

Volume VII - Parts 5101 to 5153

**ARMY
FEDERAL
ACQUISITION
REGULATION
SUPPLEMENT**

Issued Fiscal Year 2019 by the:

GENERAL SERVICES ADMINISTRATION

DEPARTMENT OF THE ARMY

TITLE 48 - CODE OF FEDERAL REGULATIONS

Chapter 51

**UNITED STATES ARMY FEDERAL
ACQUISITION REGULATION SUPPLEMENT**

Volume #

Need Be To Fixed

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(Revised 12 July 2022)

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Subpart 5101.1 - Purpose, Authority, Issuance

5101.101 Purpose.

The Army Federal Acquisition Regulation Supplement (AFARS) implements and supplements the Federal Acquisition Regulation (FAR), the Defense FAR Supplement (DFARS) and the DFARS Procedures, Guidance and Information (PGI) to establish uniform policies for Army acquisition. It does not restrict the exercise of good business judgment or stifle innovation.

5101.105 Reserved.

5101.105-3 Copies.

The AFARS is available electronically on Procurement.Army.mil (<https://procurement.army.mil>) at <https://spcs3.kc.army.mil/asaalt/procurement/AFARS/Home.aspx>. The Office of the Deputy Assistant Secretary of the Army (Procurement) (ODASA(P)), Procurement Policy Directorate, SAAL-PP will issue notices of AFARS revisions to all senior contracting officials (SCOs).

5101.108 FAR conventions.

(b) *Delegation of authority.* Each authority is delegable within the contracting chain of authority unless otherwise indicated by law, statute, or regulation. All delegations must reference the applicable AFARS citation. Delegations that do not include expiration dates remain effective until a higher authority supersedes or cancels them.

5101.108 (b)(S-90) Introduction of delegations matrix at Appendix GG and instructions for use.

Delegations of certain procurement authorities are identified throughout the AFARS with a pointer to a matrix, labeled Appendix GG. Appendix GG outlines all delegations of authority within the FAR, DFARS and AFARS, and specifies whether the authority prohibits or allows for further delegation. The Army level of authority identified in the matrix is the lowest level of delegation.

5101.170 Peer reviews.

(a) *DoD peer reviews.*

(1) The SCO will concur, in writing, on all solicitation and contract packages submitted for each phase of any DoD peer review. For the first phase only, the SCO will send a copy of the written concurrence to the DASA(P) (see 5101.290) and provide a copy to the head of the contracting activity (HCA). [See AFARS PGI 5101.170-2.](#)

(i) In accordance with [Defense Pricing and Contracting \(DPC\) Class Deviation 2019-O0010, Peer Reviews of Contracts for Supplies and Services](#), except for procurements of major defense acquisition programs above \$1 billion for which the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) is the milestone decision authority and USD(A&S) special interest programs, the DASA(P) is responsible for conducting preaward peer reviews for competitive procurements above \$1 billion. See Appendix GG for further delegation.

(2) Contracting activities shall provide their rolling annual forecast of acquisitions that will be subject to DoD peer reviews to the address at 5101.290(b)(2)(ii)(A) at the end of each quarter. See 5104.802(f)(4) for peer review forecast requirements. [See AFARS PGI 5101.170-3.](#)

(b) *Component peer reviews.*

(i) *Army peer reviews.* With the exception of acquisitions using sealed bidding procedures (see FAR Part 14), a Solicitation Review Board (SRB) and a Contract Review Board (CRB) will approve all procurements with an estimated value of \$50 million or more including the award of task and delivery orders. A CRB is required for contract modifications that increase total evaluated price or otherwise increase scope. A CRB is not required for modifications that exercise an option, add incremental funding, or make administrative changes. The SRB and CRB will be independent, multi-functional teams comprised of senior level experts, which will, at a minimum, include representatives from the contracting activity, small business office, office of counsel, requirements community, and in the case of noncompetitive actions, the advocate for competition. The same members should participate in both the SRB and the CRB in order to ensure consistency.

(ii) *Objective of Army peer reviews.* The SRB/CRB will review and assess the presolicitation, solicitation and contract award documents for consistency, sufficiency, compliance and application of sound business practices. The SRB/

CRB will verify that the procurement represents an overall good value to the Government and appropriate obligation of taxpayer funds.

(iii) *Resolution of comments.* The SCO will establish procedures for resolving all SRB and CRB comments.

(iv) *Peer review statistics.* Contracting activities will collect peer review statistics, to include annual data on the number of SRB/CRB reviews conducted and waived, identification of any systemic issues or trends, best practices, lessons learned, overall effectiveness of the process, and other data as determined necessary.

(c) *Peer Review Thresholds.*

Table 1-1 designates the Army peer reviews, thresholds and approval authorities.

TABLE 1-1, Peer Reviews, Thresholds and Approval Authorities			
Level	Threshold	Parameters	Approval Authority
DPC	\$1 Billion or More	Pre-award Non-Competitive	Director, Price, Cost and Finance, DPC (Note 1)
DPC	Actions designated by USD(A&S) as requiring peer review, regardless of value	Pre-award Non-Competitive	Director, Price, Cost and Finance, DPC (Note 1)
DPC	\$1 Billion or More MDAPs for which USD(A&S) is the MDA	Pre-award, Competitive	Director, Contract Policy, DPC (Note 1)
DPC	Actions designated by USD(A&S) as requiring peer review, regardless of value	All Pre-award, Competitive	Director, Contract Policy, DPC (Note 1)
Army	\$1 Billion or More	Pre-award, Competitive	HCA Non-delegable, Except DASA(P) for Special Interest Acquisitions
Army	\$250 Million or More but Less than \$1 Billion	Pre-award, Competitive and Non-Competitive	HCA, with authority to delegate No Lower than the SCO
Army	\$50 Million or More but Less than \$250 Million	Pre-award, Competitive and Non-Competitive	SCO, with authority to delegate to No Lower than the CoCO
Army	Below \$50 Million	Pre-award, Competitive and Non-Competitive	SCO or Designee (Note 2)
Army	\$1 Billion or More	Independent Management Review Contracts for Services	DASA (P) or SSM; without authority to further delegate.
Army	\$100 Million or More but Less than \$1 Billion	Independent Management Review Contracts for Services	HCA, with authority to delegate to No Lower than the SCO
Army	Procurements identified as Special Interest by the DASA(P).	All Peer Reviews, Special Interest	DASA(P), without power to further delegate. (Note 3)
Notes:			

(v) *Independent Management Reviews (IMRs) (Postaward peer reviews) of contracts for services.* Independent Management Reviews shall be conducted if the base period is greater than one year, the IMR takes place prior to the end of

the second year of the base period of performance. If the base period of performance is one year or less, the IMR occurs prior to the exercise of the second option period.

(a) The ODASA(P) will conduct an Independent Management Review (IMR) for contracts for services valued at \$1 billion or more. The reviews will be conducted in accordance with [AFARS PGI 5101.170-4\(a\)](#).

(b) The HCA will conduct an IMR for contracts for services valued at \$100 million or more but less than \$1 billion. See [Appendix GG](#) for further delegation. For HCA reviews, the HCA will provide the Senior Services Manager a summary report. The summary report will address the independent management review required elements in DoDI 5000.74 Defense Acquisition of Services and shall be filed within PCF in accordance with [AFARS PGI 5101.170-4\(b\)](#); no later than 45 days after completion of the review.

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Subpart 5101.2 - Administration

5101.290 Routing documents and mailing addresses.

(a)(1) Contracting activities will obtain either head of the contracting activity (HCA) or, if delegated, SCO concurrence on all procurement document packages submitted for Headquarters, Department of the Army (HQDA) review, coordination, and/or approval. The SCO may not delegate this authority. Procurement document packages will include all reviews and coordination completed prior to submission to HQDA, including legal reviews. Unless otherwise specified in this regulation, individual and class deviations to this AFARS provision are prohibited. Send document packages via the HQDA Task Management Tool (TMT) to the ODASA(P) directorate groups associated with the email addresses listed in 5101.290(b)(2) (ii)(C) (except as provided elsewhere in this regulation).

(2) The contracting officer shall include the contract type determination required by FAR 16.103(d)(1) and 5116.103(d)(1) in HQDA-level approval packages that reference contract type, including the approvals required by FAR 6.304 and FAR 16.504(c)(1)(D)(I). If a written acquisition plan is required for the associated contract action, include the acquisition plan in the submission package and provide the acquisition plan citation in the applicable paragraph of the document submitted for review. If a written acquisition plan is not required, include the contract type determination from the contract file in the submission package.

(b) Frequently used addresses:

(1) For the Deputy Assistant Secretary of the Army (Procurement), use the following:

Deputy Assistant Secretary of the Army (Procurement)
Attn: SAAL-ZP
103 Army Pentagon
Room 2D528
Washington, DC 20310-0103.

(2)(i) For the Office of the Deputy Assistant Secretary of the Army (Procurement), use the following:

Office of the Deputy Assistant Secretary of the Army (Procurement)
usarmy.pentagon.hqda-asa-alt.list.zp-current-operations@mail.mil
Zachary Taylor Building – 5th Floor
2530 Crystal Drive
Arlington, VA 22202.

The email addresses for the directorates appear in paragraph (2)(ii). Submit document packages requiring HQDA review, coordination, and/or approval via the TMT.

(ii) Specify the directorate and email address within paragraph (2)(i) as follows:

- (A) SAAL-ZP-PP Procurement Policy, usarmy.pentagon.hqda-asa-alt.list.saal-zp-pp@army.mil.
- (B) SAAL-ZP-PS Procurement Support, usarmy.pentagon.hqda-asa-alt.list.saal-ps-staff@army.mil.
- (C) SAAL-ZP-PS Procurement Support, usarmy.pentagon.hqda-asa-alt.list.saal-ps-staff@army.mil.
- (D) SAAL-ZP-PE Procurement Systems, usarmy.pentagon.hqda-asa-alt.list.saal-zp-pe@armymil.
- (E) SAAL-ZP-SSM Senior Services Manager, usarmy.pentagon.hqda-asa-alt.list.saal-zp-ssm@army.mil.

(3) For the Office of the Assistant Secretary of the Army (Financial Management and Comptroller), use the following:

Office of the Assistant Secretary of the Army (Financial Management and Comptroller)
109 Army Pentagon
Washington, DC 20310-0109.

(4) For the Office, Chief of Legislative Liaison, use the following:

The Office, Chief of Legislative Liaison (OCLL)
Attn: SALL-SPA
1600 Army Pentagon
Washington, DC 20310-1600.

(5) For the Chief, Procurement Fraud Branch, U.S. Army Legal Services Agency, use the following:

Chief, Procurement Fraud Branch
Contract and Fiscal Law Division
U.S. Army Legal Services Agency
9275 Gunston Road, BLDG 1450
Ft Belvoir, VA 22060-5546.

(6) For the Office of the Command Counsel, Headquarters, U.S. Army Materiel Command, use the following:

Office of the Command Counsel
Headquarters U.S. Army Materiel Command
Attn: AMCCC
4400 Martin Road
Redstone Arsenal, AL 35898-5340.

(7) For the U.S. Army Contracting Command, use the following:

U.S. Army Contracting Command
ATTN: AMSCC
3334A Wells Road
Redstone Arsenal, AL 35898-5000.

(8) For the Directorate of Contracting, U.S. Army Corps of Engineers, use the following:

U.S. Army Corps of Engineers
Directorate of Contracting
CECT-ZA
441 G Street, N.W.
Washington, DC 20314-1000.

(9) For the Chief, Army Power Procurement Office, U.S. Army Center for Public Works, use the following:

Chief, Army Power Procurement Office
U.S. Army Center for Public Works (CECPW-C)
7701 Telegraph Road
Alexandria, VA 22315-3862.

Subpart 5101.3 - Agency Acquisition Regulations

5101.301 Policy.

(a) The Deputy Assistant Secretary of the Army (Procurement) (DASA(P)) acts for the Assistant Secretary of the Army (Acquisition, Logistics and Technology) in developing, coordinating, issuing and maintaining the AFARS.

(b) SCOs will coordinate with the Office of the Deputy Assistant Secretary of the Army (Procurement) (ODASA(P)) Procurement Policy Directorate, SAAL-PP, to publish proposed internal acquisition regulations or instructions, policy letters, clause books, policies, procedures, clauses, or forms in the *Federal Register* for public comment when required. (See FAR 1.301(b) and DFARS 201.301(b).) Contracting activities will format coordination packages in accordance with FAR 1.304, DFARS 201.304, and 5101.304 and route them in accordance with 5101.290. SAAL-PP will assist the contracting activity with preparing the proposed notice, forward it to the *Federal Register*, and receive public comments. At the close of the public comment period, SAAL-PP will send all public comments to the contracting activity for analysis. When the contracting activity completes its analysis, it will –

- (1) Send an updated request for deviation in accordance with 5101.402; or
- (2) Send an updated request for approval, which does not involve a deviation, in accordance with 5101.304(1)(i); and
- (3) Include the results of the publication and analysis under the heading “IV Collaterals.”

5101.303 Publication and codification.

(a)(i) The Code of Federal Regulations codifies the AFARS under chapter 51, in Title 48.

(ii) To the extent possible, number all AFARS text, whether implemental or supplemental, as if it were implemental. Use supplemental numbering only when the text cannot be integrated intelligibly with its FAR or DFARS counterpart.

(A) The AFARS implemental numbering sequence is the same as the FAR except–

- (1) Insert the number “51” before the primary citation;
- (2) Insert “0” if the primary citation is to a single digit part number; and
- (3) When the text exceeds one paragraph, number subdivisions by skipping a unit in the FAR 1.105-2(b)(2) prescribed numbering sequence.

prescribed numbering sequence.

(B) The AFARS supplemental numbering sequence is the same as the FAR except –

- (1) Insert the number “51” before the primary citation;
- (2) Insert “0” if the primary citation is to a single digit part number;
- (3) Add “90” to parts, subparts, sections, or subsections;
- (4) Add “S-90” to subdivisions; and
- (5) When the text exceeds one paragraph, number subdivisions without skipping a unit in the FAR 1.105-2(b)(2) prescribed numbering sequence.

1.105-2(b)(2) prescribed numbering sequence.

(D) Examples of AFARS implemental and supplemental numbering are in Tables 1-1 and 1-2 respectively:

TABLE 1-1, AFARS IMPLEMENTAL NUMBERING		
	FAR	AFARS
1 paragraph implementing FAR 19.501	19.501	5119.501
3 paragraphs implementing FAR 19.501	19.501	5119.501 (1) (2) (3)
1 paragraph implementing FAR 19.501(a)	19.501(a)	5119.501(a)
3 paragraphs implementing FAR 19.501(a)	19.501(a)	5119.501 (a)(i) (ii) (iii)

3 paragraphs implementing FAR 19.501(a)(1)	19.501(a)(1)	5119.501 (a) (1)(A) (B) (C)
Further subdivisions follow the prescribed sequence	19.501(a)(1)(i)(A)(I)(i)	5119.501(1)(i)(A)(I)(i)

TABLE 1-2, AFARS IMPLEMENTAL AND SUPPLEMENTAL NUMBERING		
FAR	Is Implemented As*	Is Supplemented As
19	5119	5119.90
19.5	5119.5	5119.590
19.501	5119.501	5119.501-90
19.501-1	5119.501-1	5119.501-1-90
19.501-1(a)	5119.501-1(a)	5119.501-1(a)(S-90)
19.501-1(a)(1)	5119.501-1(a)(1)	5119.501-1(a)(1)(S-90)

*Assumes one AFARS paragraph implementing one FAR or DFARS paragraph.

(iii) Contracting activities will contact SAAL-PP to obtain numbers for acquisition instruction or guidebook text and clauses.

(A) Chapter 51 reserves subsection numbers 90-99 for AFARS supplementary material with no FAR or DFARS counterpart.

(I) Headquarters, Department of the Army (HQDA) reserves numbers 100-199 for the Army Commands, the Army Service Component Commands, and the Direct Reporting Units with a head of the contracting activity for unique implementing material with no counterpart in higher-level regulations.

(2) HQDA reserves numbers 200 and above for Army Materiel Command and major subordinate command unique implementing material with no counterpart in higher-level regulations.

(B) Chapter 51 reserves numbers 9000 and above for supplementary clauses approved for use Army-wide, in specific commands, subordinate commands or contracting offices. (See 5152.101.)

5101.304 Agency control and compliance procedures.

5101.304-90 Army control and compliance.

(a) *Definitions.* As used in this section—

(1) “Acquisition instruction” means the set of governing local processes and procedures developed and maintained by the head of each contracting activity.

(2) “Policy” means direction to contracting organizations implementing statute, executive order, regulation, or other governing directives.

(3) “Procedure” means an outline of how to perform a process – who performs what action, what sequence they perform the steps in the task, and the criteria (i.e., standard) they must meet to accomplish the goal/end-state.

(4) “Process” means a high-level view or map of the tasks required by the policy described in sufficient detail to direct the user to a desired outcome.

(b) All Army procurement policy is centralized under the ODASA(P), and ODASA(P) is the only Army organization authorized to issue procurement policy.

(c) HQDA and Army contracting activities will not supplement the FAR, DFARS, or AFARS or issue internal acquisition regulations or instructions except as provided in this section. HCAs, on a non-delegable basis, are responsible for procurement processes and procedures, to include processes and procedures intended for issuance below the HCA level,

within their contracting activity. These shall be codified in an acquisition instruction. HCAs shall obtain DASA(P) approval for their baseline acquisition instruction. HCAs are to maintain, review, and update their acquisition instruction as necessary.

(1) Acquisition instructions require recurring certification by the Procurement Policy Directorate. The Procurement Policy Directorate shall evaluate the integrity of the acquisition instruction to ensure compliance with established procurement policies, procedures, and regulations. All substantive issues shall be resolved prior to recertification of the acquisition instruction.

(2) The first recertification evaluation shall be conducted in fiscal year 2022 between the months of January and March and every three years thereafter. HCAs shall submit their acquisition instruction for review to the DASA(P) in accordance with 5101.290(b)(2)(ii)(A).

(3) Acquisition instructions will be submitted electronically for evaluation as follows:

ACC AI 1 January 2022 and every three years thereafter

MEDCOM AI 1 February 2022 and every three years thereafter

NGB AI 1 February 2022 and every three years thereafter

USACE AI 1 March 2022 and every three years thereafter

(d) HCAs must obtain prior DASA(P) approval for actions that require Under Secretary of Defense (Acquisition and Sustainment) approval. (See DFARS 201.304(1)(i) and AFARS Appendix FF, Department of the Army Plan for Control of Nonstandard Clauses, for approval of nonstandard clauses or provisions.)

(e) HCAs shall submit requests for new Army policy to the DASA(P) in accordance with 5101.290(b)(2)(ii)(A). The DASA(P) will coordinate with the HCAs to validate the need for new policy and determine how the policy will be issued to the contracting enterprise.

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Subpart 5101.4 - Deviations From the FAR

5101.402 Policy.

(2) The contracting officer will prepare all deviation requests in accordance with DFARS 201.402(2) and follow the procedures at 5101.301(b) to publish the deviation in the Federal Register.

5101.403 Individual deviations.

(1) SCOs, after obtaining a legal review, approve individual deviations from the FAR, DFARS, DFARS PGI, and AFARS other than those specified in DFARS 201.402(1) and DFARS 201.403(2).

5101.403-90 Deviation copy and control number.

The contracting activity will –

- (a) Send one copy of each deviation to the address at 5101.290(b)(2)(ii)(A) at the time the approval authority grants the deviation; and
- (b) Assign a control number to each deviation.

5101.404 Class deviations.

(b)(ii) The The senior procurement executive approves class deviations from the FAR, DFARS, DFARS PGI, and AFARS. This authority does not extend to deviations specified in DFARS 201.402(1) and DFARS 201.403(2). See Appendix GG for further delegation.

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Subpart 5101.5 - Agency and Public Participation

5101.501-2 Opportunity for public comments.

(b) Army contracting personnel may submit agency, organizational, or individual comments on FAR and DFARS cases published in the Federal Register (see FAR 1.501-2(b)) in one of two ways:

(i) Official Army comments. Army contracting personnel may submit comments through their chain of command to the Army Policy Member to the Defense Acquisition Regulations (DAR) Council in the Office of the Deputy Assistant Secretary of the Army (Procurement) Procurement Policy Directorate, SAAL-PP. The DAR Council member will determine if the comments are consistent with the Deputy Assistant Secretary of the Army (Procurement)'s official Army position and if they are, forward them to the Director of the DAR Council for adjudication with public comments. If the comments are inconsistent with the Deputy Assistant Secretary of the Army (Procurement)'s official Army position, the DAR Council member will contact the commenter to address his or her comment within the Army.

(ii) Comments as a private citizen. Army contracting personnel may submit comments as a private citizen by following the instructions in the Federal Register notice. Private citizens must clearly state that their comments represent a personal opinion rather than an official position. They may refer to the extent of their relevant experience within the body of the comments. Private citizens will not submit comments using Army letterhead or reference the Army in a signature block; however, they may use Army email and fax, in accordance with Section 2-301(a)(2) of the Department of Defense Joint Ethics Regulation, DoD 5500.7-R.

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Subpart 5101.6 - Career Development, Contracting Authority and Responsibilities

5101.601 General.

- (1) Army contracting activities are listed in DFARS PGI 202.101.

5101.601-90 Department of the Army contracting authorities and responsibilities.

(a) General. Heads of the Contracting Activity (HCAs) have the authority to procure supplies and services to support all customer requirements, unless such procurements fall within the scope of unique contracting authorities assigned to another HCA as described in paragraph (b) below. This framework supports Category Management (CM) reforms, and promotes habitual customer relationships that leverage subject matter expertise to achieve greater contracting outcomes. The list of unique contracting authorities set forth in paragraph (b) is not all-inclusive and will continue to update as CM initiatives evolve. See [AFARS PGI 5101.601-90-1](#) for Guidance for Alignment of Contracting Activities to Categories. Additionally, the authorities described in paragraph (b), sub-paragraphs (2-4), do not apply to contingency requirement, and contracting operations outside the continental United States and overseas.

(1) Delegation of any Army HCA contracting authority is limited to officials within the Department of Army at the levels prescribed in Appendix GG.

(2) If a requiring activity presents a requirement in one of the designated commodity areas, to a contracting office not listed in paragraph (b) of this section, that contracting office shall refer the requiring activity to the designated HCA and coordinate with the designated HCA to determine which organization will provide support. If an HCA other than the designated HCA retains that requirement and executes a contract action for the designated commodity:

(A) The supporting HCA shall coordinate with the designated HCA as early as practicable in the procurement planning process, to leverage the subject matter expertise of the designated HCA and ensure the solicitations and contracts are properly structured.

(B) The supporting HCA should ensure the requisite contracting and technical/program personnel are properly trained in the contract award and administration of the designated commodity.

(C) The supporting HCA and designated HCA shall maintain a record of the coordination for contract award. The ODASA(P) will review the records during the Procurement Management Reviews.

(b) Assignment of Unique Contracting Authorities to Army HCAs. The assigned responsibilities are as follows:

(1) The Deputy Assistant Secretary of the Army (Procurement) has the following overarching authorities and responsibilities:

(A) Serves as the Enterprise HCA for the Department of the Army.

(B) Serves as the principal advisor to the Army Senior Procurement Executive (SPE).

(C) Subject to the authority, direction, and control of the SPE, directs other Army HCAs in connection with any procurement or procurement-related matter.

(D) Reviews all Senior Contracting Official (SCO) selections prior to SCO appointment by an Army contracting activity's HCA.

(E) Acts in the absence of another Army contracting activity's specifically-designated HCA.

(F) Chairs the Army Contracting Enterprise Executive Committee.

(G) Appoints Program or Project-specific SCOs on a temporary basis within the responsible Army contracting activity. The Program or Project-specific SCO focuses solely on the management of that program's contract action(s).

(2) The HCA for the U.S Army Materiel Command is responsible for awarding and administering the following contract actions:

(A) Ammunition.

(B) Aviation and Missiles. [Army Contracting Command-Redstone Arsenal is the exclusive contracting center for Army Fixed Wing and non-tethered lighter than air platform aircraft and supporting services; and non-standard rotary wing aircraft].

(C) Combat and Tactical Vehicles.

(D) Construction related materials and services [Mission and Installation Contracting Command (MICC) is the secondary contracting center; the U.S. Army Corps of Engineers (USACE) is the primary contracting activity].

(E) Environmental services.

(F) Facility related materials and services [MICC is the primary contracting center; USACE is the secondary contracting activity].

(G) Information Technology, to include: software, hardware, consulting, security, outsourcing, and telecommunications.

(H) Transportation and Logistics Services, to include: logistics support services, transportation of things, motor vehicles (non-combat), and transportation equipment. [Note: Does not apply to U.S. Transportation Command-unique requirements related to the procurement of transportation services].

(3) The HCA for USACE is responsible for awarding and administering the following contract actions:

(A) Architect-Engineer services. (See also 5136.601-90 Authority for architect-engineer contracting).

(B) Civil works.

(C) Construction related materials and services [USACE is the primary contracting activity; MICC is the secondary contracting center].

(D) Environmental services.

(E) Facility related materials and services [USACE is the secondary contracting activity; MICC is the primary contracting center].

(F) Facilities purchase and lease.

(4) The HCA for the U.S Army Medical Command is responsible for awarding and administering the following contract actions:

(A) Medical equipment accessories and supplies.

(B) Healthcare services.

5101.602-1 Authority.

5101.602-1-90 Departmental review and approval.

(a) At any time during the procurement process, the Deputy Assistant Secretary of the Army for Procurement (DASA(P)) may designate a proposed contractual action as Special Interest, and direct the responsible SCO or source selection authority to submit the proposed contractual action to the Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA(ALT)) for review, notation, and/or approval.

(1) The SCO or source selection authority will provide any information, documents, and briefings requested, and will not take, or permit anyone else to take, final action on the proposed contractual action during the period of the DASA(P) review. The SCO shall coordinate all proposed major decision points (e.g. Source Selection Authority appointments), with the DASA(P).

(2) The DASA(P) will customize the departmental review requirements on a case-by-case basis..

(3) In accordance with FAR 3.104-4(a), the ASA(ALT) has authorized personnel within the Office of the DASA(P), the Office of the Army General Counsel, and other personnel designated by the DASA(P) to receive full access to contractor bid or proposal information and source selection information in connection with such review. The contracting officer, under SCO direction, shall ensure the Virtual Contracting Enterprise Paperless Contract File contains all documents related to the proposed contractual action. (See 5104.802 Contract files).

(b) The DASA(P), as Enterprise HCA, or other Army HCAs may appoint Program or Project-specific SCOs in conjunction with this subpart. (See 5101.693-90)

5101.602-2 Responsibilities.

(a) Refer to 5132.7 for instructions with regard to ensuring funds are available.

5101.602-2-90 Legal coordination.

Contracting officers will obtain a legal review and consider counsel's advice as follows:

(a) Include legal counsel as a member of the acquisition team (see FAR 1.102-3) throughout the acquisition process;

(b) Obtain a legal review for proposed contracting actions in accordance with locally established procedures and as otherwise required by law, regulation, or policy. It is not practicable to specify, in the AFARS, an inclusive list of actions requiring legal review at each contracting activity. Instead, counsel will routinely review a full range of acquisition-related actions that have potential legal significance. SCOs will work with local chief counsels, or equivalent official, to develop specific legal review protocols that are consistent with this provision.

