

jurisdiction outside the District of Columbia, has violated his or her parole, the Commission may issue a warrant pursuant to the procedures of § 2.98. The warrant may be executed as provided as in § 2.99. A parolee who is arrested on such a warrant shall be considered to be a prisoner in federal custody, and may be returned to the District of Columbia or designated to a facility of the Bureau of Prisons at the request of the Commission.

(d) If a parolee from another jurisdiction, who is under the supervision of CSOSA pursuant to the Interstate Compact, is alleged to have violated his or her parole, the Compact Administrator or his designee may issue a temporary warrant to secure the arrest of the parolee pending issuance of a warrant by the original paroling agency. If so requested, the Commission will conduct a courtesy revocation hearing on behalf of the original paroling agency whenever a revocation hearing within the District of Columbia is required.

(e) The term "D.C. Code parolee" shall include any felony offender who is serving a period of parole or mandatory release supervision pursuant to a sentence of imprisonment imposed under the District of Columbia Code.

Dated: July 18, 2000.

**Michael J. Gaines,**

*Chairman, Parole Commission.*

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## DEPARTMENT OF LABOR

### Office of the Secretary

#### 29 CFR Part 4

RIN 1215-AB26

#### Service Contract Act; Labor Standards for Federal Service Contracts

**AGENCY:** Wage and Hour Division, Employment Standards Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** Pursuant to Section 4(b) of the McNamara-O'Hara Service Contract Act (SCA), the Department of Labor (DOL or the Department) is issuing a temporary exemption from coverage for certain subcontracts for commercial services. On this same date, the Department of Labor is separately proposing a similar exemption for both prime contracts and subcontracts. This exemption mirrors the subcontract portion of the proposed rule and will remain in effect for the period of one year or until final action is taken on the DOL proposed

exemption for both prime and subcontracts, whichever occurs first. The exemption for subcontracts was determined to be necessary and proper in the public interest to avoid the serious impairment of government business, and is in accord with the remedial purpose of the SCA to protect prevailing labor standards.

**EFFECTIVE DATE:** August 25, 2000.

#### FOR FURTHER INFORMATION CONTACT:

William W. Gross, Director, Office of Wage Determinations, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3028, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone (202) 693-0062. This is not a toll-free number.

#### SUPPLEMENTARY INFORMATION:

##### I. Paperwork Reduction Act

This rule contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (Pub. L. 96-511). The existing information collection requirements contained in Regulations, 29 CFR Part 4 were previously approved by the Office of Management and Budget under OMB control number 1215-0150.

##### II. Background

On October 1, 1995, the Federal Acquisition Regulations were amended to implement provisions of the Federal Acquisition Streamlining Act (FASA). One provision of the final regulation, 48 CFR 12.504(a)(10), provided that the requirements of the McNamara-O'Hara Service Contract Act (SCA) are not applicable to subcontracts at any tier for the acquisition of commercial items or services.

After a subsequent review of the issue by the FAR Council, the Administrator for Federal Procurement Policy wrote to the Secretary of Labor and requested that the Department propose an exemption for a more limited group of commercial service contracts (both prime contracts and subcontracts). The Administrator stated that the FAR Council had concluded that a blanket exemption of all subcontracts for commercial items may not adequately serve the Administration's policy of supporting exemptions of the SCA only where they do not undermine the purposes for which the SCA was enacted. Therefore the FAR Council agreed that any exemption from the coverage of SCA for subcontracts for the acquisition of commercial items or components should be accomplished under the Secretary of Labor's authority in the SCA, and stated that it would withdraw the FAR provision.

The FAR Council indicated that the adoption of their recommendations will further the commitment of the Administration to be more commercial-like, encourage broader participation in government procurement by companies doing business in the commercial sector, and reinforce their commitment to reduce government-unique terms and conditions from their contracts. Furthermore, the FAR Council represented that the limited exemptions that they proposed would be in accord with the remedial purpose of the SCA to protect prevailing labor standards.

