

**EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT ACT –
MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT – REQUIREMENTS (Jan 2008)**

(a) The items of equipment to be serviced under this Agreement are used regularly for other than Government purposes, and are sold or traded by the Seller in substantial quantities to the general public in the course of normal business operations.

(b) The services shall be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of equipment.

(1) 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 Seller, 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.

(2) 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 Seller.

(c) The compensation (wage and fringe benefits) plan for all service employees performing work under the Agreement shall be the same as that used for these employees and for equivalent employees servicing the same equipment of commercial customers.

(d) The Seller is responsible for compliance with all the conditions of this exemption by its subcontractors. The Seller shall determine the applicability of this exemption to any subcontract on or before subcontract award. In making a judgment that the exemption applies, the Seller shall consider all factors and make an affirmative determination that all of the conditions in paragraphs (a) through (c) of this clause will be met.

(e) If the Department of Labor determines that any conditions for exemption in paragraphs (a) through (c) of this clause have not been met, the exemption shall be deemed inapplicable, and the Agreement shall become subject to the Service Contract Act. In such case, the procedures at 29 CFR 4.123(e)(1)(iv) and 29 CFR 4.5(c) will be followed.

(f) The Seller shall include the substance of this clause, including this paragraph (f) in subcontracts for exempt services under this Agreement.