(c) Obtain legal reviews on proposed actions to determine if the action is legally sufficient based on statute, regulation, and policy, and request details and a recommended course of action to resolve any insufficiency. Contracting officers will address and resolve counsel's objections at the lowest possible level. Contracting officers and counsel will elevate unresolved

objections within the acquisition and legal channels, as appropriate, and in exceptional cases, to the head of the contracting activity (HCA).

(d) The contracting officer, under SCO direction, retains sole authority to determine matters that relate to the exercise of business judgment.

5101.602-2-91 Contracting officers representative appointments.

(a) Contracting officers will appoint a properly trained contracting officer's representative (COR) upon contract award, consistent with DFARS 201.602-2. SCOs may specify additional training at their discretion within their contracting activity. Contracting officers shall execute the COR appointment in the DoD Procurement Integrated Enterprise Environment (PIEE) Joint Appointment Module (JAM) no later than one business day after receipt of the contract in the Electronic Data Access (EDA) system has been confirmed.

(b) Contracting officers will allow 45 calendar days after receipt of the procurement request (PR) package for the requiring activity (RA) to satisfy all COR requirements. If, after the 45 days, a COR has not been properly trained and nominated in PIEE JAM, contracting officers will cease further action on the PR package and return it to the supported RA.

(c) Contracting officers will validate COR and ordering officer records every 12 months in accordance with DFARS PGI 201.602-2(d)(vii) to ensure contractor compliance with the terms of the contract. Contracting officers will document the review in the contract file.

5101.602-2-92 Ordering officer appointments.

(a) *Policy.* The official (see 5101.603-1) appointing an ordering officer will state in the appointment letter that the ordering officer's authority may not be delegated further (see 5153.303-2 for a sample appointment letter).

(b) *Appointment and termination authority.* An appointing official may appoint an ordering officer, pursuant to 5101.603-3-90(a) through (f), when the official determines that the appointment is essential for the operation of the contracting mission. The purposes for which an appointing official may appoint an ordering officer and references to limitations of their authority are –

(1) To make purchases using imprest funds (FAR 13.305);

(2) To make purchases using Standard Form 44 (FAR 13.306, DFARS 213.306);

(3) To place orders against indefinite delivery contracts awarded by contracting officers of the Military Departments for the preparation for shipment, Government storage, and intra-city or intra-area movement of personal property, provided contract terms permit (see FAR subpart 47.2);

(4) To place Service Orders for Personal Property (DD Form 1164) against Commercial Warehousing and Related Services for Household Goods contracts for military and civilian personnel subject to the criteria and procedures prescribed in Chapter 2, DoD 4500.34-R, provided that no service order will be in excess of \$10,000; and

(5) To place orders against indefinite delivery contracts, in addition to those in (4), that contracting officers award, as long as the contract terms permit and provided all orders placed are within monetary limitations specified in the contract.

(c) *Responsibilities of appointing authority.*

(1) *Training and orientation.* The appointing authority will orient and instruct ordering officers either personally or in writing about –

(i) The proper procedure(s) the appointing authority will authorize the ordering officer to use;

(ii) The standards of conduct for Army personnel prescribed in the Joint Ethics Regulation (DoD 5500.7-R) and the procurement integrity provisions at FAR 3.104; and

(iii) The preparation and submission of information for contract action reporting purposes.

(2) *Surveillance.* The appointing authority will provide technical supervision of ordering officers. At least once each year, the appointing authority will examine ordering officer purchase documents and records. Any individual designated to perform this review must be well qualified in the contracting procedures that ordering officers use.

(i) Write inspection or review findings and include specific comments as to whether the ordering officer is –

(A) Operating within the scope and limitations of authority delegated and FAR subpart 3.1;

(B) Maintaining the standards of conduct prescribed in DoD 5500.7-R;

(C) Engaging in improper practices, including but not limited to splitting purchase transactions to avoid monetary limitations or delegating authority to others; and

(D) Submitting correct and timely information for reporting purposes.

(ii) Retain copies of inspection and review findings for one year in the ordering officer's files and the inspector's or reviewer's files.

(iii) If an appointing authority finds that an ordering officer is not properly performing assigned duties or promptly correcting the deficiencies noted in inspections or reviews, the appointing authority will terminate the ordering officer's appointment.

(3) *Termination.*

(i) An ordering officer's appointment will remain in effect until the ordering officer leaves his position via reassignment or termination or the appointing authority revokes the appointment. Appointing officials will not revoke an appointment retroactively.

(ii) Appointing officials will terminate appointments in writing except terminations that result when a contract expires.

(d) *Procedures.* Appointing officials will –

(1) Appoint ordering officers by a letter of appointment substantially in the format at 5153.303-2, but tailored to fit the circumstances of the appointment;

(2) Maintain the file of appointments and justification for the appointments;

(3) Require individuals appointed as ordering officers to acknowledge receipt of their letters of appointment and termination in writing;

(4) Distribute appointment letters to ordering officers, imprest fund cashiers, disbursing officers and other interested personnel as necessary;

(5) List the names of ordering officers appointed to place orders against the contracts in the contract, or furnish copies of ordering officer appointment letters to contractors, imprest fund cashiers, disbursing officers and other interested personnel; and

(6) Furnish copies of termination letters to imprest fund cashiers, disbursing officers and other interested personnel.

5101.602-3 Ratification of unauthorized commitments.

(b) *Policy.*

(3) HCAs may ratify unauthorized commitments and may delegate this authority as specified in Appendix GG.

5101.602-3-90 Ratification procedures.

(a) HCAs may ratify an unauthorized commitment. See Appendix GG for further delegation.

(b) The individual making the unauthorized commitment must send the following documentation, at a minimum, to the cognizant ratifying authority:

(1) A signed statement describing the circumstances, the reason normal contracting procedures were not followed, what bona fide Government requirement necessitated the unauthorized commitment, the benefit received and its value, and any other pertinent facts.

(2) All other relevant documents, including orders, invoices or other evidence of the transaction.

(c) If the commander concurs that the unauthorized commitment should be ratified, the documentation must be sent to the chief of the contracting office with an endorsement that –

(1) Verifies the accuracy and completeness of the documentation;

(2) Describes the measures taken to prevent a recurrence of unauthorized commitments, including a description of any disciplinary action to be taken; and

(3) Provides a complete purchase description and funding for the ratifying contract.

(d) The chief of the contracting office will assign the action to an individual contracting officer who will be responsible for –

(1) Reviewing the case and determining the adequacy of all facts, records, and documents and obtaining any additional material required; and

(2) Preparing a summary of facts to include a recommendation as to whether the individual responsible for approving the ratification (see 5101.602-3(b)) should ratify the transaction and reasons for the recommendation. In a recommendation not to ratify, include an explanation as to whether the contracting activity should process the transaction under FAR part 50 and DFARS part 250, Extraordinary Contractual Actions and the Safety Act or by means of the claims or disputes process set forth in FAR subpart 33.2.

(e) Upon receipt and review of the complete file, the individual responsible for approving the ratification may approve the ratification if he or she considers it to be in the best interest of the Government, or may direct other disposition.

(f) HCAs must monitor compliance with this subsection, 5101.602-3-90, and take all necessary corrective action.

5101.603 Selection, appointment, and termination of appointment for contracting officers.**5101.603-1 General.**

The Secretary of the Army or one of the following individuals may select, appoint, and terminate contracting officers:

- (1) The ASA(ALT).
- (2) The DASA(P).
- (3) The HCA. See Appendix GG for further delegation.

5101.603-2 Selection.

The HCA will establish criteria and procedures to ensure that prospective contracting officers with authority to award or administer contracts for amounts above the simplified acquisition threshold, have the knowledge and experience to effectively and efficiently support their customers and successfully fulfill their fiduciary responsibilities as required by DFARS 201.603-2 and 10 U.S.C. 1724. The HCA shall follow the policy set forth in the Army Warranting Guide. The policy is available on the [Army Warranting Program](#) tile on <https://procurement.army.mil> (PAM).

5101.603-3 Appointment.

(a) Appointing officials will utilize the Virtual Contracting Enterprise (VCE) Warrant Tool to appoint, suspend, terminate and otherwise document and maintain a complete file for each contracting officer. The file will include documentation of qualifications and the continuation of professional proficiency. The appointing official will update the files in the VCE Warrant Tool upon any change in the contracting officer's authority, and will review the files no less than biennially to ensure compliance with statutes and regulations.

5101.603-3-90 Other individuals authorized to procure supplies and services on behalf of the Army.

In addition to the ordering officers identified in AFARS 5101.602-2-92, a contracting officer or one of the appointing officials identified in AFARS 5101.603-1 may designate individuals to procure supplies or services on behalf of the Army as specified in paragraphs (a) through (f) in this subsection. Individuals in paragraphs (a) through (c) will prepare and submit information for reporting purposes to the supporting contracting office as specified by that office policy. Individuals in (d) will report to the contracting office supporting the mobilization base.

(a) Contracting officers may authorize individuals to place calls under blanket purchase agreements. (See FAR subpart 13.3, DFARS subpart 213.3, and subpart 5113.3.)

(b) Appointing officials may authorize Army aviators and masters of Army-owned or operated vessels to use Standard Form 44 (see FAR 13.306 or provisions of Army Regulation 710-2 and Department of the Army Pamphlet 710-2-2) for emergency purchases of supplies (e.g., fuels, oils, parts) and services (e.g., mechanical services, hangar services, landing and docking fees and employment of civilian guards or watchmen to safeguard Government property) under any of the following conditions:

(1) Authorized flights or voyages during which mechanical or meteorological conditions prevent obtaining required supplies and services from Government facilities.

(2) Conditions under which continuation of flight, voyage or mission would constitute a hazard to safety or endanger public property.

(3) Conditions under which procurement of supplies and services from Government facilities would interfere with approved flight plans or voyages.

(c) Appointing officials may issue the Governmentwide commercial purchase card to individuals to use in accordance with FAR 13.301.

(d) Appointing officials may authorize individuals in Reserve Components to procure supplies or services on behalf of the Army in the event of mobilization using Standard Form 44 and U.S. Army Forces Command Mobilization and Deployment System, Volume III. Reserve Component unit commanders may purchase over-the-counter type items not exceeding the micro-purchase threshold per transaction. The commander will use Standard Form 44 when a Federal Mobilization Order, requiring unit movement to a mobilization station or site, or where procurement support is not readily available from a supporting installation. This temporary authority will expire upon resumption of procurement support by the contracting office at the mobilization station or supporting installation.

(e) Appointing officials may issue U.S. Government Travel Charge Cards to individuals for use on official travel.

(f) Appointing officials may authorize individuals identified in Army Regulation 725-50 to order supplies from General Services Administration Stores Depots using the Governmentwide commercial purchase card procedures.

5101.603-3-91 Restrictions.

(a) Personnel in the 1101 job classification series will not be appointed or serve as contracting officers. This requirement is not subject to an individual or class waiver.

(b) Commanders and others having administrative supervision over contracting officers must bear in mind that actions exceeding the authority of a contracting officer are not binding on the Government. Therefore, they will not direct, or otherwise exert influence, upon contracting officers to take such actions.

5101.690 Procurement management review assistance.

(a) Office of the Deputy Assistant Secretary of the Army (Procurement), Procurement Insight/Oversight Directorate, manages the Procurement Management Review (PMR) Program to perform oversight of Army contracting activities in accordance with Appendix CC.

(b) Once every 36 months, all HCAs will conduct PMRs for each of their contracting offices to ensure compliance with, at a minimum, laws, policies, regulations, directives, FAR, DFARS, AFARS and AFARS Appendix CC. HCAs will furnish copies of review reports to the HQDA PMR Team Leader at the address at 5101.290(b)(2)(ii)(B) within 60 days of completing a review.

5101.691 Management controls.

See [AFARS PGI 5101.691-1](#) for guidance on the Army Enterprise Audit Tracker.

Management controls within each contracting organization are an element of day-to-day operations. Managers at all levels should refer to Appendix BB, Management Control Evaluation Checklist, to evaluate their organization's compliance with key management controls and to identify and correct weaknesses. The list of questions in Appendix BB is not all-inclusive nor are managers required to respond to all of them. Managers should tailor the list to include areas specific to each contracting office, and should include the Areas of Special Interest, which the DASA(P) issues each fiscal year.

5101.692 Head of the contracting activity.

(a) HCAs will ensure that only contracting officers selected and appointed in accordance with 5101.603 enter into contracts on behalf of the Army.

(b) HCAs will appoint a SCO. When selecting the SCO, the HCA must comply with the requirements of Department of Defense Instruction (DoDI) 5000.66 governing the selection of senior contracting officials. Prior to appointing the SCO, the HCA shall coordinate the proposed SCO selection directly with the Enterprise HCA.

(1) The HCA must assign to the SCO, or give him/her direct access to, the personnel and other essential resources necessary to perform all the functions that the HCA delegates to him/her.

(2) The HCA may appoint Program or Project-specific SCOs on a temporary basis within the responsible Army contracting activity. The Program or Project-specific SCO focuses solely on the management of that program's contract action(s). (See 5101.693-90)

(3) The HCA must notify in writing the addressee in 5101.290(b)(2)(i) when there is a newly appointed SCO.

5101.693 Senior contracting official.

(1) A SCO, defined as a critical acquisition position in 10 U.S.C. 1735 and a key leadership position in the DoDI 5000.66, must meet the additional position requirements listed in DoDI 5000.66, Table 1.

(2) SCOs will exercise procurement authority in accordance with the FAR and its supplements and perform delegated HCA contracting authorities. Procurement authority is delegated by the HCA and is not position dependent.

(3) The SCO, by virtue of the organizational position occupied, may execute command functions for the contracting activity, but these functions are separate and distinct from procurement authority.

(4) SCOs will –

(i) Report directly to the HCA on all matters regarding procurement.

(ii) Be evaluated by the HCA for performance appraisals, as required by the DoDI 5000.66.

(iii) Minimize the potential for undue influence and protects contracting professionals from internal or external pressure to perform improper actions.

5101.694-90 Program or Project-specific Senior contracting official.

(1) A Program or Project-specific SCO focuses solely on the management of that program's or project's contract action(s). The appointment may be tailored to align with the risk or complexity, and dollar value of the pertinent program

or project. The Program or Project-specific SCO will exercise procurement authority in accordance with the FAR and its supplements and perform delegated HCA contracting authorities. Procurement authority is delegated by the HCA and is not position dependent.

(2) Program or Project-specific SCOs may be appointed on a temporary basis, typically for the duration of that contract action(s), within an Army contracting activity. The individual must meet the position requirements listed in DoDI 5000.66.

(3) Program or Project-specific SCOs will –

(i) Report directly to the HCA on all matters regarding the pertinent contract action(s).

(ii) Have direct access to the personnel and other essential resources necessary to perform all assigned functions.

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Subpart 5101.7 - Determinations and Findings

5101.707 Signatory authority.

The head of the contracting activity or the SCO and the contracting officer will sign each Secretarial determination request.

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Subpart 5101.90 - Nonappropriated Funds

5101.9001 Policy.

DoD policy for contract actions using nonappropriated funds is in DoD Directive 4105.67. See Army Regulation (AR) 215-1 and AR 215-4 for implementing policies and procedures for Army nonappropriated fund acquisitions.

5101.9002 Contracting authority.

SCOs may designate appropriated fund contracting officers as nonappropriated fund contracting officers. (See AR 215-4.)

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Subpart 5101.91 - Authority to Award and Administer Grants, Cooperative Agreements, Technology Investment Agreements, and Other Transactions

5101.9101 Authority and responsibilities.

(a) Procedures governing grants, cooperative agreements, and technology investment agreements are set forth in the DoD Grant and Agreement Regulations (DoDGAR), currently codified at Chapter I, Subchapter C of Title 32, Code of Federal Regulations (CFR) and Chapter XI of Title 2, CFR (see Department of Defense Directive Number 3210.06). In the absence of an Army supplement to the DoDGAR this AFARS subpart provides a record of the Army's implementation of 32 CFR 21.425 – 21.435.

(b) Procedures governing Other Transaction Authority are set forth at 10 U.S.C. section 2371b and in the Other Transactions Guide for Prototype Projects, issued January 2017 by the Director for Defense Procurement and Acquisition Policy (DPAP). In the absence of an Army supplement this subpart provides a record of the Army's implementation of 10 U.S.C section 2371b and the DPAP guide.

(b)(1) Heads of contracting activities (HCAs) with grant and cooperative agreement responsibilities are authorized to make and administer grant and cooperative agreement awards in accordance with specific delegations of authority from the Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA(ALT)) and as otherwise authorized in 32 CFR 21.420(c).

(2) HCAs with other transaction responsibilities are authorized to make and administer other transaction agreement awards in accordance with specific delegations of authority from the ASA(ALT) and as otherwise authorized in 10 U.S.C. section 2371b.

(c) HCAs also are authorized to appoint grants officers and agreements officers and to broadly manage their contracting activity's functions related to assistance instruments.

(d) HCAs are responsible for grant and cooperative agreement awards made by their contracting activity and shall supervise and establish and maintain internal policies and procedures for that activity's awards.

(e) HCAs shall utilize the Virtual Contracting Enterprise (VCE) Warrant Tool to appoint, suspend, terminate and otherwise document and maintain a complete file for each grants and agreements officer. The file will include documentation of qualifications and the continuation of professional proficiency. The appointing official will update the files in the VCE Warrant Tool upon any change in the grants and agreements officer's authority, and will review the files no less than biennially to ensure compliance with statutes and regulations.

The HCA shall follow the policy set forth in the Contracting Officer Warranting Program Guide. The policy is available in the Warranting tile on <https://procurement.army.mil> (PAM) at <https://spsc3.kc.army.mil/asaalt/procurement/warrant/Home.aspx>.

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PART 5102 - DEFINITIONS OF WORDS AND TERMS

Sec.

Subpart 5102.1 - Definitions

5102.101

Definitions.

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Subpart 5102.1 - Definitions

5102.101 Definitions.

“Army Acquisition Executive (AAE)” means the Assistant Secretary of the Army (Acquisition, Logistics and Technology), as designated by the Secretary of the Army.

“Chief of the contracting office” means the person having direct responsibility for the operation of a contracting office as defined in FAR 2.1. This person also has procurement authorities assigned by the Federal Acquisition Regulation and its supplements and performs contracting authorities as delegated by the head of the contracting activity or senior contracting official.

“Head of the agency” means the Assistant Secretary of the Army (Acquisition, Logistics and Technology) when executing authorities of the head of the agency for contracting procurement matters pursuant to laws and regulations, as designated by the Secretary of the Army.

“Head of the contracting activity” means the Deputy Assistant Secretary of the Army (Procurement) for a contracting activity that does not have a head of the contracting activity specifically designated. This authority shall not be further delegated. See delegations in Appendix GG.

“Senior contracting official (SCO)” means the senior official for or within a contracting activity responsible for the performance of contracting authorities delegated by the head of the contracting activity. (See 5101.693.)

“Senior Procurement Executive (SPE)” means the Assistant Secretary of the Army (Acquisition, Logistics and Technology), as designated by the Secretary of the Army.

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**PART 5103 - IMPROPER BUSINESS PRACTICES
AND PERSONAL CONFLICTS OF INTEREST**

Sec.

5103.104	Subpart 5103.1 - Safeguards	5103.204	Treatment of violations.
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5103.203	Applicability.		Subpart 5103.10 - Contractor Code of Business Ethics and Conduct
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Subpart 5103.1 - Safeguards

5103.104 Procurement integrity.

The Army General Counsel is the Designated Agency Ethics Official (DAEO). The General Counsel has designated deputy DAEOs (DDAEOs) and has delegated to them the authority to act on his behalf concerning procurement integrity matters. The General Counsel has authorized DDAEOs to further delegate that authority to subordinate ethics counselors under their area of responsibility.

5103.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) or contracting officer may disclose contractor bid or proposal information or source selection information to facilitate timely access to information by higher Headquarters personnel and external stakeholders who require such access in the performance of their official duties. See Appendix GG. Personnel serving in the following positions are authorized access to contractor bid or proposal information and source selection information to the extent necessary to perform their official duties:

(i) Personnel assigned to the Office of the Assistant Secretary of the Army for Acquisition, Logistics and Technology (ASA(ALT)), Office of the Assistant Secretary of the Army for Financial Management & Comptroller (ASA(FMC)) and the Office of the Army General Counsel, who are performing Headquarters, Department of the Army level reviews or oversight.

(ii) Personnel participating in the evaluation of an offeror's or bidder's proposal or in the review and defense of protests.

(iii) Personnel in the responsible contracting office, along with supporting legal and small business office personnel.

(iv) Personnel in the requiring activity having principal technical cognizance over the requirement, to include those with technical oversight responsibilities.

(v) Personnel assigned to the Defense Contract Audit Agency and contract administration offices of the DoD, who are supporting the procurement.

(vi) Personnel assigned to the DoD Office of Cost Assessment and Program Evaluation (CAPE) performing reviews or oversight.

(vii) Other personnel whom the Deputy Assistant Secretary of the Army (Procurement), the head of the contracting activity (HCA), contracting officer, or the source selection authority designates on an individual basis.

(b) Follow the procedures at [AFARS PGI 5103.104-4-1](#) Access to Contract Procurement Data and Documentation to provide access.

5103.104-5 Disqualification.

(c)(2) The head of contracting activity shall make the determination as described in FAR 3.104-5(c)(2). See Appendix GG for further delegation.

5103.104-6 Ethics advisory opinions regarding prohibitions on a former officials acceptance of compensation from a contractor.

(c) The appropriate agency ethics official to provide an ethics advisory opinion is any properly appointed ethics official or ethics counselor within the servicing legal office for the last unit or organization to which the former official was assigned.

5103.104-7 Violations or possible violations.

(a) If a contracting officer receives information of a violation or possible violation of the Restrictions on Obtaining and Disclosing Certain Information statute and –

(1) Concludes that there is no impact on the procurement, the contracting officer must forward the information to the chief of the contracting office who will follow the procedures set forth in FAR 3.104-7(a)(1); or

(2) Concludes that the violation or possible violation impacts the procurement, the contracting officer must promptly forward the information through the chief of the contracting office to the HCA.

(b) Upon receipt of information, the HCA, on a non-delegable basis, must take appropriate action after consulting with the contracting officer and legal counsel.

(f) The HCA must:

(i) Notify the ASA(ALT) (see 5101.290) when the HCA has determined that urgent and compelling circumstances justify an award, or award is otherwise in the interests of the Government; and

(ii) Obtain written verification that the ASA(ALT) has received the notification before authorizing award of the contract or execution of the contract modification.

5103.171 Senior DoD officials seeking employment with defense contractors.

5103.171-3 Policy.

(a) The appropriate agency ethics official to provide a written opinion regarding the applicability of post-employment restrictions to a covered DoD official is any properly appointed ethics official or ethics counselor within the servicing legal office for the last unit or organization to which the covered DoD official was assigned.

Subpart 5103.2 - Contractor Gratuities to Government Personnel

5103.201 Applicability.

This subpart establishes Army procedures for addressing suspected violations of the Gratuities clause. These procedures are not intended to be an exclusive remedy that would preclude or limit otherwise appropriate criminal, civil, or administrative action.

5103.203 Reporting suspected violations of the Gratuities clause.

(a)(i) Violations of the Gratuities clause include, but are not limited to, entertainment or gift(s) offered or given by a contractor or a contractor's agent or representative to any officer, official, or employee of the Government to obtain an Army contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance of an Army contract.

(ii) Provide reports of suspected violations of the Gratuities clause to the following Army officials (see FAR 3.203 and 52.203-3):

(A) The chief of the contracting office responsible for the contract with the potential infraction, unless the chief of the contracting office is suspected to be a party to the proffered gratuity, in which case refer to paragraph (B) of this section.

(B) The senior contracting official (SCO) having responsibility for the contract with the potential infraction.

(b) As soon as practicable, the chief of the contracting office, or SCO if necessary under paragraph (a)(ii)(B) of this section, shall:

(i) Report the suspected violation to the Army Criminal Investigation Division (CID) for appropriate action.

(ii) In coordination with the local procurement fraud advisor (PFA), report the suspected violation to the HCA, with a complete copy to the Chief of the Army Procurement Fraud Branch (see 5101.290(b)(5)). Include the following information:

(A) The name and address of the contractor, a statement as to the form of the organization, including names and addresses of principals;

(B) Complete contract data, including number, date, estimated day of completion of performance, general description of supplies or services procured, dollar amount, status of performance and payment, urgency of requirements and availability of the supplies or services from other sources;

(C) A summary of the reported information concerning the suspected violation, with names and addresses, dates and references to documentary evidence available.

(iii) Contracting personnel will cooperate fully with Army CID personnel, the organization's PFA and the Chief of the Army Procurement Fraud Branch and preserve any documentary evidence and exhibits.

(iv) If Army CID declines to initiate a criminal investigation, the HCA will coordinate with the organization's PFA and the Chief of the Army Procurement Fraud Branch to decide whether the circumstances warrant the initiation of an administrative investigation of the suspected violation under Army Regulation 15-6. If the HCA decides not to initiate an investigation, the HCA will prepare a memorandum to document the basis for the decision.

(v) If a CID or administrative investigation is conducted, at its conclusion the HCA will coordinate with the organization's PFA and the Chief of the Army Procurement Fraud Branch to determine whether further action is necessary.

(A) If the HCA decides that no further action is necessary, the HCA will prepare a memorandum to document the basis for the decision.

(B) If the HCA decides that further action is necessary, the HCA shall refer the matter, along with all supporting documentation, to the Army suspension and debarment official (SDO) through the Chief of the Army Procurement Fraud Branch. The Army SDO, or other senior official designated by The Judge Advocate General, shall proceed in accordance with FAR 3.204 and 5103.204.

5103.204 Treatment of violations.

(a) Pre-hearing procedures.

(i) The Army SDO, or other senior official designated by The Judge Advocate General, is the hearing officer for hearings under FAR 3.204 and is responsible for determining whether a violation of the Gratuities clause occurred. The Chief of the Army Procurement Fraud Branch will generally provide administrative support to the Army SDO to include providing counsel to act as the Government's representative in any proceeding pursuant to this subpart. See Appendix GG.

(ii) The hearing officer is responsible for notifying the contractor of any suspected violation of the Gratuities clause. The notice to the contractor is sent by registered or certified mail, or another, similar commercial means that provides a signed delivery receipt. The notice will accomplish the following:

(A) Describe the suspected violation(s) in sufficient detail to reasonably apprise the contractor of the alleged violation(s).

(B) State the potential penalties for a violation of the Gratuities clause.

(C) Include a copy of the supporting record, with a general description of any redacted material, such as social security numbers, dates of birth, and financial account numbers, and the reasons for withholding.

(D) Inform the contractor that it may refute the allegations set forth in the notice. The contractor may refute the allegations and provide in person, through a representative at its own expense, or in writing any information the contractor wishes to have considered. The contractor may submit documentary evidence and arguments. If the contractor requests a hearing, at that hearing the contractor may confront any person the Government representative presents as a witness and may present witnesses at the contractor's own expense. Inform the contractor that any hearings will be conducted in accordance with paragraph (b) of this section.