The Department of Labor on this date has issued a Notice of Proposed Rulemaking (NPRM) to amend the SCA Regulations to implement the exemptions requested by the FAR Council. The FAR Council is contemporaneously withdrawing its current rule that exempts commercial subcontracts from the application of SCA (48 CFR 12.504(a)(10)). As a result of the FAR Council's actions, a small group of commercial subcontracts that were previously exempted under the FAR rule and that also meet the requirements of DOL's proposed rule could change from exempt to nonexempt and back to exempt if the DOL proposal becomes final as it is currently proposed. The Department, pursuant to its authority under section 4(b) of the SCA, finds that a temporary, limited exemption from the SCA is necessary and proper in the public interest to avoid the serious impairment of government business. This exemption is necessary to prevent the disruption that could be caused by such changes, including the possible disruption of services if the current subcontractor does not agree to continue the subcontract services under the requirements of SCA. Furthermore, the Department finds that as a result of the criteria applied to the exempt services, this temporary, limited exemption is in accord with the remedial purpose of the Act to protect prevailing labor standards.

This exemption does not apply to all commercial subcontracts that may have been exempt under the now withdrawn FAR rule nor does it apply to any prime contracts. The exemption is limited solely to those subcontracts that (1) were or would have been exempt under the now withdrawn FAR rule and (2) would be exempt under the DOL proposed rule if that rule becomes final in its current form. The exemption will be in effect for one year or until final action is taken on the NPRM issued this date, whichever occurs first. The Department notes that it intends to proceed expeditiously with this

rulemaking and anticipates that a final rule, after review of all of the comments, will be issued within six months.

The Department also finds that there is good cause to issue this temporary final rule without prior notice and comment. Prior notice and comment would be contrary to the public interest because of the disruption to contractors and to the provision of services to the Government caused by such changes from SCA-exempt, to SCA-covered, to SCA-exempt over the period of less than one year.

### III. Summary of the Exemptions

This rule addresses two separate but somewhat related issues. First, the current exemption for the maintenance and repair of Automated Data Processing (ADP) equipment, 29 CFR 4.123(e)(1), is modified to apply the exemption to subcontracts, and with respect to subcontracts, reflects terminology changes in law that have occurred, and applies the exemption to installation services. Second, a new exemption, similar to the current ADP exemption, is added to 4.123(e) to exempt subcontracts for a specified subset of commercial services that also meet certain criteria.

#### *Revision of the current ADP exemption*

This final rule retains the current language of the ADP exemption for application to prime contracts and adds a new subparagraph (2) to § 4.123(e) for application to subcontracts. The new subparagraph first reflects changes in terminology stemming from the passage of the Clinger-Cohen Act of 1996, 40 U.S.C. 1401 *et seq.*, which set forth a new framework for the management and acquisition of information technology and replaced the "ADP" terminology originally in the Brooks Automatic Data Processing Act, 40 U.S.C. 759, with "information technology" to reflect the convergence of ADP and telecommunications equipment and technology.

As defined at 40 U.S.C. 1401(3) and incorporated in the FAR, 48 CFR 2.101, the term "information technology," with respect to an executive agency, means "any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information." Under this definition, equipment is considered to be used by an executive agency if the agency uses the equipment directly or if the equipment is used by a contractor under a contract which requires the use of such equipment, or requires the use

of such equipment to a significant extent in the performance of a service or the furnishing of a product. The term "information technology" does not include any equipment that is acquired by a contractor incidental to a contract; or any equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices and medical equipment where information technology is integral to its operation, is not information technology.

In addition, the final rule applies to installation services (where those services are not subject to the requirements of the Davis-Bacon Act).

