

Federal Acquisition Regulation

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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.

(4) Contracts as follows:

(i) Contracts principally for the maintenance, calibration, or repair of the following types of equipment are exempt, subject to the restrictions in subdivisions (b)(4)(ii), (b)(4)(iii), and (b)(4)(iv) of this subsection.

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

(B) 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, Federal Supply Classification (FSC) Group 65, Class 6515, *Medical Diagnostic Equipment*; Class 6525, *X-Ray Equipment*; FSC Group 66, Class 6630, *Chemical Analysis Instruments*; and Class 6665, *Geographical and Astronomical Instruments*, are largely composed of the types of equipment exempted hereunder).

(C) Office/business machines not otherwise exempt pursuant to subdivision (b)(4)(i)(A) of this subsection, if such services are performed by the manufacturer or supplier of the equipment.

(ii) The exemption set forth in this subparagraph (b)(4) of this subsection shall apply only under the following circumstances:

(A) The items of equipment are commercial items which 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.

(B) The contract services are furnished at prices which are, or are based on, established catalog or market prices (see 29 CFR 4.123(e)(1)(ii)(B)) for the maintenance, calibration, or repair of such commercial items.

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

(D) The contractor certifies in the contract to the provisions in subdivision (b)(4)(ii) of this subsection. (See 22.1006(e).)

(iii)(A) Determinations of the applicability of this exemption shall be made in the first instance by the contracting officer before contract award. In determining that the exemption applies, the contracting officer shall consider all factors and make an affirmative determination that all of the above conditions have been met.

(B) If any potential offerors would not qualify for the exemption, the contracting officer shall incorporate in the solicitation 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).

(iv) If the Department of Labor determines after contract award that any of the requirements for exemption in subparagraph (b)(4) of this subsection have not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act, effective as of the date of the Department of Labor determination.

[54 FR 19816, May 8, 1989, as amended at 61 FR 39198, July 26, 1996]

22.1003-5 Some examples of contracts covered.

The following examples, while not definitive or exclusive, illustrate some of the types of services that have been found to be covered by the Act (see 29 CFR 4.130 for additional examples):

(a) Motor pool operation, parking, taxicab, and ambulance services.

(b) Packing, crating, and storage.

(c) Custodial, janitorial, house-keeping, and guard services.

(d) Food service and lodging.

(e) Laundry, dry-cleaning, linen-supply, and clothing alteration and repair services.

(f) Snow, trash, and garbage removal.

(g) Aerial spraying and aerial reconnaissance for fire detection.

(h) Some support services at installations, including grounds maintenance and landscaping.

(i) Certain specialized services requiring specific skills, such as drafting,

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illustrating, graphic arts, stenographic reporting, or mortuary services.

(j) Electronic equipment maintenance and operation and engineering support services.

(k) Maintenance and repair of all types of equipment, for example, aircraft, engines, electrical motors, vehicles, and electronic, office and related business and construction equipment. (But see 22.1003-4(b)(4).)

(l) Operation, maintenance, or logistics support of a Federal facility.

(m) Data collection, processing and analysis services.

[48 FR 42258, Sept. 19, 1983, as amended at 56 FR 67136, Dec. 27, 1991]

22.1003-6 Repair distinguished from remanufacturing of equipment.

(a) Contracts principally for remanufacturing of equipment which is so extensive as to be equivalent to manufacturing are subject to the Walsh-Healey Public Contracts Act, rather than to the Service Contract Act. Remanufacturing shall be deemed to be manufacturing when the criteria in either subparagraphs (a)(1) or (a)(2) of this subsection are met.

(1) Major overhaul of an item, piece of equipment, or materiel which is degraded or inoperable, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down into individual component parts.

(ii) Substantially all of the parts are reworked, rehabilitated, altered and/or replaced.

(iii) The parts are reassembled so as to furnish a totally rebuilt item or piece of equipment.

(iv) Manufacturing processes similar to those which were used in the manufacturing of the item or piece of equipment are utilized.

(v) The disassembled components, if usable (except for situations where the number of items or pieces of equipment involved are too few to make it practicable) are commingled with existing inventory and, as such, lose their identification with respect to a particular piece of equipment.

(vi) The items or equipment overhauled are restored to original life expectancy, or nearly so.

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(vii) Such work is performed in a facility owned or operated by the contractor.

(2) Major modification of an item, piece of equipment, or material which is wholly or partially obsolete, and under which all of the following conditions exist:

(i) The item or equipment is required to be completely or substantially torn down.

(ii) Outmoded parts are replaced.

(iii) The item or equipment is rebuilt or reassembled.

(iv) The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition.

(v) The work is performed in a facility owned or operated by the contractor.

(b) Remanufacturing does not include the repair of damaged or broken equipment which does not require a complete teardown, overhaul, and rebuild as described in subparagraphs (a)(1) and (a)(2) of this subsection, or the periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. Such contracts typically are billed on an hourly rate (labor plus materials and parts) basis. Any contract principally for this type of work is subject to the Service Contract Act. Examples of such work include the following:

(1) Repair of an automobile, truck, or other vehicle, construction equipment, tractor, crane, aerospace, air conditioning and refrigeration equipment, electric motors, and ground powered industrial or vehicular equipment.

(2) Repair of typewriters and other office equipment (but see 22.1003-4(b)(4)).

(3) Repair of appliances, radios, television sets, calculators, and other electronic equipment.

(4) Inspecting, testing, calibration, painting, packaging, lubrication, tune-up, or replacement of internal parts of equipment listed in subparagraphs (b)(1), (b)(2), and (b)(3) of this subsection.

(5) Reupholstering, reconditioning, repair, and refinishing of furniture.