(E) State that the contractor has 30 working days from receipt of the notice to submit written matters concerning the allegations and to request a hearing. Any timely submissions by the contractor will become part of the evidentiary record.

(F) Advise the contractor that if a hearing is requested, a list of any witnesses the contractor wishes to present and a concise statement of each witness's relevance to the hearing will be delivered to the Chief of the Army Procurement Fraud Branch no later than five working days in advance of the hearing date.

(b) Hearing and post-hearing procedures.

(i) The hearing officer will schedule the hearing as soon as practicable after receipt of the contractor's request. The hearing officer may inform the contractor of the hearing date by email if the contractor so requests and provides an email address for that purpose when requesting a hearing.

(ii) Hearings shall be conducted at the hearing officer's office.

(iii) Hearings shall be consistent with FAR 3.204(b), and they shall be non-adversarial in nature.

(iv) The hearing officer and the Government representative may ask questions of the contractor or its representatives making the presentation.

(v) The contractor or its representatives and the Government representatives shall have an opportunity to present information, including witness testimony, relevant to the facts at issue. The hearing officer may permit witnesses to appear by videoconference or other electronic means rather than in person. Witnesses will be sworn in and reminded of the official nature of the proceedings and that they are subject to criminal prosecution for any false testimony. Witnesses are subject to cross-examination. The hearing officer may ask questions of any witness.

(vi) Documents and testimony not ordinarily admissible under legal rules of evidence may be received at the discretion of the hearing officer and will be given appropriate weight. The hearing officer may exclude from the evidentiary record irrelevant or unduly repetitive information presented by the contractor or the Government representative.

(vii) A verbatim transcript of the hearing will be made and will become part of the evidentiary record. Additional documentary materials or comments the hearing officer permits the contractor or the Government representative to submit to the hearing officer at or following the hearing become part of the evidentiary record. The party submitting such additional materials or comments to the hearing officer shall simultaneously provide the same materials to the other party, and the other party shall have five working days from receipt to submit comments to the hearing officer on the post-hearing submission.

(viii)(A) The hearing officer shall make all findings of fact and conclusions of law relevant to whether a violation of the Gratuities clause occurred, including the dollar value of any gratuity. The hearing officer also makes all findings of fact, conclusions of law, and recommendations relevant to whether the contractor's right to proceed under the contract should be terminated, and, if so, whether an assessment of exemplary damages is appropriate and in what amount. These findings will be based on a preponderance of the evidence contained in the evidentiary record. The decision of the hearing officer as to whether a violation of the Gratuities clause has occurred will be the Department of the Army's final decision.

(B) If the contractor does not request a hearing in a timely manner or abandons its request, the hearing officer will make the findings of fact, conclusions of law, and recommendations on the basis of the written record.

(C) The hearing officer may permit the contractor and the Government representative to submit proposed findings of fact, conclusions of law, and recommendations by the date specified by the hearing officer. The hearing officer also may require the contractor and the Government representative to submit stipulated findings of fact and conclusions of law.

(ix) The hearing officer shall issue a written decision as soon as practicable after the conclusion of the hearing or the hearing officer's receipt of all documentary submissions. If the hearing officer concludes that a violation of the Gratuities clause occurred, the decision shall include:

(A) The findings of fact and conclusions of law that the hearing officer relied upon and

(B) The findings of fact, conclusions of law, and recommendations relevant to whether the contractor's right to proceed under the contract should be terminated, and, if so, whether an assessment of exemplary damages is appropriate and in what amount.

(x) If the hearing officer determines that a violation of the Gratuities clause occurred, the hearing officer will submit the written decision and evidentiary record to the responsible HCA.

(c)(i) As soon as practicable upon receipt of the written decision and evidentiary record the Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall determine whether to terminate the contractor's right to proceed under the contract, and, if so, whether to assess exemplary damages and in what amount. The decision will be the final decision of the Department of the Army with respect to those determinations. See Appendix GG for further delegation.

(ii) Officials of the responsible contracting activity will promptly provide written notice of the decision, together with the written decision of the hearing officer, to the contractor by registered or certified mail, or another, similar commercial means that provides a signed delivery receipt.

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Subpart 5103.6 - Contracts with Government Employees or Organizations Owned or Controlled by Them

5103.602 Exceptions.

Only HCAs may authorize exceptions to the policy in FAR 3.601.

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Subpart 5103.7 - Voiding and Rescinding Contracts

5103.703 Authority.

The authority to act for the agency head under this subpart is limited to a level no lower than an official who is appointed by and with the advice of the Senate, without power of redelegation. For the Department of the Army, the Assistant Secretary of the Army (Acquisition, Logistics and Technology), without power of further delegation, performs the functions under this subpart.

5103.704 Policy.

(c) The head of contracting activity, on a non-delegable basis, shall perform the penalty-related duties as described in FAR 3.704(c)(1) and (2).

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Subpart 5103.9 - Whistleblower Protections for Contractor Employees

5103.905 Procedures for investigating complaints.

(2) The Office of the Deputy Assistant Secretary of the Army (Procurement) will forward the DoD Inspector General's initial notification and subsequent written report of findings to the cognizant head of the contracting activity.

5103.906 Remedies.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) performs the functions specified in DFARS 203.906. See Appendix GG for further delegations.

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Subpart 5103.10 - Contractor Code of Business Ethics and Conduct

5103.1004 Contract clauses.

- (a) Insert the clause at FAR 52.203-13, Contractor Code of Business Ethics and Conduct, in full text.

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PART 5104 - ADMINISTRATIVE MATTERS

Sec.

5104.103	Subpart 5104.1 - Contract Execution Contract clause.	5104.604	Responsibilities. Subpart 5104.8 - Government Contract Files
5104.201	Subpart 5104.2 - Contract Distribution Procedures.	5104.802	Contract files.
5104.202	Agency distribution requirements. Subpart 5104.4 - Safeguarding Classified Information Within Industry	5104.803	Contents of contract files.
5104.402	General.	5104.804	Closeout of contract files.
5104.403	Responsibilities of contracting officers. Subpart 5104.5 - Electronic Commerce in Contracting	5104.804-5	Procedures for closing out contract files. Subpart 5104.9 - Taxpayer Identification Number Information Reporting contract information to the IRS.
5104.502	Policy.	5104.903	Subpart 5104.71 - Uniform Contract Line Item Numbering System Contract line items for internal use software (IUS).
5104.502-90	Army supplemental policy. Subpart 5104.6 - Contract Reporting	5104.7103-90	Subpart 5104.73 - Safeguarding Covered Defense Information and Cyber Incident Reporting
		5104.7304	Solicitation provisions and contract clauses.

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Subpart 5104.1 - Contract Execution

5104.103 Contract clause.

Contracting officers will insert FAR clause 52.204-1, Approval of Contract, in solicitations and contracts when an agency official other than the contracting officer is the approval authority.

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Subpart 5104.2 - Contract Distribution

5104.201 Procedures.

In addition to DFARS 204.201 requirements for bilateral contracts, contracting officers shall distribute a copy or reproduction of the contract form showing the contractor's signature. The copy or reproduction shall be in the "portable document format" (.pdf) for distribution via electronic mail (email) or other electronic means.

5104.202 Agency distribution requirements.

Distribute a copy of contracts for utility services and communications to:
General Services Administration/Public Buildings Service
Office of Procurement, Public Utilities Service Division (PPU)
Room 7322, GSA Building
18th & F Streets NW
Washington DC 20405.

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Subpart 5104.4 - Safeguarding Classified Information Within Industry

5104.402 General.

(d)(1) The National Industrial Security Program (NISP) Contract Classification System (NCCS) module Version 2.0 re-deployed effective 1 May October 20221. Contracting officers shall follow the procedures at FAR 4.402(d)(1) to transmit DD Form 254s to the Defense Counterintelligence Security Agency (DCSA).

5104.403 Responsibilities of contracting officers.

(1) In accordance with DFARS PGI 204.403(1), the contracting officer will include a DoD Form DD 254, DoD Contract Security Classification Specification in solicitations as appropriate and obtain the security manager's signature (see Army Regulation 380-49, 4-4a, Department of the Army Industrial Security Program) as the certifying official on the form.

(2) See [AFARS PGI 5104.403\(2\)-1](#).

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Subpart 5104.5 - Electronic Commerce in Contracting

5104.502 Policy.

(b)(4) Electronic commerce in contracting is satisfied if the reverse auction application posts the synopsis (or combined synopsis-solicitation) to SAM.gov.

5104.502-90 Army supplemental policy.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) on a non-delegable basis, shall ensure that systems, technologies, procedures, and processes used by the agency to conduct electronic commerce follow the guidelines set forth in FAR 4.502 (b) and (c).

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Subpart 5104.6 - Contract Reporting

5104.604 Responsibilities.

(a) The Senior Procurement Executive in coordination with the head of the contracting activity is responsible for developing and monitoring a process to ensure timely and accurate reporting of contractual actions to FPDS. See Appendix GG for further delegation.

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Subpart 5104.8 - Government Contract Files

5104.802 Contract files.

(f) Contracting officers shall utilize the Virtual Contracting Enterprise (VCE) tools throughout the acquisition process to maximize visibility and management of contract specific information and documents. VCE shall not be used for classified documents or contracts.

(i) The Paperless Contract File (PCF) module shall be used to store, access, and route documents necessary to manage the acquisition process for review and approval. Contracting officers shall ensure that the PCF contains all appropriate contract documents. If the contract document is maintained within the Procurement Integrated Enterprise Environment (PIEE, <https://wawf.eb.mil/>) or the Federal Procurement Data System-Next Generation (FPDS-NG)), then that system is the official system of record; contracting officers should not duplicate the document and file it in the PCF.

Follow procedures at [AFARS PGI 5104.802\(f\)\(i\)-2](#).

Follow procedures at [AFARS PGI 5104.802\(f\)\(i\)-1](#).

(1) The Army Cabinet Index folder structure shall be used when filing documents in PCF to ensure standardization throughout Army contract files. See AFARS PGI 5104.802(f)(i)(1) for instructions to access the cabinet index structure.

(2) The Protest and Claims Tracking tool shall be used when the contracting officer receives knowledge of a preaward or postaward protest submitted to any venue.

(3) Milestone Tracking shall be used to forecast and document dates for initiation and completion of key documents and milestones. The VCE tool identifies the mandatory data fields based on specific criteria for the acquisition.

See [AFARS PGI 5104.802\(f\)\(i\)\(3\)-1](#).

See [AFARS PGI 5104.802\(f\)\(i\)\(3\)-2](#).

(4) Mission Partner/Requirement Owner Functionality shall be used by requirements owners to create cabinets and submit documents to contracting organizations. Contracting officers shall assist requirements owners as necessary to ensure utilization of the tool.

(ii) VCE Warrants Module shall be used to issue and track contracting officer and grant officer warrants; see 5101.603-3.

(iii) VCE shall be used for the Announcement of Awards and Small Business Coordination Record (DD Form 2579); see 5105.303 and 5119.201(d)(10)(B)(i) respectively.

5104.803 Contents of contract files.

(a)(24) Legal reviews in accordance with 5101.602-2-90(c) shall be done in writing and documented in the contract file.

5104.804 Closeout of contract files.

(2) The head of contracting activity shall perform the duties as described in DFARS 204.804(2). See Appendix GG for further delegation.

5104.804-5 Procedures for closing out contract files.

(a)(12) When the contractor submits an adequate final indirect cost rate proposal in accordance with FAR 42.705-1(b)(1)(iii), the contracting officer must obtain a Defense Contract Audit Agency audit report or document the file with a memorandum that deems the proposal to be low-risk and not subject to further audit before closing out the contract file.

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Subpart 5104.9 - Taxpayer Identification Number Information

5104.903 Reporting contract information to the IRS.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall report the information set forth in FAR 4.903 to the IRS. See Appendix GG for further delegation.

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Subpart 5104.71 - Uniform Contract Line Item Numbering System

5104.7103-90 Contract line items for internal use software (IUS).

(a) *Definition.* As used in this section, the following terms have the same meaning as given in the Implementation Guide for Internal Use Software located on the Procurement.Army.Mil Knowledge Management Portal at <https://spcs3.kc.army.mil/asaalt/zp/doccenter/Documents/PARC%20Policy%20Alert%2018-17%20AFARS%205104%20Revision%20Contract%20Line%20Items%20for%20Internal%20Use%20Software%20RMoye.msg>.

- (1) internal use software
- (2) valuation
- (3) capitalized
- (4) expensed

(b) *Procedures.* When procuring internal use software, Army contracting activities shall—

- (1) Confirm that the requiring activity has established separately identifiable line items for all capitalized and expensed requirements in the purchase request;
- (2) Ensure the line item structure aligns with the lines of accounting related to the capitalized and expensed classifications assigned by the requiring activity; and
- (3) Include appropriate invoicing instructions and acceptance criteria in the solicitation and contract or order.

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Subpart 5104.73 - Safeguarding Covered Defense Information and Cyber Incident Reporting

5104.7304 Solicitation provisions and contract clauses.

See [AFARS PGI 5104.7304-1](#) for implementation guidance of Enhanced Security Protections for Contractor Information Systems.

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PART 5105 - PUBLICIZING CONTRACT ACTIONS

Sec.

5105.101	Subpart 5105.1 - Dissemination of Information Methods of disseminating information.	5105.402	General public.
5105.102	Availability of solicitations.	5105.403	Requests from members of congress.
5105.303	Subpart 5105.3 - Synopses of Contract Awards Announcement of contract awards.	5105.404	Release of long-range acquisition estimates.
	Subpart 5105.4 - Release of Information	5105.404-1	Release procedures.
		5105.502	Subpart 5105.5 - Paid Advertisements Authority.

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Subpart 5105.1 - Dissemination of Information

5105.101 Methods of disseminating information.

(a)(1) Prior to synopsis in Federal Business Opportunities (FedBizOpps), contracting officers shall obtain concurrence on the notice for all Program Executive Office (PEO) managed programs requiring a written acquisition plan in accordance with DFARS 207.103.

(i) When the estimated dollar value of the acquisition is at least \$50 million but less than \$250 million, obtain the concurrence of the cognizant Program Manager.

(ii) When the estimated dollar value of the acquisition is \$250 million or greater, obtain the concurrence of the cognizant PEO.

5105.102 Availability of solicitations.

(a)(5)(iii) The senior procurement executive shall make the determination that access through government point of entry (GPE) is not in the Government's interest. See Appendix GG for further delegation.

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Subpart 5105.3 - Synopses of Contract Awards

5105.303 Announcement of contract awards.

(a) *Public announcement.*

(i) In addition to the contractual actions identified in DFARS 205.303, report all contractual actions of significance or interest to the United States Congress, the Army, and the local community.

(ii)(I) The contracting officer shall submit an announcement of contract award to the Office of the Deputy Assistant Secretary of the Army (Procurement) (ODASA(P)) no later than noon (12:00 p.m., Washington, DC, time) three business days (including the date of submission) prior to the date of the proposed award. For example: when an award is anticipated on Thursday, the ODASA(P) must receive the announcement no later than noon, Washington DC time, on the preceding Tuesday. Contracting officers will submit the request along with required supporting information via the Virtual Contracting Enterprise (VCE) portal page at <https://vceportal.army.mil>. A contracting officer will not award a contract that meets the reporting threshold at DFARS 205.303(a)(i) without formal ODASA(P) approval. If the contracting officer has not received approval of the request by 2:30 p.m., Washington, DC time, on the day before the desired date of contract award, the contracting officer will contact the ODASA(P) at usarmy.pentagon.hqda-asa-alt.list.congressional-notific@mail.mil to inquire into the status of the approval.

(2) Contracting officers shall confirm the award schedule with ODASA(P) by noon of the proposed award date using the email address in paragraph (a)(ii)(1). If the schedule is anticipated to slip, a new award date must be established.

(3) When a contract action is to be awarded under the authority of FAR 6.302-2 and the senior contracting official (SCO) determines that it may be impracticable to comply with the requirements of DFARS 205.303(a)(ii)(A) and (B), the SCO, without power to delegate further, shall:

(i) Immediately notify the DASA(P) by email, with a copy furnished to the head of the contracting activity, that explains the circumstances and requests authority to make the award in advance of compliance with DFARS 205.303(a)(ii)(A) and (B); and

(ii) Authorize the contracting officer to award the contract only upon written approval by the DASA(P) or, in the DASA(P)'s absence, the senior official within the ODASA(P).

(4) The contracting officer will submit the standard announcement under paragraph (a)(ii)(I) of this section to the ODASA(P) no later than one business day after the award. In addition to the information specified in the automated tool, the contracting officer will add a one-line comment in the "Description" field that describes the nature of the urgency that precluded advance notification to the Office of the Assistant Secretary of Defense (Public Affairs) (OASD(PA)).

(5) In accordance with 10 U.S.C. 2316, do not release the identity or location of the awardee to any individual, including a Member of Congress, until OASD(PA) makes the public announcement.

(6) Paragraph (a)(ii)(3) of this section is the only authorized Army-level exception to DFARS 205.303(a)(ii)(A) and (B). No contracting activity-level deviation from this provision may be authorized.

(iii) The ODASA(P) informs the Office of the Chief Legislative Liaison who in turn informs the members of Congress in whose state or district the contractor is located and performing the contractual requirements, and the Office of the Chief of Public Affairs who in turn notifies OASD(PA).

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Subpart 5105.4 - Release of Information

5105.402 General public.

The contracting officer must obtain concurrence from Office of the Chief Legislative Liaison, Department of the Army, prior to releasing information regarding a congressional inquiry response to the general public, including information proposed to be released to the news media.

5105.403 Requests from members of congress.

(a) Contracting officers shall not provide information regarding a congressional inquiry to any public or private, individual or organization, prior to responding to the appropriate Member of Congress (see 5105.402).

(b) When responsiveness would result in disclosure of a classified matter, business confidential information, or information prejudicial to a competitive acquisition, the contracting officer shall refer the proposed reply, with full documentation, through the senior contracting official to the ODASA(P) as provided in 5101.290. ODASA(P) will seek agency head approval as defined in 5102.101. The contracting officer shall inform the Office of the Chief Legislative Liaison of the action and submit an interim response to the appropriate Member of Congress, indicating the action being taken.

5105.404 Release of long-range acquisition estimates.

5105.404-1 Release procedures.

(a) *Application.* The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may release long-range acquisition estimates. See Appendix GG for further delegation.

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Subpart 5105.5 - Paid Advertisements

5105.502 Authority.

(a) The head of the contracting activity shall approve the publication of paid advertisements in newspapers. See Appendix GG for further delegation.

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PART 5106 - COMPETITION REQUIREMENTS

Sec.

	Subpart 5106.2 - Full and Open Competition After Exclusion of Sources	5106.303	Justifications.
5106.202	Establishing or maintaining alternative sources.	5106.303-1	Requirements.
5106.302	Subpart 5106.3 - Other Than Full and Open Competition	5106.303-1-90	Requirements for amended justifications.
5106.302-1	Circumstances permitting other than full and open competition.	5106.303-2	Content.
	Only one responsible source and no other supplies or services will satisfy agency requirements.	5106.303-2-90	Format and submission of the justification review and justification and approval documents.
5106.302-2	Unusual and compelling urgency.	5106.304	Approval of the justification.
5106.302-3	Industrial mobilization; engineering, developmental, or research capability; or expert services.	5106.501	Subpart 5106.5 - Advocates for Competition Requirement.
5106.302-4	International agreement.	5106.502	Duties and responsibilities.
5106.302-5	Authorized or required by statute.	5106.502-90	Supplementary information.

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Subpart 5106.2 - Full and Open Competition After Exclusion of Sources

5106.202 Establishing or maintaining alternative sources.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may make the determination as stated in FAR 6.202(a). See Appendix GG for further delegation, based on the dollar value of the contract action.

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Subpart 5106.3 - Other Than Full and Open Competition

5106.302 Circumstances permitting other than full and open competition.

5106.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a)(2)(i)(1) The head of the contracting activity shall make the determination at DFARS 206.302-1(a)(2)(i)(1). See Appendix GG for further delegation.

(d) The head of the contracting activity may waive the requirements as stated in DFARS and DFARS PGI 206.302-1(d). See Appendix GG for further delegation.

5106.302-2 Unusual and compelling urgency.

(d)(1)(ii) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination that exceptional circumstances apply as described in FAR 6.302-2(d)(1)(ii). See Appendix GG for further delegation.

(2)(ii) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination for any subsequent modification as set forth in FAR 6.302-2(d)(2)(ii). See Appendix GG for further delegation.

5106.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services.

(c) *Limitations.* When citing the authority at 10 U.S.C. 2304(c)(3) as implemented in FAR 6.302-3(a)(2)(ii), the contracting officer must ensure the certifications required by FAR 6.303-1(c) and FAR 6.303-2(c) contain a statement that the technical and requirements personnel reviewed the proposed effort to ensure that it falls within the charter or special capabilities of the proposed institution. In addition, the statement will explain how the proposed effort establishes or maintains (as appropriate) an essential engineering, research, or development capability to be provided by an educational or other non-profit institution or a federally funded research and development center (FFRDC). When proposing to contract directly with an FFRDC not sponsored by the contracting activity, the contracting officer must ensure that the procurement request includes a written confirmation from the sponsoring agency that the proposed effort falls within the mission and general scope of effort or special competency of the FFRDC.

5106.302-4 International agreement.

(c) *Limitations.* When citing the authority at 10 U.S.C. 2304(c)(4) as implemented in FAR 6.302-4 and DFARS 206.302-4(c), the contracting officer must ensure the document referred to in DFARS 206.302-4(c) is titled "International Agreement Competitive Restrictions" (IACR). The IACR describes the terms of an international agreement or treaty, or the written directions of a foreign government reimbursing the cost of the procurement, that have the effect of requiring other than competitive procedures for the procurement. The IACR may be used even when the terms of the agreement or treaty, or the written directions, do not specifically name a required source, provided the agreement or treaty, or the written directions, contain sufficient information to explain why the use of other than competitive procedures is required. The HCA may delegate authority to prepare an IACR to a level no lower than the chief of the contracting office. The contracting officer must include in the contract file the IACR and a copy of the associated Letter of Offer and Acceptance, or other international agreement, treaty, or written directions of the reimbursing foreign government.

5106.302-5 Authorized or required by statute.

(b) Application. Agencies may use this authority to—

(4) See 5106.303-1(b) for requirements for justification and approval of sole source 8(a) awards exceeding \$100 million.

5106.303 Justifications.

5106.303-1 Requirements.

(a) Contracting officers shall not release any solicitation for other than full and open competition prior to approval of the justification, except when citing the authority at 10 U.S.C. 2304(c)(2) as implemented at FAR 6.302-2.

(b) Contracting officers shall not release any solicitation for a sole-source contract prior to approval of the justification, except when citing the 8(a) authority (15 U.S.C. 637(a)) for an amount exceeding \$100 million unless—

(2) The head of the procuring activity has approved the justification. See Appendix GG for further delegation,

(c) Only United States Government employees formally representing the appropriate functional activity may sign technical and requirements certifications under this provision.

(d) A justification approved on a class basis authorizes the award of two or more contract actions using other than full and open competition. Provided that it complies with the requirements below, the justification may encompass identified contract actions for the same or integrally related supplies or services or other contract actions that require essentially identical justification. A justification made on a class basis—

(i) Is not limited to a single contractor;

(ii) May cover contracts for non-permanent requirements to be awarded in successive fiscal years, provided that the requirements and quantities are included in the Future Years Defense Plan, and their costs have been specifically identified;

(iii) Must address every contract included in the scope of the class justification in each paragraph, in detail (e.g., specific quantity and dollar amounts for each contract; detailed documentation of the circumstances supporting the use of other than full and open competitive procedures for each contracting action); and

(iv) Must include only those supply or service components that are, and will clearly remain, sole or limited source for the period covered by the justification.

(e) If a contracting officer awards a contract exceeding the dollar threshold identified at FAR 6.304(a)(4) prior to approval of the required justification using the authority cited in FAR 6.302-2, the contracting activity must submit the justification for approval to the address in 5101.290(b)(2)(ii)(C) no later than seven calendar days after contract award.

5106.303-1-90 Requirements for amended justifications.

(a) The contracting officer shall amend a justification and obtain the required approvals when any of the following occur prior to award of the contract action:

(1) The dollar value of the prospective contract action increases beyond the authority of the previous approving official.

(2) A change in the competitive strategy further reduces competition.

(3) A change in requirements affects the basis for the justification.

(b) The Senior Procurement Executive (SPE) approves all amendments to justifications previously approved at the SPE level, except when the basis for the amended justification supports a lower approval level per FAR 6.304.

(c) Prepare all amended justifications as required in 5106.303-2-90(c)(3).

5106.303-2 Content.

(d)(5) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall specify other matters as described in FAR 6.303-2(d)(5). See Appendix GG for further delegation.

5106.303-2-90 Format and submission of the justification review and justification and approval documents.

(a) *General.* The justification and approval (J&A) format at 5153.303-5 is mandatory for all justifications in support of other than full and open competition. Contracting officers will tailor the J&A's format to accommodate other type justifications in accordance with the FAR approval thresholds and required content.

(b) Reserved.

(c) *Instructions.*

(1) *Justification review document (JRD).* The JRD serves as the cover page(s) to the J&A document and may be tailored to reflect the approval thresholds and relevant functions for the instant contract action.

(2) *Justification and approval document.*

(i) Begin page numbering on the first page of the JRD, and number each subsequent page of the document sequentially.

(ii) Enter the control number in the upper right corner of each page, including the JRD and approval pages.

(iii) If a paragraph prescribed in the format does not apply to the contract action, indicate "Not applicable" and explain why.

(iv) Certifying officials must approve any material changes to the original J&A contents.

(v) Paragraph 7, "Actions to Increase Competition," must be specific and comprehensive.

(vi) Only United States Government employees formally representing the appropriate functional activity may validate and certify the JRD and J&A (see 5153.303-4 and 5153.303-5). Other government officials shall not perform this certification.

(3) *Amended justifications.*

(i) When 5106.303-1-90 requires an amended justification, the contracting officer must prepare a document entitled "Amendment to Justification for Other Than Full and Open Competition," using the same paragraph designations used in the original justification. Attach a copy of the original JRD and J&A documents. In addition—

(A) Number amendments sequentially;

(B) Include J&A paragraphs 1, 2 and 3 in full, revised if required;

(C) Include new certifications by the contracting officer (paragraphs 13 and 14). Include new technical and requirements certifications (paragraphs 11 and 12) only when changes in those areas of responsibility prompted the amendment;

(D) Use paragraph 10 to explain the reason for the amendment and to give any additional information that would help the reader understand the changes; and

(E) Address all remaining paragraphs of the J&A by stating "No change" following the paragraph number or by inserting an entirely revised paragraph. When there are minor changes, mark through deleted items and underline additions to the original paragraph to indicate changes to the original document. For major revisions, including the addition of paragraphs that previously did not apply, instead of marking through and underlining, use paragraph 10 to identify the paragraph number and summarize the changes. Include this information following the entry required by (D).

(ii) Determine the approval level for an amended J&A by using the cumulative dollar value of the amended justification, e.g., original J&A value plus the amount of the change.

(d) *Submission.*

(1) For contracting actions exceeding the dollar threshold identified at FAR 6.304(a)(4), the contracting activity must submit the justification in sufficient time for approval, approximately 40 working days, to the address at 5101.290(b)(2)(ii) (C). Electronic transmission is preferred. For electronic submission, indicate the lead point of contact and the alternate (name, phone number, email address).