#### *New exemption for Certain Commercial Service Subcontracts*

In certain situations, an employee's work on a government contract represents a small portion of his or her time and the balance of the time is spent on commercial work. In such cases, the FAR Council represents that the Government loses the full benefits of competition for its service contracts because some contractors decline to compete for Government work due to specific government requirements. Consistent with the recommendation of the FAR Council, this exemption is limited to those subcontracts where the services being procured are such that it would be more efficient and practical for the subcontractor to perform the services with a workforce that is not primarily assigned to the performance of government work. In addition, in order that the exemption comport with the statutory requirement that it be in accord with the remedial purposes of the Act to protect prevailing labor standards, a number of criteria must be satisfied. First, the proposed exemption would apply only when the subcontract award is not determined primarily upon the factor of cost. Therefore, the subcontractor providing the best service at a somewhat higher or lower cost would not be at a competitive disadvantage. Second, the criteria would limit the application of the exemption to circumstances where the nature of the procurement dictates that the most efficient and practical performance of the workload can be accomplished with a workforce that is not dedicated to working primarily on

the Government contract. Thus, the competitive pressures upon employee wages that might exist if the services were performed by a workforce dedicated to the Government contract would not come into play on the subcontracts within the scope of the exemption. Furthermore, even if a subcontractor might be inclined to reduce wages to secure the subcontract, the criteria would forbid that practice.

Under this rule, the following criteria for exemption are applied to a short list of services. The exemption applies only if the services under the subcontract meet all of the following criteria.

(1) *The services under the subcontract are commercial—i.e., they are offered and sold regularly to non-Governmental customers, and are provided by the subcontractor to the general public in substantial quantities in the course of normal business operations.*

The basic underlying purpose of the exemption is to permit a prospective subcontractor to utilize its commercial compensation practices for both Government and private commercial work. If the prospective subcontractor does not currently perform the solicited services, then conforming to the SCA requirements would not cause the subcontractor to alter its commercial compensation practices.

(2) *The subcontract will be awarded on a sole source basis or the subcontractor will be selected for award on the basis of other factors in addition to price. In such cases, price must be equal to or less important than the combination of other non-price or cost factors in selecting the subcontractor.*

One of the basic purposes of the Service Contract Act is to counteract the negative impact that competition based on price alone may have upon wages. If a subcontract is awarded on a sole source basis, there is no competition and price is clearly not the basis for awarding the subcontract.

For the majority of other subcontracts that are competitively awarded, this criterion would attempt to largely remove wages from consideration by making quality of service and other non-cost factors equal to or more important than the bottom line price. If one assumes that the best employees (contractors) are paid (pay) higher wages, then this criterion would allow these employees (contractors) to compete on the basis of the employees' increased productivity and higher quality service. These employees/contractors should not be disadvantaged even though the employee wages and possibly the resulting subcontract price are somewhat higher than the lowest offer.

(3) *The subcontract services are furnished at prices which are, or are based on, established catalog or market prices. An established price is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the subcontractor, 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. 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 subcontractor. Normally, market price information is taken from independent market reports, but market price could be established by surveying the firms in a particular industry or market.*

This criterion ensures that the subcontractor will provide the services to the Government on the same basis that the subcontractor services commercial accounts. Combined with the other criteria, this requirement should ensure that subcontractors do not decrease employee compensation as a part of the competitive contracting process.

(4) *All of the service employees who will perform the services under the subcontract spend only a small portion of their 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 subcontract.*

If the employees spend only a small portion of their available work hours on the Government contract, the subcontractor would not likely be willing to alter its compensation practices simply to obtain the subcontract. (Note: Criterion 5 would also specifically preclude any such change in compensation practices.) Furthermore, the criteria for exemption will not be satisfied by rotating the workforce and having different employees work on the contract each day of the week. In the Department's experience it would be extraordinary for a contractor to staff a contract in this manner. Therefore in such a case, although each individual employee would spend less than 20% of his/her work hours on the Government contract, a prime contractor could not certify—as required by Criterion 6—that all or nearly all offerors would staff the contract with service employees who spend only a small portion of their time on the project.

