for the conference (which *must* not include ongoing contracts for lodging on an as needed or continuing basis).

(iv) Maintenance, calibration, repair, and/or installation (where the installation is not subject to the *Construction* Wage Rate Requirements statute, as provided in 29 CFR 4.116(c)(2)) services for all types of equipment where the services are obtained from the manufacturer or supplier of the equipment under a contract awarded on a sole source basis.

(v) Transportation by common carrier of persons by air, motor vehicle, rail, or marine vessel on regularly scheduled routes or via standard *commercial services* (not including charter services).

(vi) Real estate services, including real property appraisal services, related to housing *Federal agencies* or disposing of real property owned by the Government.

(vii) Relocation services, including services of real estate brokers and appraisers to assist Federal employees or military personnel in buying and selling homes (which *shall* not include actual moving or storage of household goods and related services).

(2) *Conditions*. The exemption for the services in paragraph (d)(1) of this subsection applies if all the following conditions are met for a contract (or for a subcontract):

(i)

(A) Except for services identified in paragraph (d)(1)(iv) of this subsection, the *contractor* will be selected for award based on other factors in addition to price or cost, with the combination of other factors at least as important as price or cost; or

(B) The contract will be awarded on a sole source basis.

(ii) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the *contractor* (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations.

(iii) The contract services are furnished at prices that are, or are based on, established catalog or market prices. As defined at 29 CFR 4.123(e)(2)(ii)(C)-

(A) An established catalog price is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the *contractor*, is either published or otherwise available for *inspection* by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(B) An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or *contractor*.

(iv) Each *service employee* who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract.

(v) The *contractor* will use the same compensation (wage and fringe benefits) plan for all *service employees* performing work under the contract as the *contractor* uses for these employees and equivalent employees servicing commercial customers.

(vi) The *contracting officer* (or *contractor* with respect to a subcontract) determines in advance before issuing the *solicitation*, based on the nature of the contract requirements and knowledge of the practices of likely *offerors*, that all or nearly all *offerors* will meet the conditions in paragraph (d)(2)(ii) through (v) of this subsection. If the services are currently being performed under contract, the *contracting officer* (or *contractor* with respect to a subcontract) *shall* consider the practices of the existing *contractor* in making a determination regarding the conditions in paragraphs (d)(2)(ii) through (v) of this subsection.

(vii)

(A) The apparent successful *offeror* certifies that the conditions in paragraphs (d)(2)(ii) through (v) will be met; and

(B) For other than sole source awards, the *contracting officer* determines that the same certification is obtained from substantially all other *offerors* that are-

(1) In the competitive range, if discussions are to be conducted (see FAR 15.306(c)); or

(2) Considered responsive, if award is to be made without discussions (see FAR 15.306(a)).

(3) *Contract award or resolicitation*.

(i) If the apparent successful *offeror* does not certify to the conditions, the *contracting officer shall* insert in the contract the applicable *Service Contract* Labor Standards clause(s) (see 22.1006) and, if

the contract will exceed $2,500, the appropriate Department of Labor *wage determination* (see 22.1007).

(ii) The *contracting officer shall* award the contract without the otherwise applicable *Service Contract* Labor Standards clause(s) if-

(A) The apparent successful *offeror* certifies to the conditions in paragraphs (d)(2)(ii) through (v) of this subsection;

(B) The *contracting officer* determines that the same certification is obtained from substantially all other *offerors* that are-

(1) In the competitive range, if discussions are to be conducted (see FAR 15.306); or

(2) Considered responsive, if award is to be made without discussions (see FAR 15.306(a)); and

(C) The *contracting officer* has no reason to doubt the certification.

(iii) If the conditions in paragraph (d)(3)(ii) of this subsection are not met, then the *contracting officer shall* resolicit, amending the *solicitation* by removing the exemption provision from the *solicitation* as prescribed at 22.1006(e)(3). The contract will include the applicable *Service Contract* Labor Standards clause(s) as prescribed at 22.1006 and, if the contract will exceed $2,500, the appropriate Department of Labor *wage determination* (see 22.1007).

(4) *Department of Labor determination*.

(i) If the Department of Labor determines after award of the contract that any conditions for exemption at paragraph (d)(2) of this subsection have not been met, the exemption *shall* be deemed inapplicable, and the contract *shall* become subject to the *Service Contract* Labor Standards statute. In such case, the procedures at 29 CFR 4.123(e)(2)(iii) and 29 CFR 4.5(c) *shall* be followed.

(ii) If the Department of Labor determines that any conditions in paragraph (d)(2) of this subsection have not been met with respect to a subcontract, the exemption *shall* be deemed inapplicable. The *contractor may* be responsible for ensuring that the subcontractor complies with the *Service Contract* Labor Standards statute, effective as of the date of the subcontract award.

(5) *Exceptions*. The exemption at paragraph (d)(1) of this subsection does not apply to *solicitations* and contracts (subcontracts)-

(i) Awarded under , 41 U.S.C. chapter 85, Committee for Purchase from People Who Are Blind or Severely Disabled (see subpart 8.7).

(ii) For the operation of a Government facility, or part of a Government facility (but *may* be applicable to subcontracts for services); or

(iii) Subject to 41 U.S.C. 6707(c) (see 22.1002-3).

Parent topic: 22.1003 Applicability.