(2) Include with the justification the transmittal memorandum signed by the appropriate official, the current acquisition plan, and any other key documents related to the instant action. The approval authority or his/her office may request a copy of the acquisition strategy, usually for large services or major weapons system contracts; business case analysis for performance based logistics and select Acquisition Category programs; or requirements validation separately.

(e) *Revisions.* The Office of the Deputy Assistant Secretary of the Army (Procurement) (ODASA (P)) action officer will return J&As submitted for SPE approval when directed revisions cannot be accomplished within five business days. The contracting activity may re-submit the J&A after making the requested revisions. Once received, the ODASA(P) action officer will start anew processing the action for approval.

5106.304 Approval of the justification.

(a)(3) The head of the contracting activity shall approve justifications as described at FAR 6.304(a)(3). See Appendix GG for further delegation.

(i) See 5106.303-1-90 for approval of amended justifications.

(ii) Requirements shall not be split in order to avoid submission of a justification to a higher-level approval authority.

(c) Approval procedures and thresholds for justifications based on a class of contracts are the same as for individual justifications; see FAR 6.304.

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Subpart 5106.5 - Advocates for Competition

5106.501 Requirement.

(1) The Deputy Assistant Secretary of the Army for Procurement serves as the Army Advocate for Competition (AAFC). Heads of contracting activities (HCAs), delegable only to their senior contracting official, may appoint a command advocate for competition (CAFC) and alternates within their contracting activities. HCAs shall appoint at least one CAFC for each contracting activity. In addition, the HCA shall appoint a local advocate for competition wherever there is a small business specialist appointed for that organization. See Appendix GG.

(2) Designation of advocates for competition at contracting offices subordinate to contracting activities depends on the nature of the contracting mission of the office, the volume of significant contracting actions, the complexity of acquisition planning, and other responsibilities of such local advocates. Advocates for competition may be appointed on a part-time basis or as an additional duty when there are no conflicts of interest.

5106.502 Duties and responsibilities.

(a) Local advocates for competition are an extension of the CAFC office and assist the CAFC in the accomplishment of their responsibilities.

(b)(2) Command advocates for competition must report the following information to the AAFC (see address at 5101.290(b)(2)(ii)(C)) no later than November 15 of each year, or as the AAFC specifies—

(A) The level of competition achieved against their goal for the fiscal year and, if applicable, reasons for not attaining the goal.

(B) Significant actions taken to increase competition or overcome barriers to competition, number of new sources identified as a result of market research, notable savings or performance or quality enhancements resulting from competition, and employees recognized for initiatives to enhance competition.

(C) Mitigating factors affecting goal achievement.

(D) A plan for competition in the coming fiscal year.

(E) Any other activities and accomplishments.

(F) Their competition goal for the coming fiscal year.

(3) Before seeking approval, CAFCs will coordinate their activity's annual competition goals with the local small business specialist to balance socio-economic and competition goals with organizational interests.

5106.502-90 Supplementary information.

Command advocates for competition should provide supplementary information on items considered significant to the AAFC at any time during the fiscal year.

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PART 5107 - ACQUISITION PLANNING

Sec.

	Subpart 5107.1 - Acquisition Plans	5107.302	Policy.
5107.103	Agency-head responsibilities.		Subpart 5107.4 - Equipment Lease or Purchase
5107.103-90	Acquisition plan approvals.	5107.470	Statutory requirements.
5107.104	General procedures.		Subpart 5107.5 - Inherently Governmental Functions
5107.105	Contents of written acquisition plans.	5107.503	Policy.
5107.107	Additional requirements for acquisitions involving consolidation, bundling, or substantial bundling.		Subpart 5107.90 - Independent Government Estimates
5107.107-2	Consolidation.	5107.9000	Scope.
5107.107-5	Notifications.	5107.9001	Definitions.
	Subpart 5107.2 - Planning for the Purchase of Supplies in Economic Quantities	5107.9002	Policy.
5107.204	Responsibilities of contracting officers.		Subpart 5107.91 - Integrating Antiterrorism and Operations Security
	Subpart 5107.3 - Contractor Versus Government Performance	5107.9100	Scope.
		5107.9101	Policy.

(Revised 14 July 2022)

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Subpart 5107.1 - Acquisition Plans

5107.103 Agency-head responsibilities.

(d)(i) Except as provided in (d)(i)(B), prepare written acquisition plans, for up to a five-year period, in accordance with dollar thresholds identified at the DFARS 207.103(d)(i).

(B) Procurements for foreign military sales (see DFARS 225.73), other than procurements funded with U.S. appropriated funds, are exempt from the requirements at DFARS 207.103(d)(i) to prepare a written acquisition plan, when—

(1) An International Agreement Competitive Restrictions (ICAR) has been approved IAW 5106.302-4(c);

or

(2) The procurement is for an item of standard Army material (i.e., supplies that, as confirmed by the requiring activity, have been type classified “standard” under Army Regulation 700-142, Type Classification, Material Release, Fielding, and Transfer) for which other acquisition planning documentation exists and can be documented in the contract file.

(ii) When there is not a requirement for a written acquisition plan, or the approval authority has waived the requirements of formality and detail in exceptional cases, use an alternate format or contract documentation such as memoranda for record, price negotiation memoranda, simplified acquisition management plan, and acquisition strategies (for service requirements) to record acquisition pre-award decisions and risk assessment information. Contracting officers shall maintain such decision support information in the contract file and to the extent practicable avoid duplication of information between the services acquisition strategy (see 5137.590-6) and the acquisition plan (e.g., by referencing content).

(m) Only the acquisition plan approval authority may waive requirements of detail and formality.

5107.103-90 Acquisition plan approvals.

(a) For acquisition plan approval, the dollar thresholds identified at DFARS 207.103(d)(i) apply to the following:

(1) For programs assigned to program executive officers (PEOs) or program managers reporting directly to the Army Acquisition Executive (DRPM), the designated milestone decision authority (MDA), on a nondelegable basis, is the acquisition plan approval authority. In the case of PEO-DRPM-managed efforts for which no MDA has been designated, the PEO/DRPM, on a nondelegable basis, is the acquisition plan approval authority.

(2) For all non-PEO/direct-reporting program manager acquisitions, the Assistant Secretary of the Army (Acquisition, Logistics and Technology) is the acquisition plan approval authority. See Appendix GG for further delegation.

(b) Approval of acquisition plans for procurements below the thresholds identified at DFARS 207.103(d)(i) shall be in accordance with contracting activity procedures.

(c) For Army Acquisition Executive-designated special interest acquisitions, the Assistant Secretary of the Army (Acquisition, Logistics and Technology) or the Deputy Assistant Secretary of the Army (Procurement) must approve the acquisition plans. Process acquisition plans for special interest acquisitions in the same manner as other acquisition plans and include all the concurrences listed in paragraph (c).

(d) The requests for approval of acquisition plans in accordance with the thresholds identified at DFARS 207.103(d)(i) must include the concurrence of the –

- (1) Contracting officer;
- (2) Local advocate for competition;
- (3) Local office of small business programs or small business specialist;
- (4) Legal office; and
- (5) Appropriate elements from the supporting contracting activity chain of command.

5107.104 General procedures.

(a)(i) Each head of the contracting activity (HCA) must establish procedures for forecasting all significant, as defined by a specified monetary threshold, or sensitive contracting requirements anticipated for the upcoming fiscal year.

(ii) These procedures will include procurement milestones and other management parameters for all proposed contract actions that the acquisition planning system will cover, including those proposed requirements for which DFARS 207.103(d)(ii) does not require written acquisition plans.

(iii) These procedures should allow sufficient time for development of an acquisition plan; preparation of solicitations, including any necessary coordination with requiring and technical elements; receipt and evaluation of bids or proposals; audits; negotiation; boards or business clearance reviews; source selection and preparation of contractual documents in an orderly and timely manner.

(iv) HCAs should establish due dates for submission of procurement requests requiring action by the end of the fiscal year to the contracting office. Exceptions to established due dates must be minimized and require authorization at a level not lower than the chief of the contracting office.

(v) In acquisitions where sole source approvals are necessary, acquisition planning must provide appropriate opportunities for the following:

(A) Involving Defense Contract Management Agency and Defense Contract Audit Agency early in the acquisition process.

(B) Obtaining appropriate contractor input for use in the development of the acquisition strategy.

(C) Establishing a Government and contractor team, including individuals with execution responsibility as well as reviewers, committed on a real-time basis to streamline the acquisition process and maintain open communications.

(D) Teaming of Government and contractor personnel in development of the proposal and model contract, leading to agreement on contractor effort and costs associated with the task(s).

(E) Teaming of the Government and contractor personnel during post-award contract performance to improve communications and develop efficient contract administration.

5107.105 Contents of written acquisition plans.

(b)(20)(C)(8)(iv) The head of contracting activity is responsible to perform the duties at DFARS 207.105. See Appendix GG for further delegation.

5107.107 Additional requirements for acquisitions involving consolidation, bundling, or substantial bundling.

5107.107-2 Consolidation.

(b)The Senior Procurement Executive has delegated authority to make the consolidation determination prescribed at FAR 7.107-2 as follows:

(i) Where the total value of the consolidated requirements is \$500 million or more, the Deputy Assistant Secretary of the Army (Procurement) will make the determination.

(ii) Where the total value of the consolidated requirements is above \$2 million but less than \$500 million, the HCA will make the determination. See Appendix GG for further delegation.

5107.107-5 Notifications.

The contracting officer is responsible for publishing the notices required by FAR 7.107-5(c) and (d).

Subpart 5107.2 - Planning for the Purchase of Supplies in Economic Quantities

5107.204 Responsibilities of contracting officers.

- (a) Send offerors' responses to the solicitation provision in FAR 52.207-4 to the requiring activity.

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Subpart 5107.3 - Contractor Versus Government Performance

5107.302 Policy.

To achieve fair and even-handed competition between in-house entities and industry, the senior contracting official will ensure that contracting officers provide industry with pertinent, accurate, and available data necessary to engender as full and complete an understanding as possible of the operation(s) covered by the A-76 competition. Historical data provided must be relevant and well organized (see Department of Army Pamphlet 5-20). To maximize use of Army resources, contracting officers must make every effort to utilize A-76 contracting best practices and good ideas that have worked for others and avoid repetition of unsuccessful strategies and procedures.

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Subpart 5107.4 - Equipment Lease or Purchase

5107.470 Statutory requirements.

(b) The head of the contracting activity shall make the determination as described in DFARS 207.470(b). See Appendix GG for further delegation.

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Subpart 5107.5 - Inherently Governmental Functions

5107.503 Policy.

(e)(i) Contracting officers must ensure that requiring officials provide a written determination as required by FAR 7.503(e) and DFARS 207.503(e) prior to issuance of a solicitation for award of a service contract, including those contract types described in FAR 16.5, a services task order awarded under FAR 16.5, or modification of an awarded service contract's or task order's statement of work. Contracting officers shall document the official contract file with the determination.

(ii) The Request for Services Contract Approval (RSCA) form (see Army Regulation (AR) 70-13), or the acquisition plan, acquisition strategy, or memorandum for file satisfies the requirement in 5107.503(e)(i).

(iii) RSCA policy for requiring activities is available at AR 70-13, sections 2-2 and 2-9, and at the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs) website: <http://www.asamra.army.mil/scra/>.

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Subpart 5107.90 - Independent Government Estimates

5107.9000 Scope.

This subpart prescribes policy for the preparation of independent government estimates.

5107.9001 Definitions.

“Independent government estimate (IGE),” as used in this subpart, means the Government’s estimate of the projected price or cost that a contractor would incur in the successful performance of a contract.

5107.9002 Policy.

(a) Contracting officers shall require the preparation of an IGE in every procurement action in excess of the simplified acquisition threshold (SAT). The contracting officer, at his or her discretion, may require an IGE for actions less than the SAT.

(b) The contracting officer shall ensure, prior to accepting an IGE, that—

- (1) The IGE contains enough detail to verify the validity of the offerors’ proposals;
- (2) The IGE provides sufficient narrative and analytical detail, to include reference material, to support its preparation;
- (3) The IGE contains a certification that the Government independently developed the IGE prior to seeking formal proposals from contractors, or for construction, within a timeframe consistent with FAR 36.203; and:

(i) Be signed and dated, by hand or by Common-Access-Card (CAC), by the preparer, and includes the preparer’s organization, position, title, and telephone number;

(ii) Be signed and dated, by hand or by CAC, by the preparer’s immediate supervisor, and includes the reviewer’s organization, position, title, rank or grade, and telephone number.

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Subpart 5107.91 - Integrating Antiterrorism and Operations Security

5107.9100 Scope.

This subpart prescribes policy for integrating antiterrorism (AT) and operations security (OPSEC) considerations into Army contracts.

5107.9101 Policy.

Implementation of AT and OPSEC considerations in the requirements package is the responsibility of the requiring activity and a signed AT/OPSEC cover sheet is required to be included in all requirements packages except for supply contracts under the simplified acquisition level threshold, field ordering officer actions and Government purchase card purchases. The cover sheet, at a minimum, must include all the information and reviews listed in the Army standard cover sheet at Appendix A of the AT/OPSEC Desk Reference, available via the Internet at https://army.deps.mil/army/sites/PMG/prog/AATEP/AT%20in%20Contracting/AT%20OPSEC%20Desk%20Reference%205th%20Edition_web.pdf (Army Knowledge Online login required). This requirement also applies to orders under indefinite delivery contracts, unless each task or delivery order under the contract is for substantially the same product or service, in which case the cover sheet at the contract level is sufficient.

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PART 5108 - REQUIRED SOURCES OF SUPPLIES AND SERVICES

Sec.

5108.404	Subpart 5108.4 - Federal Supply Schedules Use of federal supply schedules.	5108.9000	Scope of subpart.
5108.405	Ordering procedures for federal supply schedules.	5108.9001	Use of civil detention facilities. Subpart 5108.91 - Video Productions
5108.405-3	Blanket purchase agreements (BPAs).	5108.9100	Scope of subpart.
5108.405-6	Limited sources. Subpart 5108.8 - Acquisition of Printing and Related Supplies	5108.9101	Contracting for total productions. Subpart 5108.92 - Army Continuing Education System Contracts
5108.802	Policy. Subpart 5108.11 - Leasing of Motor Vehicles	5108.9200	Scope of subpart.
5108.1102	Presolicitation requirements. Subpart 5108.70 - Coordinated Acquisition	5108.9201	References.
5108.7002	Assignment authority.	5108.9202	Educational services contracts.
5108.7002-90	Non-standard ammunition. Subpart 5108.74 - Enterprise Software Agreements	5108.9203	Procedures. Subpart 5108.93 - Training With Commercial Firms
5108.7401-90	Software product manager.	5108.9300	Scope of subpart.
5108.7403	Acquisition procedures. Subpart 5108.90 - Civil Confinement of Military Absentees and Deserters	5108.9301	General. Subpart 5108.94 - Foreign Language Support
		5108.9400	Scope of subpart.
		5108.9401	Definitions.
		5108.9402	Policy.

(Revised 20 May 2022)

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Subpart 5108.4 - Federal Supply Schedules

5108.404 Use of federal supply schedules.

(h)(3)(ii)(C) The head of the contracting activity without the power to further delegate is the approval authority for actions stated in FAR 8.404(h)(3)(ii)(C).

5108.405 Ordering procedures for federal supply schedules.

5108.405-3 Blanket purchase agreements (BPAs).

(a)(3)(ii). The Assistant Secretary of the Army (Acquisition, Logistics and Technology) makes the determination described in FAR 8.405-3(3)(ii). See Appendix GG for further delegation.

5108.405-6 Limited sources.

(b)(3)(ii)(C) The senior procurement executive makes the determination described in FAR 8.405-6(b)(3)(ii)(C). See Appendix GG for further delegation.

(d)(3) The head of the contracting activity is the approval authority for actions stated in FAR 8.405-6(d)(3). See Appendix GG for further delegation.

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Subpart 5108.8 - Acquisition of Printing and Related Supplies

5108.802 Policy.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, shall designate a central printing authority as set forth in FAR 8.802(b).

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Subpart 5108.11 - Leasing of Motor Vehicles

5108.1102 Presolicitation requirements.

(c) The head of the contracting office is the approval authority for actions stated in FAR 8.1102(c). See Appendix GG for further delegation.

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Subpart 5108.70 - Coordinated Acquisition

5108.7002 Assignment authority.

(a)(1) Contracting activities shall procure commodities assigned to the Army under DFARS 208.7000 according to the assignment of responsibilities issued by the Commanding General, U.S. Army Materiel Command. DFARS PGI 208.7006 lists the commodity assignments.

5108.7002-90 Non-standard ammunition.

Contracting officers shall forward all U.S. Army non-standard ammunition procurements to Joint Program Executive Office, Armaments & Ammunition for execution.

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Subpart 5108.74 - Enterprise Software Agreements

5108.7401-90 Software product manager.

The Army's software product manager is the Computer Hardware, Enterprise Software and Solutions (CHES) Office. Information on CHES is available via the Internet at <https://chess.army.mil>.

5108.7403 Acquisition procedures.

(5)(iii) Before procuring commercial software outside of the CHES contracts, the contracting officer must ensure that the requiring activity obtains a waiver (see 5139.101-90(a)).

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Subpart 5108.90 - Civil Confinement of Military Absentees and Deserters

5108.9000 Scope of subpart.

This subpart prescribes policy for the acquisition of civil detention facility services, when installation commanders or provost marshals deem the use of such facilities appropriate.

5108.9001 Use of civil detention facilities.

See Army Regulations 190-9 and 190-47.

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Subpart 5108.91 - Video Productions

5108.9100 Scope of subpart.

This subpart prescribes policy for the acquisition of video productions.

5108.9101 Contracting for total productions.

(a) The Army Multimedia and Visual Information Directorate (AMVID), U.S. Army Headquarters Services, Office of the Administrative Assistant to the Secretary of the Army, is the only multimedia and visual information activity authorized to contract for total productions. See Army Regulation 25-1 and Department of the Army Pamphlet 25-91.

(b) Direct requests for contracted total productions and non-local productions per Army Regulation 25-1 to the local visual information activity for processing to the

AMVID, Production Acquisition Division

ATTN: AAHS-VI-C

2530 Crystal Drive, 13th Floor

Arlington, Virginia 22202-3934.

(c) The contracting officer must forward procurement requests for contracting total productions to the AMVID, Production Acquisition Division at the address in paragraph (b) in this section.

(d) For advisory and assistance services for audiovisual productions, please contact AMVID, Production Acquisition Division, at the address in paragraph (b) in this section.

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Subpart 5108.92 - Army Continuing Education System Contracts

5108.9200 Scope of subpart.

This subpart prescribes policy for the acquisition of Army Continuing Education System (ACES) programs and services.

5108.9201 References.

Army Regulation (AR) 621-5 establishes the ACES and prescribes policies and responsibilities for its administration.

- (a) AR 350-20 provides for mission-required language training procured through ACES.
- (b) AR 380-67 outlines security requirements for ACES personnel.

5108.9202 Educational services contracts.

(a) The contracting officer may execute educational services contracts to support ACES for Active Component, Reserve Component and Army National Guard soldiers and to provide Headstart language and host nation acculturation programs for Active Component adult family members.

(b) In the continental United States, the tuition assistance procedures described in AR 621-5 are the appropriate method to obtain postsecondary and off-duty high school instruction.

(c) Use contracts for the following:

- (1) Conducting Army education center instruction for programs listed in AR 621-5 and AR 350-20.
- (2) Testing individuals or groups of individuals who desire to participate in ACES.
- (3) Army learning center services such as the use of professional, paraprofessional or technical personnel to operate computer laboratories, information centers, language laboratories, military publications reference libraries and provide adjunct instruction for ACES participants.
- (4) Education transition management services for Active Component only.
- (5) Education program development, such as curriculum development, software and courseware development.
- (6) Training for professional development of ACES full-time, permanent, professional staff.

5108.9203 Procedures.

See Army Regulations cited at 5108.9202(c)(1).

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Subpart 5108.93 - Training With Commercial Firms

5108.9300 Scope of subpart.

This subpart prescribes policy for obtaining commercial training for Army Medical Department and other Army personnel.

5108.9301 General.

(a) Contracting officers shall refer questions about obtaining commercial training for Army Medical Department personnel to:

Commander, AMEDDC&S
Department of Health Education and Training
Attn: MCCS-HE
2377 Greeley Road, Suite B
Fort Sam Houston, TX 78234-5075
or by telephone to (210) 295-9528, or fax to (210) 221-2832.

(b) Contracting officers shall refer questions about obtaining commercial training for other Army personnel to the:

Office of The Deputy Chief Of Staff, G1
Director of Military Personnel Management
Attn: DAPE-MP
300 Army Pentagon
Washington DC 20310-0300
or by telephone to DSN 225-5881 or (703) 695-5881.

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Subpart 5108.94 - Foreign Language Support

5108.9400 Scope of subpart.

This subpart prescribes policy for foreign language support contracts.

5108.9401 Definitions.

“Foreign language support,” as used in this subpart, means services which require the ability to listen, read, speak and/or write in a foreign language, and translate the foreign language into spoken or written English. It excludes those services that specifically support the conduct of foreign language instruction, services provided under personal services contracts, or contracted services that use Special Operations Major Force Program-11 funds.

5108.9402 Policy.

(a) Except as provided in (b), contracting officers shall use contracts administered by the U.S. Army Intelligence and Security Command (INSCOM) to procure foreign language support.

(b)(1) If the contracting officer contemplates using a non-INSCOM-administered contract to procure foreign language support, the contracting officer shall send an exception request to the following address no later than 90 days prior to the proposed contract award:

USARMY Pentagon HQDA DCS G-2 List Foreign Language Office
usarmy.pentagon.hqda-dcs-g-2.list.foreign-language-office@mail.mil.

(2) At a minimum, the request for exception shall include –

(i) The scope of the contract to include the mission, the number of linguists required, and the job description of the linguists;

(ii) A justification statement;

(iii) The type of funds to be used to pay for the contract;

(iv) Copies of the proposed contract and statement of work;

(v) Any special Government-provided benefits; and

(vi) The point-of-contact information for the proposed contract.

(3) HQDA Office of the Deputy Chief of Staff for Intelligence (G-2) will review the exception request and notify the requestor whether the proposed award can proceed.

(c) Army organizations with existing contracts for foreign language support outside the INSCOM-administered contracts shall contact the G-2 at the address provided in paragraph (b)(1) of this section to determine if movement of the requirements to the INSCOM-administered contracts is appropriate.

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PART 5109 - CONTRACTOR QUALIFICATIONS

Sec.

5109.103	Subpart 5109.1 - Responsible Prospective Contractors	5109.403	Definitions.
5109.104	Policy.	5109.404	System for award management exclusions.
5109.104-5	Standards.	5109.405	Effect of listing.
5109.105	Representation and certifications regarding responsibility matters.	5109.405-1	Continuation of current contracts.
5109.105-2	Procedures.	5109.405-2	Restrictions on subcontracting.
5109.108	Determinations and documentation.	5109.406	Debarment.
5109.108-4	Prohibition on contracting with inverted domestic corporations.	5109.406-1	General.
5109.108-4	Waiver.	5109.406-3	Procedures.
5109.202	Subpart 5109.2 - Qualifications Requirements	5109.407	Suspension.
5109.206	Policy.	5109.407-1	General.
5109.206-1	Acquisitions subject to qualification requirements.	5109.407-3	Procedures.
5109.270	General.		Subpart 5109.5 - Organizational and Consultant Conflicts of Interests
5109.270-3	Aviation and ship critical safety items.	5109.503	Waiver.
5109.270-3	Policy.	5109.504	Contracting officers responsibilities.
5109.402	Subpart 5109.4 - Debarment, Suspension, and Ineligibility	5109.506	Procedures.
	Policy.		

(Revised 30 March 2022)

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Subpart 5109.1 - Responsible Prospective Contractors

5109.103 Policy.

(b) Army contracting officials shall use the Determination of Responsibility Assistant (DORA) Contractor Responsibility bot to assist them to determine prospective contractor responsibility or non-responsibility. Instructions on how to use the bot can be found on the Acquisition Innovation through Technology page located at: <https://procurement.army.mil/bot> and at [AFARS PGI 5109.103\(b\)-1.](#)

5109.104 Standards.

5109.104-5 Representation and certifications regarding responsibility matters.

(a)(2) See 5109.406-3 and 5109.407-3 for Army notification procedures.

(b)(2) See 5109.406-3 and 5109.407-3 for Army notification procedures.

5109.105 Procedures.

5109.105-2 Determinations and documentation.

(a) *Determinations.* The contracting officer shall submit a copy of the determination of non-responsibility to the cognizant suspension and debarment official listed at 5109.403.

5109.108 Prohibition on contracting with inverted domestic corporations.

5109.108-4 Waiver.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may approve the waiver set forth in FAR 9.108-4. See Appendix GG for further delegation.

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Subpart 5109.2 - Qualifications Requirements

5109.202 Policy.

(a)(1) The authority of DFARS PGI 209.202(a)(1) is not delegable below the level of the chief of the contracting office.

(b) The head of the contracting activity may waive the requirements as described in FAR 9.202(b). See Appendix GG for further delegation.

(e) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has authorization to grant the approval described in FAR 9.202(e). See Appendix GG for further delegation.

5109.206 Acquisitions subject to qualification requirements.

5109.206-1 General.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to make the determination at FAR 9.206-1(b). See Appendix GG for further delegation.

5109.270 Aviation and ship critical safety items.

5109.270-3 Policy.

(a) The head of the contracting activity shall perform the duties stated in DFARS 209.270-3. See Appendix GG for further delegation.

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Subpart 5109.4 - Debarment, Suspension, and Ineligibility

5109.402 Policy.

(d) The Chief, Procurement Fraud Branch, U.S. Army Contract and Fiscal Law Division, U.S. Army Legal Services Agency, Office the Judge Advocate General processes and recommends debarment or suspension action to the suspension and debarment official (SDO).

5109.403 Definitions.

“The Army suspension and debarment official,” as used in this subpart, means –

(1) Director, Soldier & Family Legal Services, or other official designated by The Judge Advocate General of the Army, pursuant to Army Regulation 27-1, to impose suspension and debarment. Use the following address:

Army Suspension and Debarment Official

ATTN: Procurement Fraud Branch

U.S. Army Legal Services Agency (USALSA)

Contract and Fiscal Law Division

9275 Gunston Road, Building 1450, Suite 2100

Fort Belvoir, VA 22060-5546;

send electronic submissions to usarmy.pentagon.hqda-otjag.list.usalsa-kfld-pfb@mail.mil ; or

(2) For specific issues outside the contiguous United States –

(i) In the United States Army Europe and Seventh Army area of responsibility, the Deputy Judge Advocate, at the following address:

U.S. Army Europe

Office of the Judge Advocate

Unit 29355, Box 0032

APO AE 09005-9355;

send electronic submissions to usarmy.wiesbaden.usareur.mbx.oja-procurement-fraud@mail.mil ; or

(ii) In the United States Eighth Army, Korea, area of responsibility, the Staff Judge Advocate, U.S. Eighth Army, at the following address:

U.S. Eighth Army

PSC 303, Box 47

APO AP 96205;

send electronic submissions to usarmy.youngsan.8-army.mbx.administrative-law@mail.mil ; or

(iii) For all other locations, see paragraph (1) of this definition.