(5) *The subcontractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the subcontract as the subcontractor uses for these employees and for equivalent employees servicing commercial customers.*

This criterion ensures that the employees servicing the government contract will be compensated exactly as they would be if they were servicing a commercial account. Thus, the prevailing labor standards for private work would not be impacted in any way by the award of the subcontract. Furthermore, because subcontract award is not determined primarily on the basis of cost (Criterion 2), the subcontractor paying the lowest wages will not have a competitive advantage over other employers who pay average or above average wages. These subcontractors will compete for the subcontract work on the same basis that they compete for private work: quality of service and overall value.

(6) *The prime contractor determines in advance, based on the nature of the subcontract requirements and knowledge of the practices of likely offerors, that all or nearly all offerors will meet the above requirements. If the services are currently being performed under a contract or subcontract, the prime contractor shall consider the practices of the existing contractor or subcontractor in making a determination regarding the above requirements.*

This requirement is designed to ensure that all subcontractors compete on an equal basis, and eliminate the possibility that a subcontractor subject to SCA would be forced to compete against a subcontractor that would be exempt from SCA. Furthermore, as noted in the discussion of Criterion 4, this requirement, which takes into consideration not only the practices of likely offerors but also the nature of the subcontract requirements, is a necessary safeguard to prevent individual offerors from juggling staffing patterns simply in an effort to avoid SCA coverage. This criterion also serves to protect those employees (either contractor or Federal employees) who might currently be engaged in performing the solicited services on a full-time basis.

(7) *The exempted subcontractor certifies in the subcontract to the provisions in paragraphs (1), and (3) through (5). The prime contractor shall review available information concerning the subcontractor and the manner in which the subcontract will be performed. If the prime contractor has reason to doubt the validity of the*

certification, SCA stipulations shall be included in the subcontract.

This criterion provides a mechanism for addressing and correcting situations where the exemption may have been misapplied. (It is not anticipated that the prime contractor will do a complete investigation into the application of the exemption to the subcontract, but rather will do a review based on known information regarding the subcontractor, including information submitted in the solicitation process.) Furthermore, if the Department of Labor, in its enforcement, determines that the subcontract is not in fact exempt, it shall require that SCA stipulations be included in the subcontract. The prime contractor, who in almost all cases will have SCA stipulations included in its contract, will be ultimately responsible for compliance with the requirements of the Act. The Department may therefore require that the SCA requirements be effective as of the date of contract award. The Department notes that an exempt subcontractor is not required to keep any particular records to meet its burden of showing that the criteria are satisfied.

These criteria will be applied only to the following small group of commercial services. In order for the exemption to apply, the subcontract must meet all of the required criteria and must be for one of the specified services listed below. Subcontracts for services that are not within the scope of the services specifically listed, will not be exempt from coverage of SCA even though the subcontract meets all of the required criteria. Furthermore, subcontracts subject to section 4(c) of the SCA are not exempt.

For each of the services included on the list of services to which the exemption would apply, the type of services covered is explained. The difficulties which the FAR Council stated have been encountered in procuring the services are discussed in the NPRM.

#### *Automatic Data Processing and Telecommunications Services*

For several years the Department of Labor regulations implementing the Service Contract Act have contained an exemption for contracts principally for the maintenance, calibration and/or repair of 1) automated data processing and office information/word processing systems; 2) scientific equipment and medical apparatus or equipment of microelectronic circuitry or other technology of at least similar sophistication; and 3) office/business machines not otherwise exempt where services are performed by the

manufacturer or supplier of the equipment. In short, the current exemption applies exclusively to hardware maintenance when certain criteria are met. In addition to the expansion of the current ADP exemption to subcontracts for installation services as well as hardware maintenance, an exemption for subcontracts for software and other ADP support services is added in conjunction with the criteria listed above.

Provided the specified criteria are met, the exemption covers a broader range of automatic data processing and telecommunications services including: ADP facility operation and maintenance services provided at the contractor's facility, ADP telecommunications and transmission services, ADP teleprocessing and timesharing services, ADP systems analysis services, information and data broadcasting or data distribution services, ADP backup and security services, ADP data conversion services, computer aided design/computer aided manufacturing (CAD/CAM) services, digitizing services (including cartographic and geographic information), telecommunications network management services, automated news services, data services or other information services (e.g., buying data, the electronic equivalent of books, periodicals, newspapers, etc.) and data storage on tapes, compact disks, etc. This exemption does not apply to ADP data entry services or ADP optical scanning services.