5109.404 System for award management exclusions.

(c)(5) The heads of the contracting activities (HCAs) must establish required procedures within their contracting activities.

5109.405 Effect of listing.

(a) The Army suspension and debarment official makes the “compelling reason” determination discussed at FAR 9.405(a), 9.405-1(b), 9.405-2, 9.406-1(c), and 9.407-1(d). Contracting officers shall submit requests for an Army SDO determination to their senior contracting official (SCO) for review and endorsement. If the SCO concurs, submit the request to the Army SDO, through the Chief, Procurement Fraud Branch (see 5101.290(b)(5)). The Army SDO shall provide GSA with written notice of each approved determination.

(d)(1) Contracting officers shall review the System for Award Management Exclusions prior to the solicitation of offers (except when performing this review for those solicitations posted to the Governmentwide point of entry where it will not be practicable), immediately prior to award of a new contract, prior to placement of a new purchase or task or delivery order, and prior to consent to subcontract. Army contracting officers shall also review the System for Award Management Exclusions prior to exercise of an option or award of any modification that adds new work or extends the duration of the contract or the period of performance. Contracting officers shall maintain a copy of the results of the reviews in the contract file.

(3) See paragraph (a) in this section for procedures on obtaining the agency head determination.

5109.405-1 Continuation of current contracts.

(a) Orders placed under a requirements contract may create a situation in which a contract continues notwithstanding the debarment, suspension, or proposed debarment of a contractor. Army contracting officers shall make decisions regarding whether to terminate a contract and the type of contract termination action, if any, only after review by command contracting and technical personnel, and by legal counsel to ensure the propriety of the proposed action in compliance with federal law and regulation.

(b) See 5109.405(a) for procedures on obtaining the agency head determination.

5109.405-2 Restrictions on subcontracting.

(a) See 5109.405(a) for procedures on obtaining the agency head determination.

5109.406 Debarment.**5109.406-1 General.**

(c) See 5109.405(a) for procedures on obtaining the agency head determination.

5109.406-3 Procedures.

(a) *Investigation and referral.* When there is a reasonable suspicion of procurement fraud or irregularity or the contracting activity refers the matter for investigation, the contracting officer shall contact the local procurement fraud advisor (PFA), who will send a Procurement Flash Report in accordance with paragraph 8-5 of Army Regulation 27-40. The contracting officer must provide information to the PFA for the Procurement Flash Report as required.

(i) The contracting officer must submit all necessary information through the HCA to the PFA for review. Prompt reporting is essential in all cases that could lead to the suspension or debarment of a contractor or to judicial or administrative action against military personnel or civilian employees of the Army.

(ii) The report must include contractor credit and financial information, such as Dun and Bradstreet or Experian reports. When the Procurement Flash Report recommends suspension or debarment because of contractor fraud or criminal conduct involving a current contract, withhold all funds, which become due the contractor on that contract, unless the HCA or the suspension and debarment official directs otherwise. When fraud is the basis for a contractor's request for advance, partial, or progress payments, contracting officers shall follow the procedures at FAR 32.006-4.

(iii) Distribute reports to the suspension and debarment official through the Procurement Fraud Branch (PFB) as follows: Forward the original and one copy through contracting channels to the PFB, and send the second copy directly to the PFB.

5109.407 Suspension.**5109.407-1 General.**

(d) See 5109.405(a) for procedures on obtaining the agency head determination.

5109.407-3 Procedures.

(a) *Investigation and referral.* Prepare and process reports in accordance with 5109.406-3.

Subpart 5109.5 - Organizational and Consultant Conflicts of Interests

5109.503 Waiver.

The head of the contracting activity, without power to further delegate, may waive any general rule or procedure required in FAR subpart 9.5.

5109.504 Contracting officers responsibilities.

(c) The head of the contracting activity is the approval authority as stated in FAR 9.504(c). See Appendix GG for further delegation.

5109.506 Procedures.

(d)(3) The head of the contracting activity gives the approval or other direction as described in FAR 9.506(d)(3). See Appendix GG for further delegation.

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Revised August 4, 2022

PART 5110 - MARKET RESEARCH

Sec.
5110.002

Procedures.

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5110.002 Procedures.

(b) All members of the acquisition team will participate in market research and apply their functional tools and expertise. Program managers or representatives of the requiring activity will typically lead the market research effort. A statement that the solicitation will be synopsisized and that all proposals received will be evaluated is not a substitute for performing adequate market research and in itself does not support and justify procurement under other than full and open conditions. Specific requirements pertaining to market research in support of other than full and open competition are included in 5153.303-5, paragraph 8.

See [AFARS PGI 5110.002\(b\)-1](#) for information and instructions on using ProcurementIQ, a market intelligence tool specifically designed for procurement, strategic sourcing and indirect procurement.

Additional market research and planning guidance is available at [AFARS PGI 5110.002\(b\)-2](#).

(e) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall document the results of market research in a manner appropriate to the size and complexity of the acquisition as stated at FAR 10.002(e). See Appendix GG for further delegation.

(i) In addition to using the “Market Research Report Guide for Improving the Tradecraft in Services Acquisition”, for service acquisitions, the format and processes should also be adapted for use in documenting market research for supplies. The Office of Small Business Programs tool at: <https://ebiz.acq.osd.mil/mrcoe/> (CAC enabled) should be used to develop the Market Research report.

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PART 5111 - DESCRIBING AGENCY NEEDS

Sec.

	Subpart 5111.1 - Selecting and Developing Requirements Documents	5111.274-2	Policy for item unique identification.
		5111.274-2	(S-90)
5111.103	Market acceptance.	5111.274-2	(S-91)
5111.106	Cloud Requirements.	5111.274-6	Contract clauses.
5111.106	(S-90)		Subpart 5111.5 - Liquidated Damages
5111.106	(S-91)	5111.501	Policy.
5111.106	(S-92)		Subpart 5111.6 - Priorities and Allocations
5111.106	(S-93)	5111.602	General.
5111.106	(S-94)	5111.602-90	Responsibilities.
5111.106	(S-95)	5111.603	Procedures.
	Subpart 5111.2 - Using and Maintaining Requirements Documents		Subpart 5111.7 - Variation in Quantity
5111.274	Item identification and valuation requirements.	5111.703	Contract Clauses

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Subpart 5111.1 - Selecting and Developing Requirements Documents

5111.103 Market acceptance.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to require offerors to demonstrate that items offered meet the standards as set forth in FAR 11.103(a). See Appendix GG for further delegation.

5111.106 Cloud Requirements.

5111.106 (S-90)

The Army Enterprise Cloud Management Office (ECMO) is the central point for all efforts and processes related to cloud adoption across the Army. The ECMO will establish a standardized cloud architecture intended for use by all Army mission areas.

5111.106 (S-91)

ECMO will provide enterprise-level contracts for commercial CSP offerings, common services, and application migration support. Where feasible and cost effective, the ECMO will leverage DoD Enterprise contracts such as the Joint Enterprise Defense Infrastructure (JEDI) contract; while establishing Army Enterprise Cloud Contracts based on mission requirements.

5111.106 (S-92)

Purchase Request Packages for NEW contracts for CLOUD Computing Services shall include the approved standard language in the Performance Work Statement unless a waiver approved by ECMO is included. This includes Follow-On Contracts. The approved PWS language applies to contract actions for Migrating to the Cloud, New SW development in the Cloud, Follow-On Contracts related to Common Services and Management, and Cloud Hosting, Use of Enterprise solutions. PWS subject areas include Use of Enterprise Services, Modernization/Migration, Software Development, Security, Data, Cloud Service Providers, Common Services, Security Incident Planning, Security, and Cost/price management & Reporting. The standard PWS language is provided in Appendix HH.

5111.106 (S-93)

Purchase Request Packages for Exercising an Option on an Existing Contracts are coordinated with ECMO IAW 5111.70. The coordination document shall be filed in the contract file.

5111.106 (S-94)

New contracts for Cloud Migration, Hosting, and Managed Services Contracting Officers and requiring activities will maximize use of the CLIN/SLIN descriptions in accordance with Appendix HH.

5111.106 (S-95)

Prior to Issuing a NEW order against an existing contract that does not accommodate the standard PWS/requirement (See Appendix HH), then during the engagement with ECMO, the requiring activity should consider alternate contracting methods that may include issuing a new contract.

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Subpart 5111.2 - Using and Maintaining Requirements Documents

5111.274 Item identification and valuation requirements.

5111.274-2 Policy for item unique identification.

(b)(1) The head of the contracting activity, on a non-delegable basis, has the authority to determine use of the items as described in DFARS 211.274-2.

(b)(2)(i)(B) The head of the contracting activity shall execute the determination and findings. See Appendix GG for further delegation.

5111.274-2 (S-90)

The contracting officer shall include separately identifiable contract line items as described at DFARS 204.7103 for items, including items of contractor acquired property, that require item unique identification as identified in DFARS 211.274-2.

5111.274-2 (S-91)

See AFARS 5142.1503(b)(2)(vi) for requirements to document contractor compliance with item unique identification in the Contractor Performance Assessment Reports System.

5111.274-6 Contract clauses.

(a)(1) Use the clause at 252.211-7003, Item Identification and Valuation, in all solicitations and contracts for supplies.

(2) The contracting officer must obtain from the requiring activity a list of items with a unit value less than \$5,000 that require unique identification. The contracting officer must enter those items into paragraph (c)(1)(ii) of the clause.

(3) As required in DFARS 252.211-7003(c)(1)(iii), include an attachment in the contract which lists embedded DoD serially managed subassemblies, components and parts that are uniquely identified.

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Subpart 5111.5 - Liquidated Damages

5111.501 Policy.

(d) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may reduce or waive the amount of liquidated damages under a contract, as described at FAR 11.501(d). See Appendix GG for further delegation.

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Subpart 5111.6 - Priorities and Allocations

5111.602 General.

5111.602-90 Responsibilities.

The G-4 Business Transformation, Headquarters, U.S. Army Materiel Command is responsible for administering the Priorities and Allocations System within the Army.

5111.603 Procedures.

(e) See DoD 4400.1-M, Department of Defense Priorities and Allocations Manual. Direct questions about areas not covered in DoD 4400.1-M to:

G-4 Business Transformation
Headquarters, U.S. Army Materiel Command
4400 Martin Road
Redstone Arsenal, AL 35898.

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Subpart 5111.7 - Variation in Quantity

5111.703 Contract Clauses

(c)(i) Insert the provision at AFARS 5152.211-9000, Evaluation of Subline Items, in solicitations when a fixed-price construction contract is contemplated and the clause at AFARS 5152.211-9001 is included in the solicitation.

(ii) In addition to the clause at FAR 52.211-18, insert the clause at AFARS 5152.211-9001, Variations in Estimated Quantities—Subline Items, in solicitations and contracts when—

(A) A fixed-price construction contract is contemplated that authorizes a variation in the estimated quantity of unit-priced items; and

(B) Those unit priced items will be subdivided into subline items and separately priced for payment purposes.

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PART 5112 - ACQUISITION OF COMMERCIAL ITEMS

Sec.

5112.102	Subpart 5112.1 - Acquisition of Commercial Items - General Applicability.	5112.301	Solicitation provisions and contract clauses for the acquisition of commercial items.
5112.207	Subpart 5112.2 - Special Requirements for the Acquisition of Commercial Items	5112.302	Tailoring of provisions and clauses for the acquisition of commercial items.
5112.272	Contract type. Preference for certain commercial products and services.		Subpart 5112.70 - Limitation on Conversion of Procurement from Commercial Acquisition Procedures
	Subpart 5112.3 - Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items	5112.7001	Procedures.

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Subpart 5112.1 - Acquisition of Commercial Items - General

5112.102 Applicability.

(a)(ii)(B) The head of the contracting activity shall perform the duties under DFARS 212.102(a)(ii)(B). See Appendix GG for further delegation.

(f) The head of the contracting activity has the authority to make the determination as described in FAR 12.102(f). See Appendix GG for further delegation.

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Subpart 5112.2 - Special Requirements for the Acquisition of Commercial Items

5112.207 Contract type.

(b)(iii) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to make the determination as described in DFARS 212.207(b)(iii). See Appendix GG for further delegation.

5112.272 Preference for certain commercial products and services.

(b)(2)(i) The head of the contracting activity has the authority to make the determination as described in DFARS 212.272(b)(2)(i). See Appendix GG for further delegation.

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Subpart 5112.3 - Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

5112.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(b)(4)(i) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, shall perform the function as described in FAR 12.301(b)(4)(i). See Appendix GG for further delegation.

5112.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(c) The head of the contracting activity is the approval authority. See Appendix GG for further delegation.

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Subpart 5112.70 - Limitation on Conversion of Procurement from Commercial Acquisition Procedures

5112.7001 Procedures.

(a)(1) The head of the contracting activity has the authority to make the determination under DFARS 212.7001(a)(1). See Appendix GG for further delegation.

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PART 5113 - SIMPLIFIED ACQUISITION PROCEDURES

Sec.

	Subpart 5113.2 - Actions At or Below the Micro-Purchase Threshold	5113.303-2-90	Establishment of BPAs.
	General.	5113.303-5	Purchases under BPAs.
5113.201		5113.303-6	Review procedures.
5113.202-90	Purchase guidelines.	5113.305	Imprest funds and third party drafts.
5113.270-90	Use of the Government commercial purchase card.	5113.305-3	Conditions for use.
	Subpart 5113.3 - Simplified Acquisition Methods	5113.306-90	Standard form 44, purchase order - invoice - voucher.
5113.302	Purchase orders.		Subpart 5113.5 - Simplified Procedures for Certain Commercial Items
5113.302-3	Obtaining contractor acceptance and modifying purchase orders.		General.
5113.303	Blanket purchase agreements (BPAs).	5113.500	
5113.303-1-90	General.		

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Subpart 5113.2 - Actions At or Below the Micro-Purchase Threshold

5113.201 General.

(a) *Delegation of micro-purchase authority.*

(i) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has management responsibility of the purchase card program. See Appendix GG for further delegation. The senior contracting official designates the Level 3 agency/organization program coordinator (A/OPC) (see Appendix EE), with final approval and endorsement of the Level 3 A/OPC by the Level 2 A/OPC in writing.

(ii) Installation commanders or activity directors shall appoint the purchase card approving official as the certifying officer for purposes of certifying payments to the paying office (disbursing officer) for purchase card issuer invoices. Certifying officers are financially liable for erroneous payments resulting from the performance of their duties in accordance with Title 31, United States Code, section 3328.

(iii) CCOs shall do the following:

(A) Develop internal operating procedures and incorporate appropriate controls in the command or installation Internal Control Program; however, the Level 3 A/OPC will develop written Government purchase card (GPC) program internal control requirements, reporting mechanisms and surveillance plans for all activities under their purview. Procedures and controls shall place minimum burdens on cardholders while still maintaining the integrity of the program.

(B) Designate the Level 4 A/OPC.

(C) Issue delegations of authority to cardholders. The CCO may further delegate this authority in writing to the A/OPC.

(D) Approve training course content and instructor qualifications.

(E) Ensure prescribed training of cardholders and approving officials.

(F) Ensure appropriate functional participation in the development and administration of the program (e.g., finance and accounting, director of logistics, director of public works, legal counsel, etc.).

(G) Perform oversight reviews on approving officials to ensure cardholder adherence to policy and procedures.

(1) Conduct reviews not less frequently than annually.

(2) Review accounts with significant dollar or transaction volume on a more frequent basis.

(H) Ensure the safeguarding of convenience checks to ensure good stewardship and discourage and detect fraudulent actions with the checking accounts. Ensure the proper auditing of checking accounts on a quarterly basis. A duly appointed, disinterested third party will conduct audits. The management control checklist of the GPC must include the quarterly audit requirement.

(iv) A/OPCs shall –

(A) Serve as the purchase card focal point at each activity;

(B) Establish, and maintain current cardholder and approving official accounts;

(C) Coordinate with resource managers, spending limits and finance and accounting data used in establishing cardholder and approving official accounts;

(D) Not establish accounts or allow the certification of invoices by billing officials until the CCO or A/OPC issues required letters of delegations and appointment letters to cardholders and approving officials/certifying officials; and

(E) Perform oversight and surveillance of all accounts under the purview of that A/OPC.

(v) Approving officials shall –

(A) Ensure that the transactions are legal, proper, necessary and correct in accordance with Government rules and regulations;

(B) Ensure that adequate documentation is available for individual transactions;

(C) Ensure the facts presented in documents for payment are complete and accurate;

(D) Take appropriate action to prevent two or more payments for the same transaction;

(E) Ensure proper implementation of dispute procedures when questions arise on transactions;

(F) Provide copy of certifying officer appointment letter with signature card to the A/OPC; and

(G) Certify and forward the official invoice to the paying office within five days of receipt. Consider electronic invoice received on the first day following the end of the billing cycle.

(vi) Cardholders shall do the following:

(A) Reconcile purchases actually made within three working days of receipt of their monthly statement of account. Consider electronic statement of account received on the first day following the end of the billing cycle.

(B) Maintain a log of purchases. The log shall be the cardholder log within the bank's electronic access system.

(c) Training requirements.

(i) The CCO or A/OPC shall not delegate authority to cardholders and billing/certifying officials until these individuals receive training and orientation covering the use of the card. The Defense Acquisition University purchase card course is mandatory for all cardholders and billing officials. Locally developed training is permissible, but it must specifically cover federal, defense, and departmental regulations, policies and procedures pertaining to micro-purchases and simplified acquisition procedures, as applicable. Orientation shall address GSA, card-issuing bank and installation-unique policies.

(ii) Cardholders and certifying officials shall receive procurement ethics training. Training shall advise cardholders and certifying officials of financial liability under the program for certifying and accountable officials.

(iii) The CCO may require additional training depending on the thresholds and circumstances established for the card's use.

(g) The head of the contracting activity shall make the determination as described in FAR 13.201(g). See Appendix GG for further delegation.

5113.202-90 Purchase guidelines.

(a) CCOs or A/OPCs should delegate micro-purchase authority to the lowest possible level. A/OPCs shall issue purchase cards only to individuals who have received the orientation/training on the purchase card program as required in these procedures.

(b) CCOs and A/OPCs shall not issue cards to contractors. If contractors working on cost type contracts request cards, the contractor will forward their request to the contracting officer for the cost-reimbursable contract. If that office preliminarily determines that they are eligible, the contractor will then file a request for eligibility determination with the GSA SmartPay contracting officer.

(c) CCOs or A/OPCs may authorize cardholders to utilize the GPC as a payment instrument for orders exceeding \$3,000 made against Federal Supply Schedule contracts, calls written against a blanket purchase agreement or orders placed against indefinite delivery/indefinite quantity contracts that contain a provision authorizing payment by purchase card.

(d) The purchase card may also provide a streamlined way of paying for contracts other than those listed in paragraph (c). Prior to using the card this way, the contracting office shall determine that use of the card for payment is in the best interest of the Government. The determination shall address any increase in price and/or administrative costs to use the card versus the costs of processing the payment without the card.

(e) The purchase card may also be used to pay for Government-owned materiel or Government-performed services received from other Government sources (i.e., Document Automated Printing Service (DAPS), GSA, Defense Logistics Agency).

5113.270-90 Use of the Government commercial purchase card.

Appendix EE contains the Army's GPC operating procedures. Use of the purchase card must meet the following conditions in addition to conditions imposed by the GSA's SmartPay Master Contract:

(a) Each transaction should involve a single delivery and payment. Receipt of the item should be within the billing cycle or by the time of receipt of the monthly report to simplify monthly reconciliation.

(b) Cardholders shall not break down (split) requirements into several purchases merely to avoid any requirement that applies to purchases exceeding the micro-purchase threshold.

(c) Cardholders shall advise merchants or vendors at the time of the transaction that items purchased with the card are "for Official United States Government use." Most states will exempt purchases made by the Government from state and local taxes.

(d) Cardholders shall initially attempt to settle disputes with the merchant. If the merchant refuses to work with the cardholder, or if 45 days have passed without resolution since receipt of the statement containing the questionable transaction, the cardholders shall formally dispute the transaction with the card-issuing bank.

(e) When using the purchase card to pay for services and/or supplies received from other Government sources (i.e., DAPS, GSA) stores or depots, Defense Logistics Agency, procurement thresholds do not apply. Payment with the card is mandatory for services obtained from the DAPS.

(f) Army organizations have the authority to use the GPC up to micro-purchase thresholds at DoD nonappropriated fund instrumentalities (NAFIs), including Army and Air Force Exchange Service facilities, provided the resale activities are within scope of the particular NAFI's charter. Overseas organizations may make purchases up to \$50,000 from exchanges only (vice NAFIs) and may use the purchase card as a method of payment.

(g) Use the purchase card as a method of payment for all commercial training \$25,000 and below for the following:

(1) Standard Form 182, Authorization, Agreement and Certification of Training, in accordance with United States Code 41 for civilians.

(2) Department of the Army Form 2171, Request for Tuition Assistance Army Continuing Education System, provides financial assistance for voluntary off-duty education Programs in support of soldiers' professional and personal self development. The Department of the Army Form 2171 is the obligation document for education programs and services authorized under 10 U.S.C. 2007 and Army Regulation 621-5 Army Continuing Education System. The Tuition Assistance Program authorizes advance payments in accordance with Army Regulation 621-5. Training and education office personnel must approve all course enrollments prior to start of class.

(3) Use of the GPC is mandatory as the method of payment for soldiers' tuition when the Centralized Tuition Assistance Management in GoArmyEd processes the request, funding, approval and enrollment verification of the specific course. Single purchase limits will be set commensurate to the level of the consolidated GPC invoice submitted by each university or college.

(h) The following dollar limits apply:

(1) For standalone purchases, the single purchase limit is the micro-purchase threshold except for the following:

(i) \$2,000 for purchases covered by the Wage Rate Requirements (Construction) statute.

(ii) \$2,500 for purchases covered by the Service Contract Labor Standards statute.

(2) For payment against existing contracts, the limit is as identified in the contract.

(3) For convenience checks and drafts, the threshold is \$3,000 except as noted in paragraphs (h)(1) and (2) in this subsection.

(4) For contingency or humanitarian operations as authorized in a specific appropriations act or an Executive Order, the applicable act or order may adjust the micro-purchase threshold.

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Subpart 5113.3 - Simplified Acquisition Methods

5113.302 Purchase orders.

5113.302-3 Obtaining contractor acceptance and modifying purchase orders.

(b) It is not necessary to modify a purchase order to document a shortage in the final shipment, provided the shortage is within the permissible variation in quantity, if any, established in the purchase order.

5113.303 Blanket purchase agreements (BPAs).

5113.303-1-90 General.

(a) It is preferable to have multiple BPAs for similar items and to establish prices using reverse auctions among BPA holders. If quantities are too small and not conducive to using a reverse auction, then when practicable, contracting officers should establish pre-priced BPAs by negotiating firm unit prices for specific periods of time or by incorporating suppliers' price lists or catalogs in BPAs.

(b) Contracting officers should not establish blanket purchase agreements for supplies or services when the use of unpriced purchase orders is appropriate (see FAR 13.302-2).

5113.303-2-90 Establishment of BPAs.

(a) The contracting officer shall do the following:

(1) Ensure that those individuals authorized to place calls under BPAs have received training and orientation in accordance with paragraph (b).

(2) Provide a copy of the BPA to individuals authorized to place BPA calls.

(3) Ensure that individuals have ready access to price lists or catalogs incorporated in BPAs. The use of reverse auctions to determine pricing among BPAs is the preferred method.

(4) Provide suppliers the names of individuals authorized to place calls.

(5) Inform individuals authorized to place calls that they may not further delegate the authority to others.

(b) Training for use of BPAs is the same as that required for the use of purchase cards. Orientation must focus on the BPA process, except that if the same individual will also be a purchase cardholder, BPA orientation must be in addition to the purchase card program orientation. The chief of the contracting office is responsible for approving training course content and instructor qualifications when someone outside the contracting office provides the training.

5113.303-5 Purchases under BPAs.

(b)(1) Individual purchases under BPAs established in accordance with FAR 13.303-2(c)(3) may exceed the simplified acquisition threshold.

(2) Individual purchases of commercial items under BPAs, other than BPAs established in accordance with FAR 13.303-2(c)(3), may exceed the simplified acquisition threshold up to the dollar limitation specified in FAR 13.500.

(c) Sole source individual commercial item purchases exceeding the simplified acquisition threshold shall comply with the documentation requirements of FAR 13.501(a).

5113.303-6 Review procedures.

(b) In addition to the review procedures in FAR 13.303-6, contracting officers who authorize individuals to place calls under BPAs shall –

(i) Ensure that individuals equitably distribute calls among suppliers with BPAs;

(ii) Ensure that individuals do not split requirements to evade monetary limitations;

(iii) Require that individuals refer to the contracting officer for consideration all cases where the individuals do not consider prices to be reasonable; and

(iv) Maintain continuing surveillance over individuals to ensure compliance with acquisition regulations.

5113.305 Imprest funds and third party drafts.**5113.305-3 Conditions for use.**

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the approval as described in FAR 13.305(a). See Appendix GG for further delegation.

5113.306-90 Standard form 44, purchase order - invoice - voucher.

(a) The contracting officer signature constitutes certification of fund availability under the appropriation cited on the order. The contracting officer is responsible for ensuring that funds are available and for entering the proper accounting classification on the order.

(b) When the bulk funding concept defined at FAR 13.101 is used, the contracting officer must inform the finance and accounting officer at the close of each accounting month of the amount of all purchases made from the bulk funding accounting by use of the Standard Form 44.

(c) If the supplier agrees, the contracting officer may hold completed Standard Forms 44 until the end of a month and prepare Standard Form 1034 as the payment voucher with the Standard Forms 44 attached as sub-vouchers. In such cases, the contracting officer signature on Standard Form 1034 will be sufficient in place of a signature on each Standard Form 44 attached. If the supplier does not agree to use this procedure, or if a time payment discount offered is not possible because of this procedure, the contracting officer must process the individual Standard Form 44 without delay to take the time payment discount.

Subpart 5113.5 - Simplified Procedures for Certain Commercial Items

5113.500 General.

(c)(1) The head of the contracting activity, on a non-delegable basis, has the authority to make the determination as described in FAR 13.500(c)(1).

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PART 5114 - SEALED BIDDING

Sec.

5114.201	Subpart 5114.2 - Solicitation of Bids	5114.407-3	Other mistakes disclosed before award.
5114.201-7	Preparation of invitations for bids.	5114.407-4	Mistakes after award.
	Contract clauses.	5114.409	Information to bidders.
5114.407	Subpart 5114.4 - Opening of Bids and Award of Contract	5114.409-2	Award of classified contracts.
	Mistakes in bids.		

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Subpart 5114.2 - Solicitation of Bids

5114.201 Preparation of invitations for bids.

5114.201-7 Contract clauses.

(b)(2) The head of contracting activity may waive the requirement at FAR 14.201-7(b)(2). See Appendix GG for further delegation.

(c)(2) The head of contracting activity may waive the requirement at FAR 14.201-7(c)(2). See Appendix GG for further delegation.

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Subpart 5114.4 - Opening of Bids and Award of Contract

5114.407 Mistakes in bids.

5114.407-3 Other mistakes disclosed before award.

(c) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to make the determination described at FAR 14.407-3(c). See Appendix GG for further delegation.

(e) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to make the determinations under FAR 14.407-3(a), (b), and (d). See Appendix GG for further delegation.

(g)(3) The determination authority (see FAR 14.407-3(e)) will return all documents to the contracting officer with the determination.

(i) When sending a doubtful case to the Comptroller General of the United States for an advance decision, contracting officers will indicate the status of the award in their transmittal document and the senior contracting official will recommend disposition.

5114.407-4 Mistakes after award.

(b) The HCA may make FAR 14.407-4(b) determinations. See Appendix GG for further delegation.

5114.409 Information to bidders.

5114.409-2 Award of classified contracts.

The contracting officer shall advise unsuccessful bidders to dispose of classified information in accordance with Army Regulation 380-5.

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PART 5115 - CONTRACTING BY NEGOTIATION

Sec.

5115.000	Scope of part.	5115.403-1	Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 35).
5115.001	Definitions.		
	Subpart 5115.2 - Solicitation and Receipt of Proposals and Information	5115.403-3	Requiring data other than certified cost or pricing data.
5115.201	Exchanges with industry before receipt of proposals.	5115.403-3-90	Process and Reporting Requirements Pertaining to Contractor Denials of Contracting Officer Requests for Data Other Than Certified Cost or Pricing Data.
5115.204	Contract format.		
	Subpart 5115.3 - Source Selection	5115.404	Proposal analysis.
5115.300	Scope of subpart.	5115.404-1	Proposal analysis techniques.
5115.300-90	Waiver approvals.	5115.404-4	Profit.
5115.303	Responsibilities.	5115.406	Documentation.
5115.304	Evaluation factors and significant subfactors.	5115.406-1	Prenegotiation objectives.
5115.305	Proposal evaluation.	5115.406-3	Documenting the negotiation.
5115.306	Exchanges with offerors after receipt of proposals.	5115.407-3	Forward pricing rate agreements.
5115.308	Source selection decision.	5115.407-4	Should-cost review.
5115.371	Only one offer.		Subpart 5115.6 - Unsolicited Proposals
5115.371-5	Waiver.	5115.606	Agency procedures.
	Subpart 5115.4 - Contract Pricing	5115.608	Prohibitions.
5115.403	Obtaining certified cost or pricing data.		

(Revised 23 March 2022)

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5115.000 Scope of part.

(1) The Army Source Selection Supplement (AS3) at [Appendix AA](#) contains detailed guidance pertaining to the source selection process. The AS3 is used in conjunction with this part and supplements the mandatory DoD Source Selection Procedures. It contains information on source selection processes and techniques that the Army uses for competitive, negotiated acquisitions using either formal or informal source selection procedures. See DoD Source Selection Procedures at 1.3, page 2 for exceptions.

(2) The AS3 is a comprehensive source selection resource which recites best practices that promote source selection flexibility and consistency within a given framework in Army source selections. Army personnel shall use the AS3 resource when conducting competitive source selections. The extent to which personnel will use the processes and techniques described in this supplement will depend upon the complexity and dollar value of each acquisition and the available resources. When using the AS3, apply prudent business sense to tailor the processes to fit the circumstances.

5115.001 Definitions.

“Formal source selection,” as used in this part, means the source selection process in which someone other than the contracting officer is the source selection authority, normally for high dollar value or complex acquisitions.

Subpart 5115.2 - Solicitation and Receipt of Proposals and Information

5115.201 Exchanges with industry before receipt of proposals.

(c) Early involvement is essential for maximizing industry’s contribution to the planning, requirements definition, and acquisition processes. Communications with industry should start prior to drafting any solicitation. Measures will be taken to protect any intellectual property (IP) discussed during the planning/pre-solicitation phase, to include non-disclosure agreements as applicable ([see Appendix D of the Implementation Guidance for Army Directive 2018-26](#).)

(6) When a written acquisition plan is required per DFARS 207.103(d) and a draft request for proposal is not used, contracting officers must include the rationale for not using a draft request for proposal in the plan.

(f) All non-public contractor-owned IP discussed will be considered proprietary information and will not be disclosed publicly. This includes IP the Government is privy to as a result of discussions, documentation, or demonstrations.

5115.204 Contract format.

(e) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may exempt individual contracts from the use of the uniform contract format. See [Appendix GG](#) for further delegation. The Deputy Assistant Secretary of the Army (Procurement), without power to further delegate, may exempt classes of contracts. The exempting authority will consult with affected contract administration and payment offices prior to granting the exemption.

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Subpart 5115.3 - Source Selection

5115.300 Scope of subpart.

Contracting officers will conduct source selections for architect-engineering services in accordance with FAR part 36.601.

5115.300-90 Waiver approvals.

The senior procurement executive may approve, in accordance with Paragraph 1.2.4 of the Department of Defense Source Selection Procedures, waivers for solicitations valued below \$1 billion. See [Appendix GG](#) for further delegation.

5115.303 Responsibilities.

(a)(i) Table 15-1 designates the Army source selection authority appointments for FAR-based acquisitions.

TABLE 15-1, Source Selection Authority (SSA) Appointments for FAR-Based Acquisitions	
SSA Designations	Appointing Authority
Acquisitions for systems and services, acquired through the Defense Acquisition System, for which milestone decision authority (or other decision authority) is at the Army Acquisition Executive (AAE) or Office of the Secretary of Defense level IAW the applicable Adaptive Acquisition Framework DoDI.	AAE, or as delegated
Other service acquisitions with a total planned dollar value of \$500 million or more, or service acquisitions identified by the ASA(ALT) as a special interest. See DoDI 5000.74 and AR 70-13.	DASA(P) or Senior Services Manager
All other acquisitions for which formal source selection procedures are used.	HCA delegable to the SCO (Note 1)
Notes: 1. The HCA or SCO must coordinate with the responsible Program Executive Officer prior to nominating or, as applicable, appointing an SSA for a source selection in support of an Army acquisition program. 2. Appointment of selection officials for Other Transactions Agreements shall follow the Army's Other Transaction policy.	

(ii) Contracting activities shall submit nominations for SSA appointment to the AAE, DASA(P) or Senior Services Manager as indicated in (a)(i) of this section. Each nomination must include the following:

(A) A memorandum from the HCA or SCO to the DASA(P) requesting the appointment of the nominee as SSA.

(B) A biography of the SSA nominee detailing the training, knowledge, and experience that qualifies them for this appointment.

(C) A memorandum for the record signed by the supporting legal office, ethics counselor, detailing the ethics briefing conducted with the nominee for this source selection, and verification the nominee's final disclosure report has been reviewed and not potential conflicts of interest were identified.

(D) Request for Source Selection Appointment documents for DASA(P) or AAE signature should be sent encrypted email to: usarmy.pentagon.hqda-asa-alt.list.saal-ps-staff@mail.mil.

(b)(2) Army SSAs shall utilize Appendix AA, Army Source Selection Supplement (AS3), when conducting competitive, negotiated source selections. A source selection plan is required for all competitive, negotiated acquisitions where the basis of award includes factors in addition to cost or price. Army SSAs must use the standard rating tables as detailed in the DoD Source Selection Procedures, to include the colors and adjectives.

(S-90) The appointment of an individual to serve as the SSA shall be commensurate with the complexity and dollar value of the acquisition. For acquisitions with a total estimated value of \$100 million or more, the SSA shall be an individual other than the contracting officer. For all other acquisitions, the contracting officer may serve as the SSA in accordance with FAR 15.303 unless the agency head appoints another individual.

(S-91) The Source Selection Evaluation Board chairperson is responsible for tailoring the reporting and documentary requirements in accordance with the AS3, and overseeing the source selection training for their source selection team.

(S-92) Contracting officers will assist program executive officers (PEOs), program managers (PMs), or other program or functional proponents to –

- (1) Develop and implement the acquisition strategy;
- (2) Prepare and obtain approval of the source selection plan before issuing the solicitation; and
- (3) Recommend an official as the SSA, when the AAE has delegated authority to appoint the SSA.

(S-93) PEOs, PMs, or other program or functional proponents provide the necessary funds for salaries, overtime, temporary duty travel, and other expenses for the source selection. In addition, PEOs, PMs, or other proponents may also provide office space, administrative equipment, clerical support, and other necessary administrative support to personnel involved in the source selection.

5115.304 Evaluation factors and significant subfactors.

(b)(2)(A) Only the absolute minimum number of factors necessary for evaluation of proposals shall be established. When appropriate, the SSA may subdivide source selection factors into subfactors. On rare occasions, the SSA may further subdivide a subfactor into elements, if needed.

(B) As stated in the AS3, evaluation factors and subfactors must be definable in readily understood qualitative terms (i.e., adjectival, colors, or other indicators, but not numbers) and represent the key areas of importance for consideration. Numerical weighting (i.e., assigning points or percentages to evaluation factors and subfactors) is not an authorized method of expressing the relative importance of the factors and subfactors.

(d) When the Government intends to evaluate the cost of future production or performance beyond the instant contract, and to include these costs as part of the basis of selection and award, clearly specify the evaluation procedures for such costs in the solicitation. Additionally, contracting officers must specify in the solicitation the Government's procedures and methodologies for developing any estimates before using any of the associated cost estimates for evaluating future or life cycle costs.

5115.305 Proposal evaluation.

(a) If the request for proposal identifies a threshold and objective performance for any of the requirements, the contracting officer must inform the offerors how the source selection team will evaluate the objective performance requirements and credit the performance above the threshold requirement.

(1) *Cost or price evaluation.* Do not score price or cost or combine it with other non-price or cost related aspects of the proposal evaluation.

(2) *Past performance evaluation.* The Contractor Performance Assessment Rating System is available via the Internet at <https://www.cpars.gov>.

(3) *Technical evaluation.* When divergent evaluations exist, and none of the evaluators have misinterpreted or misunderstood any aspects of the proposals, consider providing the SSA with written majority and minority opinions.

5115.306 Exchanges with offerors after receipt of proposals.

All exchanges with offerors after receipt of proposals must clearly identify the types of exchanges, i.e., clarifications, communications or discussions.

(c) *Competitive Range.* The SSA must approve the competitive range determination.

5115.308 Source selection decision.

The SSA shall prepare a source selection decision document for all source selections conducted using this part. The source selection decision document must reflect the SSA's integrated assessment and decision. The document must be the single summary document supporting selection of the best value proposal consistent with the stated evaluation criteria. It must clearly explain the decision and document the reasoning the SSA used to reach a decision. The document should be releasable to the Government Accountability Office and others authorized to receive proprietary and source selection information.

5115.371 Only one offer.

5115.371-5 Waiver.

(a) The head of the contracting activity is authorized to perform the functions at DFARS 215.371-5. See [Appendix GG](#) for further delegation.

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Subpart 5115.4 - Contract Pricing

5115.403 Obtaining certified cost or pricing data.

5115.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 35).

(c)(4) Waivers. Follow the procedures at DFARS PGI 215.403-1(c)(4), Waivers, to determine when an exceptional case waiver of the requirement to submit certified cost or pricing data is appropriate.

Army Contracting Officers shall follow the procedures IAW AFARS PGI 5115.403-1-1, for tracking and reporting the required information when submitting exceptional case waivers.

(A)(2) Coordinate proposed exceptional case waivers that exceed \$100 million in writing with the Deputy Assistant Secretary of the Army (Procurement) (DASA(P)) prior to submission to the head of contracting activity (HCA) for approval. Submit the proposed waiver to the addressee listed at 5101.290(b)(2)(ii)(A).

5115.403-3 Requiring data other than certified cost or pricing data.

(a)(4) The head of contracting activity makes the determination as specified in FAR 15.403-3(a)(4). See [Appendix GG](#) for further delegation.

5115.403-3-90 Process and Reporting Requirements Pertaining to Contractor Denials of Contracting Officer Requests for Data Other Than Certified Cost or Pricing Data.

In accordance with Defense Pricing and Contracting (DPC) [memorandum](#), dated 22 March 2019, subject: Process and Reporting Requirements Pertaining to Contractor Denials of Contracting Officer Requests for Data Other Than Certified Cost or Pricing Data, in the event of an exigent situation when the HCA approves award without obtaining requested cost data from exclusive distributors and/or dealers, Army contracting activities shall notify the Office of the DASA(P) at the address listed at 5101.290(b)(2)(ii)(A).

The Office of the DASA(P) will then notify the Office of the Under Secretary of Defense (Acquisition and Sustainment). Each notification will include the following information:

- (a) Contractor name and DUNS number (Exclusive Distributor/Dealer).
- (b) Subcontractor name and DUNS number (e.g., OEM/actual manufacturer).
- (c) Contract number, modification or order number, if applicable.
- (d) Date and amount of the contract action.
- (e) Steps taken to attempt price analysis without requiring cost data.
- (f) Contractor's rationale for refusing to provide the data.
- (g) Actions taken by the contracting activity to obtain the data.
- (h) Data used to determine price reasonableness and resulting determination.
- (i) Actions planned to avoid this situation in the future.

5115.404 Proposal analysis.

5115.404-1 Proposal analysis techniques.

(a) General.

(i)(A)(iv) The head of the contracting activity shall make the decision as stated in DFARS PGI 215.404-1(a)(i)(A) (iv) and in accordance with AFARS [5115.403-3-90 Process and Reporting Requirements Pertaining to Contractor Denials of Contracting Officer Requests for Data Other Than Certified Cost or Pricing Data](#). See [Appendix GG](#) for further delegation.

5115.404-4 Profit.

(c) *Contracting officer responsibilities.*

(2)(C)(2) The head of the contracting activity approves use of the alternate approach discussed in DFARS 215.404-4(c)(2)(C)(2). See [Appendix GG](#) for further delegation.

5115.406 Documentation.**5115.406-1 Prenegotiation objectives.**

(1) The contracting officers will prepare, review, and obtain approval of prenegotiation memoranda in accordance with the activity's business clearance procedures. In accordance with 5115.406-3, the contracting officer may consolidate the prenegotiation memorandum and price negotiation memorandum (POM/PNM) for competitive or non-competitive acquisitions. When intending to use a consolidated POM/PNM, the contracting officer must still comply with FAR 15.406-1 and DFARS PGI 215.406-1 and obtain written approval of the prenegotiation objectives before negotiation of any pricing action.

(i) *Sole source acquisitions.* For sole source actions, the prenegotiation memoranda document compliance with law, regulations, and policy and become the official record demonstrating the exercise of good business judgment. The prenegotiation memoranda describe the contractor's methodology and how it developed its proposal position to the extent it can be determined from the contractor's proposal and fact finding efforts, how the price and technical auditors and reviewers developed their recommendations, and what the negotiator did in developing an independent prenegotiation position considering the pricing, audit, and technical analyses and recommendations. An understanding of the development of each of these positions is important when preparing for negotiations. The Defense Acquisition University's Acquisition Community Connection, available via the Internet at <https://acc.dau.mil/pricing>, contains the DoD Contract Pricing Reference Guides, which discuss in depth the pricing techniques and factors contracting officers should consider when developing negotiation positions.

(ii) *Competitive negotiated acquisitions.* For competitive negotiated acquisitions using formal source selection procedures, the contracting officer should ensure the source selection plan, as well as section M of the solicitation is documented and readily available. This should include the evaluation criteria and the basis for award contained in the solicitation, a summary schedule of offerors' prices, and the technical and cost evaluations. Also, the determination and supporting discussion of offerors determined to be within and outside the competitive range and a summary of the technical and cost evaluation notices the contracting officer intends to discuss with offerors selected to participate in the discussions should documented and readily available to the contracting officer.

(2) When a significant disagreement as defined in DFARS PGI 215.406-1(b)(i) exists between the contracting officer and the Defense Contract Audit Agency (DCAA) auditor, and the auditor requests a higher-level review of the contracting officer's decision, the contracting officer will advise his/her management and provide the name, title and telephone number of the higher-level review authority to the DCAA auditor. The initial higher-level review authority is the chief of the contracting office or district/center contracting chief in the United States Army Corps of Engineers. If the significant disagreement still exists after discussions with the chief of the contracting office, the matter is elevated to the SCO for resolution. If s/he is unable to resolve the disagreement, the HCA will attempt to resolve the disagreement. The HCA will notify the DASA(P) if DCAA elevates the significant disagreement to the Director, DPC. The contracting officer shall document the disposition of the higher-level review(s) in a memorandum for the contract file.

5115.406-3 Documenting the negotiation.

(a) Contracting officers must document within the price negotiation memorandum the results of the negotiation in sufficient detail to clearly establish all significant aspects of the contract action. When utilizing a consolidated POM/PNM, the contracting officer must ensure the POM/PNM contains all required content for both documents, in accordance with FAR 15.406 and DFARS PGI 205.406, and is stated in sufficient detail to reconstruct actions and decisions and to support the reasonableness of the final price.

(b) If the final negotiated price is within a range specifically approved as the prenegotiation objective, and if negotiations did not present information that calls into question the reasonableness of the previously-approved price range, the written approval obtained under 5115.406-1(1) may also serve as the approval for the consolidated POM/PNM. The approved POM/PNM may be used in determining the negotiated price to be fair and reasonable. Notwithstanding this subsection, the contracting officer still must obtain all other required pre-award approvals.

For guidance on make-or-buy analysis for Army programs of record see [AFARS PGI 5115.407-2](#).

5115.407-3 Forward pricing rate agreements.

(b)(i) The head of the contracting activity may waive rates as described in DFARS 215.407-3(b)(i). See [Appendix GG](#) for further delegation.

5115.407-4 Should-cost review.

(b) Program should-cost review .

(4) In coordination with the program manager or other customer, the SCO must establish the requirements and format for the program should-cost team report.

(c) Overhead should-cost review.

(2)(B) The head of the contracting activity may request an overhead should-cost review as described in DFARS PGI 215.407-4(c)(2)(B). See [Appendix GG](#) for further delegation.

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Subpart 5115.6 - Unsolicited Proposals

5115.606 Agency procedures.

See Department of the Army Pamphlet 70-3, paragraphs 10-19 and 20, for Army procedures pertaining to unsolicited proposals. Department of the Army Pamphlet 70-3 is located on the Army Publishing Directorate's website at <http://www.apd.army.mil/>.

5115.608 Prohibitions.

Government personnel shall not disclose proprietary data included in an unsolicited proposal for any purpose or use except for evaluation purposes (see FAR 15.608). In the event a contract award is made as a result of an unsolicited proposal, the Government shall have the right to duplicate, use, or disclose proprietary data to the extent provided in the contract.

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PART 5116 - TYPES OF CONTRACTS

Sec.

5116.102-90	Subpart 5116.1 - Selecting Contract Types	5116.405	Cost-reimbursement incentive contracts.
5116.103	Policies.	5116.405-1	Cost-plus-incentive-fee contracts.
	Negotiating contract type.	5116.405-2	Cost-plus-award-fee contracts.
	Subpart 5116.2 - Fixed-Price Contracts		Subpart 5116.5 - Indefinite-Delivery Contracts
5116.203	Fixed-price contracts with economic price adjustment.	5116.504	- Indefinite Quantity Contracts.
5116.203-4	Contract clauses.	5116.505	Ordering.
	Subpart 5116.3 - Cost-Reimbursement Contracts	5116.505-91	Multiple award task order contracts.
5116.301	General.		Subpart 5116.6 - Time-and-Materials, Labor-Hour, and Letter
5116.301-3	Limitations.		Contracts
5116.306	Cost-plus-fixed-fee contracts.	5116.603	Letter contracts.
	Subpart 5116.4 - Incentive Contracts	5116.603-2	Application.
5116.401	General.	5116.603-3	Limitations.

(Revised 14 July 2022)

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Subpart 5116.1 - Selecting Contract Types

5116.102-90 Policies.

Contracting officers must document the rationale for selection of the contract type, to include consideration of the associated risks, in the contract file. The supporting documentation may be located in the contract type justification, a separate determination and findings, memorandum for record, or other appropriate document.

Follow the procedures at [AFARS PGI 5116.102-90-1](#) for selecting contract type.

See [AFARS PGI 5116.102-90-2](#) for guidance on using the Virtual Pricing website.

5116.103 Negotiating contract type.

(c) Contracting officers should actively communicate and coordinate with their requiring activities to identify opportunities to transition away from cost-reimbursement contracts, when possible and in the best interest of the Government.

(d)(1) In addition to the items at FAR 16.103(d)(1), discuss how the profit arrangement motivates the contractor to control costs and meet performance requirements.

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Subpart 5116.2 - Fixed-Price Contracts

5116.203 Fixed-price contracts with economic price adjustment.

5116.203-4 Contract clauses.

(d)(2) See 5101.304-90 and APPendix FF for clause approval procedures.

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Subpart 5116.3 - Cost-Reimbursement Contracts

5116.301 General.

5116.301-3 Limitations.

(2) The head of the contracting activity shall approve actions as described in DFARS 216.301-3(2). See Appendix GG for further delegation.

5116.306 Cost-plus-fixed-fee contracts.

(c)(ii) Contracting officers requesting approval to award a contract for non-construction, environmental work (see DFARS 236.271) must submit their requests to the address at 5101.290(b)(2)(i).

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Subpart 5116.4 - Incentive Contracts

5116.401 General.

(d)(i) The head of the contracting activity or designee shall sign the determination and finding. See Appendix GG for further delegation.

(e)(3)(i) The head of contracting activity shall approve actions as described in FAR 16.401(e)(3)(i). See Appendix GG for further delegation.

(g) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall provide mechanisms for sharing proven incentive strategies as described in FAR 16.401(g). See Appendix GG for further delegation.

5116.405 Cost-reimbursement incentive contracts.

5116.405-1 Cost-plus-incentive-fee contracts.

(b)(3) For cost-plus-incentive-fee type contracts, contracting officers shall consider use of a 70/30 share line and a zero minimum fee as the point of departure for establishing the incentive arrangement during negotiations.

5116.405-2 Cost-plus-award-fee contracts.

(2)(A) In accordance with DFARS PGI 216.405-2(2), a contractor begins each evaluation period with zero percent of the available award fee due and works to earn the evaluated fee for each evaluation period. Contractors do not begin with 100% of the available award-fee and have deductions withdrawn to arrive at the evaluated fee for each evaluation period. In addition, contractors should not receive award fee above the base fee for simply meeting contract requirements. Earning an award fee is in accordance with the award fee plan, and should be directly commensurate with the level of performance under the contract. A contractor should not receive the maximum amount of award fee under a contract without a demonstrated superior level of performance, as provided for in the award-fee plan. Maximum contract fee is the sum of all fees (i.e., not just the award fee) and incentives payable under the contract, including performance and subcontracting incentives.

(B) When an Award-Fee Evaluation Board (AFEB) is used, the senior contracting official (SCO) or authorized contracting officer will appoint an award-fee determining official (AFDO) in writing, unless the SCO is the AFDO. The AFDO will then appoint the AFEB and its chairperson in writing. Such appointment letters will clearly outline the responsibilities and limitations of the AFEB and its chairperson. AFEB membership should consist of those contracting and acquisition management personnel, including contract administration personnel, most knowledgeable of the requirements and contractor performance in the areas evaluated. For contracts in support of major systems, the AFDO will coordinate the selection of technical AFEB members with the program executive officer or other management official responsible for technical requirements prior to their appointment. The AFEB chairperson is responsible for ensuring sufficient training of all AFEB evaluators. AFDOs and AFEBs will document the rationale for their decision(s) in sufficient detail to demonstrate the integrity of the award-fee determination process in the contract file. The AFDO may alter the AFEB's recommended award fee.

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Subpart 5116.5 - Indefinite-Delivery Contracts

5116.504 - Indefinite Quantity Contracts.

(a)(1) The contracting officer shall ensure an order that fulfills the minimum quantity of supplies or services is issued at the time of contract award.

(c)(1)(ii)(D)(I) The senior procurement executive shall approve actions as stated in DFARS 216.504(c)(1)(ii)(D)(I). See Appendix GG for further delegation.

5116.505 Ordering.

(b)(2)(ii)(C)(3) The head of the contracting activity shall approve actions as stated in FAR 16.505(b)(2)(ii)(C)(3). See Appendix GG for further delegation.

(b)(8) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall designate a task and delivery order ombudsman for the contracting activity. The ombudsman shall be a senior official, who is independent of the contracting officer and may be the command advocate for competition. The ombudsman shall be responsible for reviewing complaints from the contractors under multiple award task or delivery order contracts and ensuring they receive a fair opportunity for consideration, consistent with the procedures in the contract. See Appendix GG for further delegation.

5116.505-91 Multiple award task order contracts.

Contracting officers will document all critical task order decisions, such as exceptions to the fair opportunity process described at FAR 16.505(b)(2) or the selection of a higher priced proposal because of its greater technical merit, in sufficient detail to justify the decision.

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Subpart 5116.6 - Time-and-Materials, Labor-Hour, and Letter Contracts

5116.603 Letter contracts.

5116.603-2 Application.

(c)(3) The head of the contracting activity shall perform the duties as described in FAR 16.603-2(c)(3). See Appendix GG for further delegation.

5116.603-3 Limitations.

The head of the contracting activity shall make the determination stated in FAR 16.603-3. See Appendix GG for further delegation.

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PART 5117 - SPECIAL CONTRACTING METHODS

Sec.

5117.104	Subpart 5117.1 - Multi-Year Contracting	5117.703	Policy.
5117.105	General.	5117.770	Procedures.
5117.105-1	Policy.		Subpart 5117.74 - Undefined Contract Actions
5117.106	Uses.	5117.7404	Limitations.
5117.106-1	Procedures.	5117.7404-1	Authorization.
5117.106-3	Special procedures applicable to DoD, NASA, and the Coast Guard.	5117.7404-5	Exceptions.
		5117.7404-6	Allowable profit.
5117.108	Congressional notification.		Subpart 5117.75 - Acquisition of Replenishment Parts
5117.171	Multi-year contracts for services.	5117.7504	Acquisition of parts when data is not available.
5117.172	Multi-year contracts for supplies.		Subpart 5117.90 - Job Order Contracts
5117.174	Multi-year contracts for electricity from renewable energy sources.	5117.9000	Scope of subpart.
	Subpart 5117.2 - Options	5117.9001	Definitions.
5117.204	Contracts.	5117.9002	Applicability.
5117.206	Evaluation.	5117.9003	Use of job order contracts.
5117.207	Exercise of options.	5117.9003-1	Planning and coordination.
5117.290	Addition of option clause or quantities to contracts after award.	5117.9004	Procedures.
	Subpart 5117.5 - Interagency Acquisitions	5117.9004-1	Presolicitation.
5117.502	Procedures.	5117.9004-2	Solicitation.
5117.502-1	General.	5117.9004-3	Ordering.
5117.502-2	The Economy Act.	5117.9005	JOC ordering officers.
	Subpart 5117.7 - Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense	5117.9006	Contracting officer responsibilities.

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Subpart 5117.1 - Multi-Year Contracting

5117.104 General.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may authorize modifications of the requirements as set forth in FAR 17.1. See Appendix GG for further delegation.

5117.105 Policy.

5117.105-1 Uses.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may enter into a multi-year contract for supplies as described in FAR 17.105-1(b). See Appendix GG for further delegation.