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

Contractors operating automobiles or other vehicles have a need for services such as normal maintenance (e.g., changing oil and filters, rotating tires, etc.), mechanical repairs, paint and body work, glass replacement, and other repairs needed to maintain the automobile or other vehicle. Unless the contractor has its own repair shop for such work, it is subcontracted to commercial firms.

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

Although these services are not typically required by most service contracts and therefore any subcontracts for these services would not typically be covered by the wage determination requirements of the prime contract, any subcontract for such financial services would be exempt if all the required criteria are met.

Lodging at hotels/motels and contracts with hotels/motels for conferences, including lodging and/or meals, which are part of the contract for the conference.

Prime contractors may contract with hotels/motels for meeting rooms for conferences of limited duration (e.g., one to five days). These subcontracts may be for conferences where attendance is limited to Government employees or may involve attendance by other organizations and/or the public. These subcontracts may also involve furnishing lodging and meals to those participating in the conference.

In other cases, the prime contractor establishes contractual arrangements with hotels/motels to obtain special rates for lodging when the contractor has a large number of employees that frequently travel to a particular location. The hotel/motel agrees to special reduced rates in exchange for being designated a preferred provider for the agency travelers to that city/location.

Maintenance services for all types of specialized building or facility equipment such as elevators, escalators, temperature control systems, security systems, smoke and/or heat detection equipment, etc.

Prime contractors that operate and maintain Government owned buildings often subcontract for services related to specialized equipment. Subcontracts for these services would be exempt if all of the required criteria are met.

Installation, maintenance, calibration or repair services for all types of equipment where services are obtained from the equipment manufacturer or supplier of the equipment.

Sometimes prime contractors are required to provide equipment and the prime contractors may have a need to acquire services to install, maintain, calibrate, service or repair the equipment from the manufacturer or original supplier in order to avoid compromising a warranty or because proprietary information needed to perform the work is only available from the manufacturer, an authorized representative of the manufacturer or the supplier of the equipment. These subcontracts may involve sophisticated equipment that requires access to proprietary information or requires employees involved in performing the work to have extensive training that is often only available through the manufacturer or equipment supplier. Examples of the type of equipment include automated building control systems, HVAC equipment, building security systems, and elevators or escalators.

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

The General Services Administration (GSA) enters into contracts with airlines called "City Pairs" so that Federal employees and contract employees traveling on Government business can get discount airfares. Where contract employees travel on official business at reduced government fares, it is not considered an SCA-covered subcontract for transportation services.

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

To the extent that these services may be required, a subcontract for real estate services, including lease acquisition, real property appraisal, broker, space planning, lease re-negotiation, tax abatement, and real property disposal services, would be exempt if the required criteria are met.

Relocation services, including services of real estate brokers and appraisers, to assist federal employees or military personnel in buying and selling homes.

Subcontracts are not generally awarded for employee relocation services. To the extent that relocation services may be required, subcontracts for these services would be exempt if the required criteria are met.

#### **IV. Executive Order 12866 and 13132; § 202 of the Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act**

This final rule is being treated as a "significant regulatory action" within the meaning of Executive Order 12866 because of the significant impact of this rule on other agencies. Therefore, the Office of Management and Budget has reviewed the final rule. However, the Department has determined that this rule is not "economically significant" as defined in section 3(f)(1) of E.O. 12866, and therefore it does not require a full economic impact analysis under section 6(a)(3)(C) of the Order. Under this rule, subcontracts would not be exempt unless price is equal to or less important than the combination of other non-price or cost factors in selecting the subcontractor. Therefore it is not anticipated that the changes proposed by this rule will have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, jobs, the environment,

public health or safety, or State, local, or tribal governments or communities.