5117.106 Procedures.

5117.106-3 Special procedures applicable to DoD, NASA, and the Coast Guard.

(e) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) makes the approval as described in FAR 17.106-3(e). See Appendix GG for further delegation.

(f) The head of a contracting activity may authorize the use of a solicitation requesting only multi-year prices as described in FAR 17.106-3(f). See Appendix GG for further delegation.

(g) The head of the contracting activity may approve the use of variable unit prices as described in FAR 17.106-3(f). See Appendix GG for further delegation.

5117.108 Congressional notification.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) gives the written notification as set forth in FAR 17.108(b). See Appendix GG for further delegation.

5117.171 Multi-year contracts for services.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may perform the duties as described in DFARS 217.171(a). See Appendix GG for further delegation.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) must be guided by the principles as described in DFARS 217.171(b). See Appendix GG for further delegation.

(c) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) must make a written determination as stated in DFARS 217.171(c). See Appendix GG for further delegation.

5117.172 Multi-year contracts for supplies.

(f)(2) The head of the contracting activity makes the determination as stated in DFARS 217.172(f)(2). See Appendix GG for further delegation.

5117.174 Multi-year contracts for electricity from renewable energy sources.

(a) The head of the contracting activity shall perform the functions as described in DFARS 217.174(a). See Appendix GG for further delegation.

(b) *Limitations.* The head of the contracting activity may exercise the authority as stated in DFARS 217.174(b). See Appendix GG for further delegation.

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Subpart 5117.2 - Options

5117.204 Contracts.

(e) The head of the contracting activity approves the use of contract terms in excess of the limitations specified in FAR 17.204(e). See [Appendix GG](#) for delegation.

(i)(C) DFARS 217.204(e)(i)(C) requires an “exceptional circumstances” determination to authorize task and delivery order contracts (including contracts for information technology) with ordering periods that would exceed 10 years. The Assistant Secretary of the Army (Acquisition, Logistics and Technology) approves the “exceptional circumstances” determination. See [Appendix GG](#) for further delegation.

(iii) The senior procurement executive shall approve use of options that extend performance under the order that extend more than 1 year beyond the 10-year limit or extended limit as stated in DFARS 217.204(e)(iii). See [Appendix GG](#) for further delegation.

5117.206 Evaluation.

In awarding the basic contract, if a contracting officer determines that the Government is reasonably likely to exercise the option at FAR 52.217-8, Option to Extend Services, the contracting officer shall evaluate the price of the option as part of the source selection. The solicitation shall include the basis for evaluating the option price (see FAR 17.203(b)). If the contracting officer does not evaluate the option at FAR 52.217-8 at the time of award, but later decides to exercise the option, the contracting officer shall prepare a justification and approval (J&A) in accordance with FAR 6.303 prior to exercising the option (see FAR 17.207(f)).

5117.207 Exercise of options.

(c) In addition to the requirements at FAR 17.207(c) and DFARS 217.207(c), the contracting officer may exercise options only after determining, when applicable, that –

(i) Government performance monitors have used a written quality assurance surveillance plan to ensure that services and supplies conform to contractual requirements (see FAR 37.603, 37.604, 46.102 and 46.401);

(ii) The contracting officer has appointed a properly trained contracting officer’s representative for the contract or task order, or has documented the file to support retention of surveillance duties by the contracting officer (see DFARS PGI 201.602-2);

(iii) The contracting officer has verified registration in the Contractor Performance Assessment Reporting System of the contract or task order for the current period (see FAR 42.1502, DFARS 242.1502, and 5142.1502), and that the assessing official will complete the final report within 120 days following the end of the current performance period; and

(iv) There are monthly surveillance reports in the Virtual Contracting Enterprise Contracting Officer’s Representative Module, along with necessary corrective actions.

5117.290 Addition of option clause or quantities to contracts after award.

Contracting officers shall obtain prior approval in accordance with FAR 6.304 before modifying a contract to incorporate option clauses or additional option quantities after award. Justifications shall include the reason for the proposed modification and the potential impact of disapproval.

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Subpart 5117.5 - Interagency Acquisitions

5117.502 Procedures.

5117.502-1 General.

(a) *Written agreement on responsibility for management and administration.*

(1) Use the DD Form 448, Military Interdepartmental Purchase Request (MIPR) as Part B of the Office of Federal Procurement Policy (OFPP) model interagency agreement. If a non-DoD agency is unable to accept a MIPR for Part B, use the Part B provided in the OFPP model interagency agreement.

(b) *Business-case analysis requirements for multi-agency contracts and governmentwide acquisition contracts.* For guidance on business-case analysis, see FAR 17.502-1(b). Submit the business case to the Office of the Deputy Assistant Secretary of the Army (Procurement) at the email address listed in 5101.290(b)(2)(ii)(A).

(i) *Cover letter.* The SCO shall sign the cover letter, recommending the business case for approval. The letter must indicate whether there is any Congressional interest in the procurement.

(ii) *Business case review document.* The business case review document shall include the signatures of the preparer, contracting officer, technical representative, requirements representative, program manager, program executive officer, legal counsel, and SCO.

(iii) *Business case.* Use the format provided at FAR 17.502-1(b). Include the command control number on the upper right hand corner of every page of the business case, including the review document and approval page, to enable the reassembling of the business case analysis if the documents become separated.

(iv) *Approval page.* Submit the approval language as the last page of the business case on a plain page, not letterhead.

5117.502-2 The Economy Act.

(a) Assisted acquisitions that are subject to the Economy Act shall comply with DoD Financial Management Regulation DoD 7000.14-R, Vol 11A Chapter 3 and

(c) The requiring activity is responsible for preparing the Economy Act determination and findings (D&F). Approval of the D&F is in accordance with FAR 17.502-2(c)(2). See Appendix GG for further delegation. The Economy Act D&F is required for both direct and assisted acquisitions, in addition to the approval to use a non-DoD contract, when applicable (see 5117.770).

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Subpart 5117.7 - Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense

5117.703 Policy.

(e) The Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) shall make the determination as described in FAR 17.703(e). See [Appendix GG](#) for further delegation.

5117.770 Procedures.

(1) The requiring activity is responsible for making the approval required by DFARS 217.770. A Government official who is of a grade not lower than O-6 or GS-15 and is assigned to the requiring activity makes the approval. The approval document shall address the elements listed in DFARS 217.770(a)-(c). The requiring activity obtains prior concurrence of the determination in accordance with paragraph (2) of this section.

(2) The following officials from the requiring activity's responsible contracting office shall concur with the use of a non-DoD contract prior to public announcement of the requirement:

(i) For acquisitions valued at or above the simplified acquisition threshold, but less than \$50 million, the head of the contracting activity (HCA). See [Appendix GG](#) for further delegation.

(ii) For acquisitions valued at or above \$50 million but less than \$250 million, the HCA. See [Appendix GG](#) for further delegation.

(iii) For acquisitions valued at or above \$250 million, the HCA. See [Appendix GG](#) for further delegation.

(3) If the proposed acquisition meets the requirements for a written acquisition plan, the contracting officer should attach the approval to use a non-DoD contract to the acquisition plan for concurrent approval when routing the acquisition plan for coordination and approval.

(4) If the approving official approves the use of a non-DoD contract at the blanket purchase agreement level, the individual calls against the agreement do not require separate determinations.

(5) Contracting officers shall follow the reporting requirements in DFARS 204.6 to support the Army's data collection and reporting requirements at DFARS 217.770(d).

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Subpart 5117.74 - Undefinitized Contract Actions

5117.7404 Limitations.

(a)(1)(ii) The head of the contracting activity shall approve actions as stated in DFARS 217.7404(a)(1)(ii). See Appendix GG for further delegation.

5117.7404-1 Authorization.

The head of the contracting activity shall approve actions as stated in DFARS 217.7404-1. See Appendix GG for further delegation.

5117.7404-5 Exceptions.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may waive the limitations as described in DFARS 217.7404-5. See Appendix GG for further delegation.

5117.7404-6 Allowable profit.

The head of the contracting activity shall perform the duties as stated in DFARS 217.7404-6. See Appendix GG for further delegation.

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Subpart 5117.75 - Acquisition of Replenishment Parts

5117.7504 Acquisition of parts when data is not available.

(4)(ii) The head of the contracting activity authorizes the action described in DFARS PGI 217.7504(4)(ii). See Appendix GG for further delegation.

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Subpart 5117.90 - Job Order Contracts

5117.9000 Scope of subpart.

A Job Order Contract (JOC) is an indefinite-delivery, indefinite-quantity contract and an alternative contracting method to fulfill repair, maintenance, and minor construction requirements on a variety of projects ranging from sustainment, restoration, and modernization, simplified acquisition of base repair requirements, civil works operations and maintenance, small renovations, real property repair and maintenance with an estimated value more than the micro-purchase threshold for acquisitions of construction. A JOC includes a comprehensive collection of detailed repair, maintenance, and minor construction task descriptions or specifications, units of measure, and pre-established unit prices for discrete tasks. Each JOC order is comprised of several pre-described and pre-priced tasks. In general, proposed projects valued at or below the micro-purchase threshold for acquisitions of construction are considered inappropriate for ordering under a JOC because of the administrative costs associated with processing JOC orders and the simplified purchase methods available for these actions.

5117.9001 Definitions.

As used in this subpart –

“JOC Price Book” (JOC PB) means the compilation of repair, maintenance, and minor construction tasks, associated units of measure and unit prices that are used in job order solicitations and a JOC. JOC unit prices include direct material, labor and equipment costs, but not indirect costs or profits which are addressed in the coefficient(s). The use of labor-only line items is appropriate for use when proper internal controls are in place and incidental to construction. Labor line items are not to provide services, typically performed under a separate service or requirements contract. The JOC PB reflects the current local costs in detail for construction tasks expected to be performed in the geographical area of the base contract with the primary use of developing a detailed line item price. For CONUS, the JOC PB shall be developed using commercially available pricing tools to ensure consistent and comprehensive pricing of tasks unless the contracting officer determines the use of a commercially available pricing tool is not in the best interest of the government.

“Coefficient” means a numerical factor that represents costs (generally indirect costs) not included in JOC PB unit prices (e.g., general and administrative and other overhead costs, insurance costs, bonding and alternative payment protection costs, protective clothing,

5117.9002 Applicability.

(a) A JOC may be used to execute repair, maintenance, and minor construction requirements for the requiring activity and are subject to the requirements in other parts of the FAR, DFARS, and this regulation.

(b) A JOC must only be used for the projects covered at 5117.9000. The requiring activity’s reoccurring facilities engineering support services, such as utility plant operation, custodial, grounds maintenance, refuse collection and disposal, and similar work shall not be acquired using a JOC. Architect-engineer services as defined in FAR 36.102 and Design-Build requirements as defined in FAR 36.3 shall not be acquired under a JOC. However, informal (shop) and as-built drawings, incidental to the job, reflecting the plan of action and the completed project, are anticipated under a JOC.

5117.9003 Use of job order contracts.

5117.9003-1 Planning and coordination.

(a) A JOC should be considered when the workload is anticipated to be of such a yearly volume that benefits derived from a JOC utilization are greater than the costs of the Government resources and contractor overhead associated with establishing and using a JOC. These costs include the total Government resources required to award, use, monitor, and administer the JOC and JOC orders, and management oversight and functional support of the entire JOC process. The calculated workload for a potential JOC should exclude –

- (1) Work normally reserved for 8(a) or set aside for small businesses; and
- (2) Work that can be effectively and economically accomplished by in-house resources.

5117.9004 Procedures.**5117.9004-1 Presolicitation.**

(a) To solicit for a JOC, the Government must develop task specifications and a JOCPB tailored to the needs of the requiring activity to be supported. Any special range pricing (to get quantity discounts) of units associated with the requirements of known JOC projects to be ordered must be specified.

5117.9004-2 Solicitation.

(a) The contracting officer must ensure that the specifications and the JOCPB have undergone technical review and validation and are tailored to meet the projected requirements of the requiring activity and local economic conditions.

(b) The JOC solicitation must include realistic and reasonable annual minimum and maximum dollar amounts for projected requirements to encourage competition and lower coefficients. Generally, the higher the minimum is, the lower the coefficient proposed will be.

(c) The solicitation must explain the make-up of the Government unit prices and specify what types of costs, as a minimum, must be covered by the coefficient. Offerors may have multiple coefficients and must specify what additional types of costs are included in their coefficients in their proposal. These additional costs may be incorporated in the contract, if appropriate, and may preclude later disagreements over non-pre-priced tasks. Multiple coefficients may be used for normal working hours and other than normal working hours.

(d) The solicitation must explain that there will be no separate repayment(s) for bond premiums because the bond premium is repaid through the coefficient, and the coefficient is paid as an indirect cost under progress payment or other standard payment provisions.

(e) JOC solicitation and contracts must use either annual coefficient adjustments or an annually updated JOCPB, but not both. Clause 5152.237-9000, Adjustments to Contractor's Coefficient for Option Years, can be used in JOC contracts in accordance with this paragraph when annual coefficient adjustments are used.

5117.9004-3 Ordering.

(a) Except as otherwise specified in this subpart, orders must be executed in accordance with FAR 16.505(a).

(b) *Statement of work.*

(1) The SOW for the proposed order must contain sufficient detail to enable the Government to develop an independent government estimate (IGE), in accordance with FAR 36.203 and to ensure that the contractor can properly prepare a responsive and cost-effective proposal with a minimum of non-pre-priced tasks.

(2) The SOW must be updated before issuing the order to reflect the negotiated agreement's details and to include significant quantities, methods of construction, quality levels, and the number of days to complete the work.

(c) *Limitations.*

(1) Except as provided in paragraph (2), the value of non-pre-priced work under an order must not exceed 10 percent of the value of the pre-priced work.

(i) The value of the pre-priced work must be computed by multiplying the coefficient(s) times the appropriate unit price(s) in the JOCPB.

(ii) When the contract allows, indirect costs and profit for non-pre-priced work may be attributed by the application of a solicited and pre-agreed rate to be applied to the unburdened labor, equipment, and material costs of the non-pre-priced work.

(iii) Description of non-pre-priced work must not be manipulated or forced to fit under a pre-priced line item, either to avoid including non-pre-priced line items in the order or to reduce the value of non-pre-priced line items in an attempt to circumvent the limitation in (c)(2).

(2) Normally, if the value of the non-pre-priced work exceeds 10 percent, then the non-pre-priced work should be reduced, eliminated, performed in-house, or the job must be acquired using other contracting methods. However, contracting officers may exceed the 10 percent if justified and approved in accordance with FAR 6.302. The contracting officer shall negotiate the modification and make a determination that the price is fair and reasonable.

(d) *Distribution.* A copy of all JOC orders must be sent to the contracting office appointing ordering officers, the Finance and Accounting Office, the office or individual assigned responsibility for inspection and technical administration of the contract, and any appointed COR. The contracting officer must maintain the permanent record of each transaction, and administration shall be done in accordance with the contracting activity procedures.

5117.9005 JOC ordering officers.

(a) *Appointment.* A “JOC ordering officer” appointment is authorized, but is only required when the contracting officer will not be executing all task orders. Appointments of ordering officers under each JOC must be minimized. The JOC ordering officer shall be obtained in accordance with AFARS 5101.603-1, The contracting officer is the appointing authority for each individual job order that is within the JOC ordering officer authorities. The requiring activity may recommend JOC ordering officers. The JOC ordering officer shall be appointed by letter similar to that in [5153.303-2 Sample ordering officer appointment](#). (see [5101.602-2-92 Ordering officer appointments](#).), tailored for JOC.

(b) *Training.* All JOC ordering officers must receive specific training and orientation from the responsible contracting office at least annually. This training must cover policy and procedures for the operation of a JOC and shall specifically address the ordering officer’s authority, limitations, and responsibilities, including ethics, conflict of interest, and potential pecuniary liabilities. JOC ordering officers shall, at a minimum, meet contracting activity COR training requirements.

(c) Authorization and limitations.

(1) JOC ordering officers are authorized to sign task orders on behalf of the Government between the micro-purchase threshold for acquisitions of construction and the Simplified Acquisition Threshold (SAT) as long as the value of the non-pre-priced item(s) does not exceed five percent of the total order to include contract modifications.

(2) The HCA may authorize JOC ordering officers to sign task orders of greater value than SAT. However, the delegated authority may not exceed the thresholds specified in 10 U.S.C. 2805(c) and may only be authorized when the HCA determines it is necessary to realize the benefits of a JOC, and provided that –

- (i) adequate management controls are in place (e.g., contracting officer oversight);
- (ii) adequate training is provided;
- (iii) the contracting officer approves; and
- (iv) the value of any non-pre-priced item(s) does not exceed five percent.

(3) JOC ordering officers may execute modifications to existing task orders provided that -

- (i) the contracting officer delegates explicitly this authority in the JOC ordering officer appointment letter;
- (ii) the absolute value of the order as modified does not exceed the ordering officer’s authority; and
- (iii) pricing is accomplished by using the JOCPB.

(iv) Modifications shall be limited to changing quantities of JOCPB items in the existing order unless the contracting officer signs an in-scope determination.

(4) JOC Ordering Officers must notify the contracting officer immediately of any modifications. The contracting officer shall execute any modification outside of paragraph 3 above.

(d) Responsibilities. JOC ordering officers--

(1) Are responsible for ensuring that all proposed JOC project descriptions and task orders express the Government’s actual requirements, validated in accordance with the requiring activity’s procedures;

(2) Must obtain concurrence from the Contracting Officer that sufficient capacity exists on the JOC before issuing of a task order;

(3) Must obtain a valid Purchase Request and Commitment (PR&C) from resource management to ensure that adequate and proper funds are available for the project before issuing an order and/or modification;

(4) Must notify the contracting officer of any additional bonding requirements associated with new orders or changes in the value of existing orders;

(5) As the principal point of contact for technical and engineering issues, must respond to requests for technical clarification from the JOC contractor, documenting both the request and the response, and conduct the joint pre-proposal site survey, assuring that the contractor is provided access to all required facilities, plans, and other documents required for full knowledge of the scope and conditions of the required job;

(6) For orders estimated to exceed the JOC ordering officer’s signature authority, the JOC ordering officer shall conduct an initial evaluation of contractor proposals; may be authorized to solicit such proposals and clarify and negotiate units and quantities of pre-priced tasks; and shall assist the contracting officer, as requested, in negotiations, and resolution of variances between the IGE and the contractor’s proposal;

(7) Must maintain an electronic contract file and complete contract documentation for each order and modification executed, including a record of all related correspondence and actions taken before award of the order and in the order administration phase; and

(8) Is responsible, along with a COR, if appointed, for assisting the contracting officer in technical monitoring of the contractor’s performance of orders issued under a JOC to include --

- (i) Monitoring compliance with the SOW and schedule;

- (ii) Ensuring contractor or supplier compliance with the clause at FAR 52.225-5, Trade Agreements (Oct 2019);
- (iii) Ensuring compliance with the Wage Rate Requirements (Construction) statute (40 U.S.C. Chapter 31, Subchapter IV, formerly known as the Davis Bacon Act, subpart 22.4);
- (iv) Assessment and validation of percentage of completion for progress payment purposes;
- (v) Recommending to the contracting officer changes to existing orders, beyond the ordering officer's authority;
- (vi) Documenting and quickly reporting to the contracting officer systemic or recurring problems in contractor performance;
- (vii) Prioritization of orders when required (in coordination with the requiring activities), provided no increase in cost is involved;
- (viii) Submitting performance evaluation reports (see 5136.201), as applicable; and
- (ix) Providing to the requiring activity documents required for continuing customer responsibilities (e.g., as-built drawings and warranties).

5117.9006 Contracting officer responsibilities.

- (a) At least once a year, the contracting officer must ensure that ordering officer files and procedures are reviewed and that a representative sampling of orders is selected for tracking from initiation of the requirement to final payment and close-out of the order.

PART 5118 - EMERGENCY ACQUISITIONS

Sec.

5118.170 Subpart 5118.1 - Available Acquisition Flexibilities
Additional acquisition flexibilities.
Subpart 5118.2 - Emergency Acquisition Flexibilities

5118.201

Contingency operation.

5118.271

Head of contracting activity determinations.

(Revised 29 March 2022)

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Subpart 5118.1 - Available Acquisition Flexibilities

5118.170 Additional acquisition flexibilities.

(h) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, shall make the notification as described in DFARS 218.170(h).

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Subpart 5118.2 - Emergency Acquisition Flexibilities

5118.201 Contingency operation.

(7) See [APPENDIX - GG Table Of Contents](#).

5118.271 Head of contracting activity determinations.

(e) See [APPENDIX - GG Table Of Contents](#).

See [AFARS PGI 5118.2-1](#) for additional information on acquisition flexibilities.

See AFARS PGI 5118.204-1 for additional information on Humanitarian or peacekeeping operation.

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PART 5119 - SMALL BUSINESS PROGRAMS

Sec.

<p>5119.201 5119.202-1 5119.203 5119.502 5119.502-3 5119.502-8 5119.502-9 5119.602 5119.602-3 5119.705 5119.705-2 5119.705-4 5119.705-6</p>	<p>Subpart 5119.2 - Policies General policy. Encouraging small business participation in acquisitions. Relationship among small business programs. Subpart 5119.5 - Set-Asides for Small Business Setting aside acquisitions. Partial set-asides. Rejecting Small Business Administration recommendations. Withdrawing or modifying small business set-asides. Subpart 5119.6 - Certificates of Competency and Determinations of Responsibility Procedures. Resolving differences between the agency and the Small Business Administration. Subpart 5119.7 - The Small Business Subcontracting Program Responsibilities of the contracting officer under the subcontracting assistance program. Determining the need for a subcontracting plan. Reviewing the subcontracting plan. Postaward responsibilities of the contracting officer.</p>	<p>5119.705-6-90 5119.803 5119.804 5119.804-2 5119.808 5119.808-1 5119.810 5119.812 5119.815 5119.816 5119.890 5119.1305 5119.1405</p>	<p>Transferring postaward responsibilities of the contracting officer to another contracting officer. Subpart 5119.8 - Contracting with the Small Business Administration (The 8(a) Program) Selecting acquisitions for the 8(a) program. Evaluation, offering, and acceptance. Agency offering. Contract negotiation. Sole source. SBA appeals. Contract administration. Release for non-8(a) procurement. Exiting the 8(a) program. Notification of award. Subpart 5119.13 - Historically Underutilized Business Zone (HUBZone) Program HUBZone set-aside procedures. Subpart 5119.14 - Service-Disabled Veteran-Owned Small Business Procurement Program Service-disabled veteran-owned small business set-aside procedures.</p>
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Subpart 5119.2 - Policies

5119.201 General policy.

(c)(8) At those contracting activities where the Small Business Administration (SBA) has assigned a procurement center representative (PCR), a small business professional serves as the designated small business technical advisor. The Contracting Officer's Representative (COR), or primary technical point of contact for the requirement when a COR is not required, shall assist the PCR and address technical aspects of the acquisition when requested by the small business professional.

(10)(B)(i) The contracting officer shall prepare and submit the DD Form 2579 and supporting documentation to the assigned small business specialist for all acquisitions above \$10,000. The DD Form 2579 shall include the small business specialist's recommendation for actions including, but not limited to: all Federal Acquisition Regulation (FAR) part 13, 14, and 15 actions, all orders placed against FAR 8.405-3 blanket purchase agreements, General Services Administration Federal Supply Schedule orders, and all delivery and task orders under multiple award, indefinite delivery indefinite quantity contracts. Neither small business coordination nor a DD Form 2579 is required when the contracting office complies with the small business reservation under the simplified acquisition threshold at FAR 19.502-2(a). The Virtual Contracting Enterprise (VCE) shall be used for DD Form 2579 submissions. The original DD Form 2579 shall remain in the contract file with a copy furnished to the SBA PCR and the activity small business professional. The DD Form 2579 shall be approved by all parties including the SBA PCR when required, prior to issuing a notice of proposed contract action or solicitation.

(ii) VCE automatically assigns the Control Number for each DD Form 2579. The small business professional must review and sign to their concurrence/non-concurrence on the DD Form 2579. If the SBA PCR lacks the necessary security clearance to review the DD Form 2579, the contracting officer shall contact the SBA office serving the area where the contracting office is located for assistance.

(iii) The DD Form 2579 must be made available only to personnel who have a "need to know" until the contract is awarded. Copies distributed outside the Army, including SBA PCR coordination, must be marked "Controlled Unclassified Information."

5119.202-1 Encouraging small business participation in acquisitions.

(1) If circumstances dictate consolidation, the contracting officer must obtain from the program manager or requiring activity written justification supporting the consolidated action. The head of the contracting activity must determine that a consolidated requirement cannot be placed under one of the preference programs prior to release of the solicitation. See Appendix GG for further delegation.

(2) When the acquisition strategy contemplates full and open, multiple award, indefinite delivery indefinite quantity (IDIQ) contracts, the contracting officer shall insert language in the solicitation that allows for requirements to be set aside (totally or partially) for small businesses. Additionally, where two or more small businesses hold IDIQ contracts, the contracting officer shall reserve the right to set aside any and all contract task order requirements for small business firms. Contracting officers shall document why the rule of two cannot be applied to the available small business awardees prior to soliciting to the entire awardee pool, seek approval one level above the contracting officer, and submit supporting documentation to the small business specialist and PCR during small business coordination.

5119.203 Relationship among small business programs.

(c) The contract file must document the release of an 8(a) commitment in accordance with FAR 19.203(c). The contracting officer shall provide a copy of all documentation releasing the 8(a) commitment to the small business professional.

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Subpart 5119.5 - Set-Asides for Small Business

5119.502 Setting aside acquisitions.

5119.502-3 Partial set-asides.

(a)(5) The head of the contracting activity shall authorize actions as described in FAR 19.502-3. See Appendix GG for further delegation.

5119.502-8 Rejecting Small Business Administration recommendations.

(b) The head of the contracting activity shall make the decision as described in FAR 19.505(b). See Appendix GG for further delegation.

(d)(i) Process appeals, on a case-by-case basis, in accordance with the appropriate FAR section (19.502-8, 19.810, 19.1305, 19.1405, 19.1505, or 19.506) and in accordance with instructions from the Director, HQDA OSBP. The contracting officer will prepare and submit the case file documents by email to the HQDA, OSBP Program Manager through contracting and small business channels. The files shall be coordinated with the Associate Director (AD), prior to contracting officer release to HQDA.

- (ii) The small business specialist at each level must review the case. The case file must include –
 - (A) A statement of attempts to resolve the matter;
 - (B) A response to each issue raised by SBA in its appeal;
 - (C) Supporting documents related to controversial aspects; and
- (iii) Suspension of all actions on the requirement pending outcome of the appeal.

5119.502-9 Withdrawing or modifying small business set-asides.

(b) If a SBA representative is not assigned or available, the AD shall refer disagreements to the small business professional's appointing authority for resolution. ([See AFARS PGI 5119.201](#)).

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Subpart 5119.6 - Certificates of Competency and Determinations of Responsibility

5119.602 Procedures.

5119.602-3 Resolving differences between the agency and the Small Business Administration.

(c)(1)(i) The contracting officer must prepare the case and send through contracting channels to the addressee in 5119.505. The small business specialist at each level will review the case.

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Subpart 5119.7 - The Small Business Subcontracting Program

5119.705 Responsibilities of the contracting officer under the subcontracting assistance program.

5119.705-2 Determining the need for a subcontracting plan.