The Department has similarly concluded that this rule is not a "major rule" requiring approval by the Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). It will not likely result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any federal mandate that may result in excess of \$100 million in expenditures by state, local and tribal governments in the aggregate, or by the private sector. Furthermore, the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1532, do not apply here because the rule does not include a "Federal mandate." The term "Federal mandate" is defined to include either a "Federal intergovernmental mandate" or a "Federal private sector mandate." 2 U.S.C. 658(6). Except in limited circumstances not applicable here, those terms do not include an enforceable duty which is "a duty arising from participation in a voluntary program." 2 U.S.C. 658(7)(A). A decision by a subcontractor to bid on Federal service contracts is purely voluntary in nature, and the subcontractor's duty to meet Service Contract Act requirements arises "from participation in a voluntary Federal program."

The Department has also reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

## V. Document Preparation

This document was prepared under the direction and control of John R. Fraser, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

### List of Subjects in 29 CFR Part 4

Administrative practice and procedures, Employee benefit plans,

Government contracts, Investigations, Labor, Law enforcement, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, wages.

Accordingly, for the reasons set out in the preamble, 29 CFR Part 4 is amended as set forth below:

## PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

1. The authority citation for Part 4 continues to read as follows:

**Authority:** 41 U.S.C. 351, *et seq.*, 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358; 41 U.S.C. 38 and 39; 5 U.S.C. 301; and 108 Stat. 4101(c).

2. New paragraphs (e)(2) and (3) are added to § 4.123(e), to read as follows:

### § 4.123 Administrative limitations, and exemptions.

\* \* \* \* \*

(e) \* \* \*

(2) The following exemptions shall expire no later than July 26, 2001:

(i) Subcontracts principally for the maintenance, calibration, repair, and/or installation (where the installation is not subject to the Davis-Bacon Act, as provided in § 4.116(c)(2) of this part) of information technology. The term information technology means any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. The term information technology does not include equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices and medical equipment where information technology is integral to its operation, are not information technology.

(ii) The exemptions set forth in this paragraph (e)(2) 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 subcontractor in substantial quantities to the general public in the course of normal business operations;

(B) The subcontract services are furnished at prices which are, or are

based on, established catalog or market prices for the maintenance, calibration, repair, and/or installation of such commercial items. 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. 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; and

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

(D) The subcontractor certifies in the subcontract to the provisions in this paragraph (e)(2)(ii).

(iii) Determinations of the applicability of this exemption to subcontracts shall be made by the prime contractor prior to subcontract award. In making a judgment that the exemption applies, the prime contractor shall consider all factors and make an affirmative determination that all of the above conditions have been met.

(iv) The prime contractor is responsible for compliance with the requirements of the Service Contract Act by its subcontractors, including compliance with all of the requirements of this exemption (see § 4.114(b) of this part). If the Department of Labor determines that any of the above requirements for exemption has not been met with respect to a subcontract, the exemption will be deemed inapplicable, and the prime contractor may be responsible for compliance with the Act, effective as of the date of contract award.

(3) The following exemptions shall expire no later than July 26, 2001:

(i) Subcontracts for the following services where the services under the subcontract meet all of the criteria set forth in paragraph (e)(3)(ii) and are not excluded by paragraph (e)(3)(iii):

(A) Automated data processing and telecommunications services, including ADP facility operation and maintenance services provided at the subcontractor's facility, ADP telecommunications and transmission services, ADP teleprocessing and timesharing services, ADP systems analysis services,

information and data broadcasting or data distribution services, ADP backup and security services, ADP data conversion services, computer aided design/computer aided manufacturing (CAD/CAM) services, digitizing services (including cartographic and geographic information), telecommunications network management services, automated news services, data services or other information services (e.g., buying data, the electronic equivalent of books, periodicals, newspapers, etc.) and data storage on tapes, compact disks, etc. This category does not include ADP data entry services or ADP optical scanning services;

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

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

(D) Lodging at hotels/motels and contracts with hotels/motels for conferences, including lodging and/or meals, which are part of the subcontract for the conference;

(E) Maintenance services for all types of specialized building or facility equipment such as elevators, escalators, temperature control systems, security systems, smoke and/or heat detection equipment, etc.;

(F) Maintenance, calibration, repair, or installation (where the installation is not subject to the Davis-Bacon Act, as provided in § 4.116(c)(2) of this part) services for all types of equipment where the services are obtained from the manufacturer or supplier of the equipment;

(G) Transportation of persons by air, motor vehicle, rail, or marine vessel on regularly scheduled routes or via standard commercial services (not including charter services);

(H) Real estate services, including real property appraisal services, related to housing federal agencies or disposing of real property owned by the Federal Government; and

(I) Relocation services, including services of real estate brokers and appraisers to assist federal employees or military personnel in buying and selling homes.

(ii) The exemption set forth in this paragraph (e)(3) shall apply to the services listed in paragraphs (e)(3)(i) of this section only when all of the following criteria are met:

(A) The services under the subcontract are commercial—i.e., they are offered and sold regularly to non-

Governmental customers, and are provided by the subcontractor to the general public in substantial quantities in the course of normal business operations;

(B) The subcontract will be awarded on a sole source basis or the subcontractor will be selected for award on the basis of other factors in addition to price. In such cases, price must be equal to or less important than the combination of other non-price or cost factors in selecting the subcontractor.

(C) The subcontract services are furnished at prices which are, or are based on, established catalog or market prices. An established price is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the subcontractor, 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. 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 subcontractor. Normally, market price information is taken from independent market reports, but market price could be established by surveying the firms in a particular industry or market;

(D) All of the service employees who will perform the services under the subcontract spend only a small portion of their 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 subcontract;

(E) The subcontractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the subcontract as the subcontractor uses for these employees and for equivalent employees servicing commercial customers;

(F) The prime contractor determines in advance, based on the nature of the subcontract requirements and knowledge of the practices of likely offerors, that all or nearly all offerors will meet the above requirements. If the services are currently being performed under a contract or subcontract, the prime contractor shall consider the practices of the existing contractor or subcontractor in making a determination regarding the above requirements; and

(G) The exempted subcontractor certifies in the subcontract to the

provisions in paragraphs (e)(3)(ii)(A) and (C) through (E) of this section. The prime contractor shall review available information concerning the subcontractor and the manner in which the subcontract will be performed. If the prime contractor has reason to doubt the validity of the certification, SCA stipulations shall be included in the subcontract.

(iii) The prime contractor is responsible for compliance with the requirements of the Service Contract Act by its subcontractors, including compliance with all of the requirements of this exemption (see § 4.114(b) of this part). If the Department of Labor determines that any of the above requirements for exemption has not been met with respect to a subcontract, the exemption will be deemed inapplicable, and the prime contractor may be responsible for compliance with the Act, effective as of the date of contract award.

(iv) The exemption set forth in this paragraph (e)(3) does not apply to solicitations and subcontracts subject to Section 4(c) of the Service Contract Act.

Signed at Washington, D.C., on this 19th day of July, 2000.

**T. Michael Kerr,**

*Administrator, Wage and Hour Division.*

[FR Doc. 00-18635 Filed 7-25-00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[COTP San Juan 00-065]

RIN 2115-AA97

#### Safety Zone Regulation for San Juan Harbor, Puerto Rico

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone within a 1500 foot radius surrounding the drill boat Apache while it is engaged in drilling or blasting operations. The drill boat will operate at the entrance to San Juan Harbor, Puerto Rico. The safety zone is necessary to protect vessels and personnel in the vicinity of the drilling and blasting operations. Entry into this zone is prohibited, unless authorized by the Captain of the Port.

**DATES:** This rule is effective from 7 a.m., Atlantic Standard Time, on July 11, 2000, to 11:59 p.m., Atlantic Standard Time, October 31, 2000.