(d) When FAR 19.705-2(d) applies, contracting officers shall include a notice in Section L or the Instruction to Offerors section of the solicitation to instruct offerors classified as an other than small business when to submit subcontracting plans, whether with their initial proposals or at another time prior to award as determined by the contracting officer. For information on small business participation proposals, see 5115.304, Evaluation factors and significant subfactors.

5119.705-4 Reviewing the subcontracting plan.

(d)(i) Contracting officers shall, with the participation of the small business specialist –

(A) Adhere to the requirements in FAR 19.705-4 and DFARS 219.705-4 and use the guidance prescribed in Appendix DD, Subcontracting Plan Evaluation Guide, Appendix AA, Army Source Selection Supplement, and the DoD Subcontracting Program – Business Rules and Processes (located at <https://business.defense.gov/Portals/57/Documents/Busi%20Rules%20Processes%20eSRS%20Subk%20Plans.pdf?ver=2018-02-26-143608-743> and referenced at DFARS PGI 219.705-6(f)) to review all subcontracting plans, except for commercial plans that have been approved by the Government;

(B) Ensure separate statements and goals are provided for the basic contract and, if applicable, each option;

(C) Identify those areas where the plan is deficient and clarify with the offeror in an attempt to correct omissions; and

(D) Ensure that, if there is a commercial plan, it has been approved in accordance with FAR 19.704(d). If it is not been previously approved, follow the DoD Subcontracting Program – Business Rules and Processes to review the commercial plan.

(ii) Plans are not acceptable if they do not adequately address the subcontracting plan requirements at FAR 19.704, DFARS 219.704, and Appendix DD. If the plan is still rated unacceptable after clarifications or discussions, the offeror shall be ineligible for contract award.

5119.705-6 Postaward responsibilities of the contracting officer.

Subject to the concurrence of the chief of the contracting office and the agreement of the receiving individual's chain of command, the contracting officer may delegate the duties in FAR 19.705-6 and supplements to another individual. The delegation must be in writing, include the scope of duties delegated, and signed by management officials from the contracting activity and authorized management officials from the supporting organization.

(f)(2) In addition to following the FAR subpart 19.7 and DFARS subpart 219.7 requirements, contracting officers shall use the DoD Subcontracting Program – Business Rules and Processes and its appendices to review the appropriate subcontracting report submitted by the contractor in the Electronic Subcontracting Reporting System (eSRS). The DoD Subcontracting Program – Business Rules and Processes serves as guidance on the business rules and processes for the eSRS, including the various roles and responsibilities of DoD and industry personnel; it provides checklists and detailed explanation on subcontracting plans; and it provides information on reviewing the related subcontract reports submitted under various types of subcontract plans. Contracting officers should pay particular attention to the guidance contained in Appendix D, Guide to Preparing and Reviewing an Individual Subcontract Report (ISR) for an Individual Subcontracting Plan; Appendix E, Guide to Preparing and Reviewing a Summary Subcontract Report (SSR) for an Individual Subcontracting Plan; and Appendix F, Guide for Preparing and Reviewing a Summary Subcontract Report (SSR) for a Commercial Subcontracting Plan.

(g)(1) The contractor's explanation and mitigation plan should demonstrate its good faith effort in meeting the subcontracting goals, and the contractor's effort or lack of effort should be assessed annually in the Contract Performance Assessment Reporting System (CPARS).

5119.705-6-90 Transferring postaward responsibilities of the contracting officer to another contracting officer.

(a) Prior to release from their contracting officer responsibilities, the outgoing contracting officer shall ensure required reviews of subcontracting reports under their purview have been conducted. If a report is rejected, provide an explanation to the contractor and document the explanation in eSRS prior to transfer of responsibility.

(b) If a new contracting officer has been identified, the outgoing contracting officer shall advise the new contracting officer of

(1) any eSRS reports that are required to be resubmitted by the contractor; and

(2) any issues or concerns with the contractor's good faith effort to meet the goals provided in the approved subcontracting plan.

(c) If a new contracting officer has not been identified prior to their release, the outgoing contracting officer shall notify their supervisor or document the file with information pertinent to the subcontracting report reviews for the new contracting officer.

(d) Prior to accepting responsibility for administering subcontracting reports, the new contracting officer shall –

(1) ensure they are registered as a contracting official in the eSRS;

(2) review their responsibilities as a reviewer in the FAR subpart 19.7, DFARS subpart 219.7, and the DoD Subcontracting Program – Business Rules and Processes, Appendices D, E, and F; and

(3) inform the prime contractor to update the contract profile in eSRS with the name and email address of the new contracting officer.

Subpart 5119.8 - Contracting with the Small Business Administration (The 8(a) Program)

5119.803 Selecting acquisitions for the 8(a) program.

(a) The Associate Director, U.S Army Office of Small Business Programs, shall respond directly to general search letters from SBA. The Associate Director, U.S. Army Office of Small Business Program may further delegate this function to the small business specialists at contracting activities.

(b) The contracting officer, in coordination with the small business specialist, shall respond to SBA requests for a specific requirement either by offering the requirement to the 8(a) program or by explaining to the SBA the rationale for not offering the requirement to the 8(a) program (see 5119.804-2).

(c) Where a number of requirements are being offered to SBA for planning purposes, associate directors, Army Small Business Programs or their designated small business specialist must identify the requirements to SBA. Specific individual requirements shall be offered in accordance with 5119.804-2(a).

5119.804 Evaluation, offering, and acceptance.

5119.804-2 Agency offering.

(a) The contracting office must notify the SBA and contracting activity small business specialist of agency offering. The notification commits the Army to negotiating with the SBA.

(14) The contracting officer must coordinate noncompetitive 8(a) offerings with a total estimated contract value above the thresholds in FAR 19.805-1(a)(2) with the local competition advocate, who will review the technical requirements to ensure that they are not overly restrictive.

5119.808 Contract negotiation.

5119.808-1 Sole source.

(a) The contracting activity must notify the contracting activity small business specialist of the intent to proceed with the acquisition if it exceeds \$100 million and the requesting agency has completed a justification in accordance with the requirements of FAR 6.303-1(b).

(b) When direct negotiation with an 8(a) subcontractor does not proceed satisfactorily, the contracting officer must ask the SBA to enter negotiations promptly to expedite the award.

5119.810 SBA appeals.

(b) Process appeals in accordance with 5119.505.

5119.812 Contract administration.

(c)(i) The contracting officer must promptly notify the SBA of subcontractor performance deficiencies. The contracting officer must promptly report to the SBA any indication that the subcontractor requires technical or management assistance and document the file accordingly.

(ii) If the SBA fails to act in a timely manner to help the subcontractor take corrective action, the contracting officer must report this failure to the Associate Director, U.S. Army Office of Small Business Programs with a recommendation for action. If the associate director cannot resolve the matter, he or she will refer the matter to the Director, U.S. Army Office of Small Business Programs.

5119.815 Release for non-8(a) procurement.

(a) Where a procurement is awarded as an 8(a) contract, its follow-on or renewable acquisition must remain in the 8(a) program unless SBA agrees to release it, in accordance with 13 CFR § 124.504(d), FAR 19.815, and the DoD and SBA Partnership Agreement.

(3) Follow-on or renewable acquisitions can transition from a stand-alone 8(a) acquisition to an award under a multiple award contract and still be considered to remain in the 8(a) program. The original multiple award contract must have been offered to and accepted by the SBA.

5119.816 Exiting the 8(a) program.

(b) The head of the contracting agency shall make the determination as set forth in FAR 19.816(b). See Appendix GG for further delegation.

5119.890 Notification of award.

Immediately after award of any 8(a) contract, the contracting officer must notify the contracting activity small business specialist and the cognizant SBA office. Notification will include the 8(a) firm's name, address, CAGE code, a description of the supplies or services, the quantity, dollar value, date of award and contract number.

Subpart 5119.13 - Historically Underutilized Business Zone (HUBZone) Program

5119.1305 HUBZone set-aside procedures.

(d)(2) The head of the contracting activity shall make the determination as described in FAR 19.1305(d)(2). See Appendix GG for further delegation.

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Subpart 5119.14 - Service-Disabled Veteran-Owned Small Business Procurement Program

5119.1405 Service-disabled veteran-owned small business set-aside procedures.

(d) The head of the contracting activity shall make the decision as stated in FAR 19.1405(d). See Appendix GG for further delegation.

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PART 5120 - RESERVED

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PART 5121 - RESERVED

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PART 5122 - APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

<i>Sec.</i>			
5122.001	Definitions.	5122.805	Procedures.
	Subpart 5122.1 - Basic Labor Policies	5122.807	Exemptions.
5122.101	Labor relations.		Subpart 5122.13 - Equal Opportunity for Veterans
5122.101-1	General.	5122.1305	Waivers.
5122.101-3	Reporting labor disputes.		Subpart 5122.14 - Employment of Workers With Disabilities
5122.101-3-70	Impact of labor disputes on defense programs.	5122.1403	Waivers.
5122.103	Overtime.		Subpart 5122.15 - Prohibition of Acquisition of Products Produced
5122.103-4	Approvals.		by Forced or Indentured Child Labor
	Subpart 5122.3 - Contract Work Hours and Safety Standards Act	5122.1503	Procedures for acquiring end products on the list of products
5122.302	Liquidated damages and overtime pay.		requiring contractor certification as to forced or indentured child
	Subpart 5122.4 - Labor Standards for Contracts Involving		labor.
	Construction		Subpart 5122.16 - Notification of Employee Rights Under the
5122.404	Construction wage requirements statute wage determinations.		National Labor Relations Act
5122.404-6	Modification of wage determinations.	5122.1604	Compliance evaluation and complaint investigations and sanctions
5122.406	Administration and enforcement.		for violations.
5122.406-8	Investigations.		Subpart 5122.17 - Combating Trafficking in Persons
5122.406-9	Withholding from or suspension of contract payments.	5122.1703	Policy.
	Subpart 5122.8 - Equal Employment Opportunity	5122.1704	Violations and remedies.

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5122.001 Definitions.

“Labor advisor,” as used in this part, means the labor advisor, Contract and Fiscal Law Division, Office of the Judge Advocate General.

Subpart 5122.1 - Basic Labor Policies**5122.101 Labor relations.****5122.101-1 General.**

The labor advisor grants departmental approval for the actions listed in DFARS PGI 222.101-1. The head of the contracting activity (HCA) may contact a national office of a labor organization, a regional office of the Federal Mediation and Conciliation Service, National Mediation Board, or National Labor Relations Board for information. However, when a contract has been transferred to the Defense Contract Management Agency for administration, request the information from the Defense Contract Management Agency. See Appendix GG for further delegation.

5122.101-3 Reporting labor disputes.

(2) Contact the labor advisor before disseminating any information on labor disputes. Army personnel cannot give information about work stoppages or labor disputes to representatives of labor or management without authorization from the labor advisor.

5122.101-3-70 Impact of labor disputes on defense programs.

(b) The head of the contracting activity shall submit a report of findings and recommendations as described in DFARS PGI 222.101-3-70(b). See Appendix GG for further delegation.

5122.103 Overtime.**5122.103-4 Approvals.**

- (a) The following individuals may approve overtime:
- (i) Contracting officer.
 - (ii) Chief of contracting office.
 - (iii) HCAs.
 - (iv) Senior contracting official.
 - (v) Other individuals whom the Deputy Assistant Secretary of the Army (Procurement), Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology), specifically designates as needed.

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Subpart 5122.3 - Contract Work Hours and Safety Standards Act

5122.302 Liquidated damages and overtime pay.

(c) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may perform the duties as stated in FAR 22.302(c). See Appendix GG for further delegation.

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Subpart 5122.4 - Labor Standards for Contracts Involving Construction

5122.404 Construction wage requirements statute wage determinations.

5122.404-6 Modification of wage determinations.

(b)(6) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may request an extension as stated in FAR 22.404-6(b)(6). See Appendix GG for further delegation.

5122.406 Administration and enforcement.

5122.406-8 Investigations.

(d) Send the contracting officer's report to the following mail or email address:

Attn.: Labor Advisor, Contract and Fiscal Actions Division

Office of The Judge Advocate General

2200 Army Pentagon, 3B548

Washington, DC 20310.

usarmy.pentagon.hqda-otjag.mbx.usalsa-kfld-rbg-support@mail.mil.

The labor advisor forwards the report to the Department of Labor on behalf of the agency head (see FAR 22.406-8(d)(2)).

5122.406-9 Withholding from or suspension of contract payments.

(c) *Disposition of contract payments withheld or suspended.*

(4) *Liquidated damages.* See 5122.302(c) for officials authorized to adjust or waive assessments of liquidated damages in accordance with DFARS 222.406-9(c)(4).

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Subpart 5122.8 - Equal Employment Opportunity

5122.805 Procedures.

(a)(8) The head of the contracting activity may approve the award as described in FAR 22.805(a)(8). See Appendix GG for further delegation.

5122.807 Exemptions.

(a)(1) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described in FAR 22.807(a). See Appendix GG for further delegation.

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Subpart 5122.13 - Equal Opportunity for Veterans

5122.1305 Waivers.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may waive any requirement in this subpart when it is determined that the contract is essential to the national security. See Appendix GG for further delegation.

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Subpart 5122.14 - Employment of Workers With Disabilities

5122.1403 Waivers.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may waive any requirement in this subpart when it is determined that the contract is essential to the national security. See Appendix GG for further delegation.

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Subpart 5122.15 - Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

5122.1503 Procedures for acquiring end products on the list of products requiring contractor certification as to forced or indentured child labor.

(f) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may impose remedies as described in FAR 22.1503(f). See Appendix GG for further delegation.

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Subpart 5122.16 - Notification of Employee Rights Under the National Labor Relations Act

5122.1604 Compliance evaluation and complaint investigations and sanctions for violations.

(d) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may provide the written objections as stated in FAR 22.1604(d). See Appendix GG for further delegation.

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Subpart 5122.17 - Combating Trafficking in Persons

5122.1703 Policy.

(a)(7) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall designate the authorized official of the contracting agency as described in FAR 22.1703(a)(7). See Appendix GG for further delegation.

5122.1704 Violations and remedies.

(c) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall ensure that the contracting officer is provided with the report as described in FAR 22.1704(c). See Appendix GG for further delegation.

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**PART 5123 - ENVIRONMENT, ENERGY AND WATER
EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES,
OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

Sec.

5123.104	Subpart 5123.1 - Sustainable Acquisition Policy Exceptions.	5123.302	Policy.
5123.105	Exemption authority.	5123.370	Safety precautions for ammunition and explosives.
	Subpart 5123.2 - Energy and Water Efficiency and Renewable Energy	5123.370-4	Procedures.
5123.204	Procurement exemptions.	5123.803	Subpart 5123.8 - Ozone-Depleting Substances Policy.
5123.205	Energy-savings performance contracts.		Subpart 5123.9 - Contractor Compliance With Environmental Management Systems
	Subpart 5123.3 - Hazardous Material Identification and Material Safety Data	5123.903	Contract clause.

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Subpart 5123.1 - Sustainable Acquisition Policy

5123.104 Exceptions.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination at FAR 23.104(a). See Appendix GG for further delegation.

5123.105 Exemption authority.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, makes exemptions as set forth in FAR 23.105.

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Subpart 5123.2 - Energy and Water Efficiency and Renewable Energy

5123.204 Procurement exemptions.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to make the determination at FAR 23.204. See Appendix GG for further delegation.

5123.205 Energy-savings performance contracts.

Energy-savings performance contracts are service contracts and require inclusion of a quality assurance surveillance plan in the contract file.

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Subpart 5123.3 - Hazardous Material Identification and Material Safety Data

5123.302 Policy.

(d) See Army Regulation 700-141 for instructions for obtaining and processing Material Safety Data Sheets.

(e) The contracting officer shall provide hazard warning labels and Material Safety Data Sheets to the safety office in accordance with Army Regulation 700-141.

5123.370 Safety precautions for ammunition and explosives.

5123.370-4 Procedures.

(1)(i) The head of the contracting activity shall approve the waiver of the mandatory requirements at DFARS PGI 222.370-4(1)(i). See Appendix GG for further delegation.

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Subpart 5123.8 - Ozone-Depleting Substances

5123.803 Policy.

(1) *Contracts.*

(i) The organization with primary responsibility for determining the principal specifications and standards cited in the solicitation or contract is responsible for obtaining authorization to include the specification or standard in the contract.

(ii) The approving official must be from the technical or program organization with primary responsibility for determining the equipment or systems specifications and standards.

(2) *Modifications.*

(i) For contracts administered by the Army, the contracting officer must obtain an evaluation and written determination of the suitability of proposed substitutes for ozone-depleting substances from the organization in (1)(i).

(ii) The written determination must be based on a certification by a technical representative of the

Environmental Support Office

Headquarters, Department of the Army

2800 Crystal Drive, 5th Floor

Arlington, VA 22202-3911,

in coordination with the requiring activity. Elevate any dispute concerning what constitutes a suitable substitute through the requiring activity's leadership to the Army Acquisition Executive for a final decision.

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Subpart 5123.9 - Contractor Compliance With Environmental Management Systems

5123.903 Contract clause.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described in FAR 23.903. See Appendix GG for further delegation.

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PART 5124 - PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Sec.

5124.103 Subpart 5124.1 - Protection of Individual Privacy Procedures.

5124.203 Subpart 5124.2 - Freedom of Information Act Policy.

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Subpart 5124.1 - Protection of Individual Privacy

5124.103 Procedures.

(b)(i) The contracting officer shall reference the following documents in solicitations and contracts that require the design, development, or operation of a system of records:

(A) DoD Directive 5400.11.

(B) DoD Regulation 5400.11-R.

(C) Regulations for community-specific protected information, as applicable, e.g. DoD Regulation 6025.18-R (DoD Health Information Privacy Regulation).

(ii) The contracting officer will ensure that work statements that require the design, development, or operation of a system of records include procedures to follow in the event of a PII breach.

(iii) The contracting officer should ensure that Government surveillance plans for contracts that require the design, development, or operation of a system of records include monitoring of the contractor's adherence to Privacy Act/PII regulations. The assessing official should document contractor-caused breaches or other incidents related to PII in past performance reports. (See 5142.1503-90(b).) Such incidents include instances in which the contractor did not adhere to Privacy Act/PII contractual requirements.

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Subpart 5124.2 - Freedom of Information Act

5124.203 Policy.

(a) Contracting officers must follow instructions in Army Regulation (AR) 25-55 for the denial of, or release of, acquisition information.

(b)(i) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has delegated the initial denial authority to act on requests for procurement records under the Freedom of Information Act, except those procurement records under the purview of the Chief of Engineers and the Commander, Army Materiel Command, to the heads of the contracting activities (HCAs). The HCAs may further delegate this authority only to the senior contracting official (SCO).

(ii) If the contracting officer concludes that he/she should deny some or all information requested, he/she must prepare the proposed response for the HCA in accordance with AR 25-55. The response must include appeal language substantially the same as the following:

“You may appeal, in whole or in part, this denial to the Secretary of the Army (attn: General Counsel). In the event you decide to appeal, your letter of appeal must be postmarked no later than 60 calendar days after the date of this denial letter. Please address your appeal to (*HCA address*). This denial is made on behalf of the Initial Denial Authority, (*name and title*), by (*name and rank*), Head of the Contracting Activity (*office*).” (*Substitute SCO for HCA if the SCO is the HCA’s designee.*)

(iii) Contracting officers in contracting activities other than the Army Materiel Command and the United States Army Corps of Engineers must send the proposed denial response to the HCA or, if delegated, to the SCO. Include copies of the records recommended for denial with a justification for the denial. Contracting officers in the Army Materiel Command and the United States Army Corps of Engineers must follow the procedures specified by their headquarters.

(iv) After coordination with counsel, the HCA will provide the denial response, modified if necessary, to the requestor.

(v) Within three working days of receipt of appeals, HCAs must send notice, the appeal and the documents required by AR 25-55 to the Office of the General Counsel at the following address:

ATTN: SAGC
General Counsel
104 Army Pentagon
Washington, DC 20310-0104.

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PART 5125 - FOREIGN ACQUISITION

Sec.

<p>5125.103 5125.105 5125.202 5125.204 5125.403 5125.603 5125.802 5125.802-71 5125.870 5125.870-4 5125.871 5125.871-7 5125.903</p>	<p>Subpart 5125.1 - Buy American - Supplies Exceptions. Determining reasonableness of cost. Subpart 5125.2 - Buy American - Construction Materials Exceptions. Evaluating offers of foreign construction material. Subpart 5125.4 - Trade Agreements World Trade Organization government procurement agreement and free trade agreements. Subpart 5125.6 - American Recovery and Reinvestment Act--Buy American Statute--Construction Materials Exceptions. Subpart 5125.8 - Other International Agreements and Coordination Procedures. End use certificates. Contracting with Canadian contractors. Contracting procedures. North Atlantic Treaty Organization (NATO) cooperative projects. Congressional notification. Subpart 5125.9 - Customs and Duties Exempted supplies.</p>	<p>5125.1001 5125.7000 5125.7000-90 5125.7002 5125.7002-2 5125.7003 5125.7003-3 5125.7008 5125.7301 5125.7301-1 5125.7703 5125.7703-2</p>	<p>Subpart 5125.10 - Additional Foreign Acquisition Regulations Waiver of right to examination of records. Subpart 5125.70 - Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Acquisitions Scope of subpart. Applicability to utilize a non-Army contracting activity. Restrictions on food, clothing, fabrics, and hand or measuring tools. Exceptions. Restrictions on acquisition of specialty metals. Exceptions. Waiver of restrictions of 10 U.S.C. 2534. Subpart 5125.73 - Acquisitions for Foreign Military Sales General. Requirement to use firm-fixed-price contracts. Subpart 5125.77 - Acquisitions in Support of Operations in Afghanistan Enhanced authority to acquire products or services from Afghanistan. Determination requirements.</p>
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Subpart 5125.1 - Buy American - Supplies

5125.103 Exceptions.

(a)(ii)(B)(1) The position one level above the contracting officer, without further delegation, shall make the determination at DFARS 225.103(a)(ii)(B)(1).

(2) The head of the contracting activity shall make the determination at DFARS 225.103(a)(ii)(B)(2). See Appendix GG for further delegation.

(3) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination at DFARS 225.103(a)(ii)(B)(3). See Appendix GG for further delegation.

(b)(ii)(A) The position one level above the contracting officer, without further delegation, may make the determination at DFARS 225.103(b)(ii)(A).

(B) The chief of the contracting office, without further delegation, may make the determination at DFARS 225.103(b)(ii)(B).

(C) The head of the contracting activity may make the determination at DFARS 225.103(b)(ii)(C). See Appendix GG for further delegation.

5125.105 Determining reasonableness of cost.

(a)(1) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described at FAR 25.105(a)(1). See Appendix GG for further delegation.

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Subpart 5125.2 - Buy American - Construction Materials

5125.202 Exceptions.

(a)(1) *Impracticable or inconsistent with public interest.* The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has delegated to the Deputy Assistant Secretary of the Army (Procurement) and the Head of the Contracting Activity (HCA), United States Army Corps of Engineers (USACE), without power to delegate further, authority to determine that the use of a particular domestic construction material is impracticable. Determinations that application of the act would be inconsistent with the public interest are reserved for the Assistant Secretary of the Army (Acquisition, Logistics and Technology). See Appendix GG.

(2) *Nonavailability.* For other materials, a nonavailability determination shall be approved at the levels specified in AFARS 5125.103(b)(ii).

5125.204 Evaluating offers of foreign construction material.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to specify a higher percentage to the offered price as described in FAR 25.204(b). See Appendix GG for further delegation.

Subpart 5125.4- - Trade Agreements

5125.403 World Trade Organization government procurement agreement and free trade agreements.

(c)(ii)(A) The head of the contracting activity may approve the waiver as stated in DFARS 225.403(c)(ii)(A). See Appendix GG for further delegation.

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Subpart 5125.6 - American Recovery and Reinvestment Act--Buy American Statute--Construction Materials

5125.603 Exceptions.

(a)(1)(i) The head of the contracting activity may make the determination as described in FAR 25.603(a)(1)(i). See Appendix GG for further delegation.

(iii) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described in FAR 25.603(a)(1)(iii). See Appendix GG for further delegation.

(a)(2) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described in FAR 25.603(a)(2). See Appendix GG for further delegation.

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Subpart 5125.8 - Other International Agreements and Coordination

5125.802 Procedures.

5125.802-71 End use certificates.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall sign end user certificates (EUCs). See [Appendix GG](#) on page 1 for further delegation.

5125.870 Contracting with Canadian contractors.

5125.870-4 Contracting procedures.

(c)(2)(ii) The head of the contracting activity shall make the determination at DFARS 225.870-4(c)(2)(ii). See Appendix GG for further delegation.

(5) The head of the contracting activity shall make the determination at DFARS 225.870-4(c)(5). See Appendix GG for further delegation.

5125.871 North Atlantic Treaty Organization (NATO) cooperative projects.

5125.871-7 Congressional notification.

(a) Send the notification at least 30 days prior to award directly to the following address:

Deputy Assistant Secretary of the Army for Defense Exports and Cooperation

Attn: SAAL-ZN

2530 Crystal Drive, Suite 11104

Arlington, VA 22202.

(b) See paragraph (a) in this section.

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Subpart 5125.9 - Customs and Duties

5125.903 Exempted supplies.

(b)(ii) The procuring contracting officer must execute duty-free entry certificates when no administrative contracting officer is assigned.

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Subpart 5125.10 - Additional Foreign Acquisition Regulations

5125.1001 Waiver of right to examination of records.

(a)(2)(iii) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a nondelegable basis, shall execute the determination and findings as set forth in FAR 25.1001(a)(2)(iii).

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Subpart 5125.70 - Authorization Acts, Appropriations Acts, and Other Statutory Restrictions on Foreign Acquisitions

5125.7000 Scope of subpart.

5125.7000-90 Applicability to utilize a non-Army contracting activity.

Army program executive offices, program management offices and other requiring activities that utilize a non-Army contracting activity to fulfill a requirement for a covered item are responsible for ensuring compliance with DFARS PGI 225.70.

5125.7002 Restrictions on food, clothing, fabrics, and hand or measuring tools.

5125.7002-2 Exceptions.

(b)(1)(ii)(I) The Secretary of the Army, on a nondelegable basis, is responsible for approving all domestic nonavailability determinations under 10 U.S.C. 2533a (Berry Amendment). (See DFARS 225.7002-2(b)(1)). The contracting officer shall not release the solicitation until the Secretary approves the determination.

(2) Submit all requests for an exception under this provision through procurement channels to the Deputy Assistant Secretary of the Army (Procurement) at the address located in 5101.290(b)(2)(ii)(C). Submit requests no later than 60 business days prior to the planned release of the solicitation. All requests shall fully explain why the item(s) in question cannot be procured as and when needed in a satisfactory quality and sufficient quantity at U.S. market prices. The request shall include information on whether item(s) in question are managed by the Defense Logistics Agency (DLA) and written confirmation from the DLA that said item(s) are not available from the DLA in the time needed to meet Army requirements. In addition, all requests shall include a written certification signed by the General Officer/Senior Executive Service-level head of the requiring activity that addresses, with specificity, why alternatives that would not require an exception from the Berry Amendment are unacceptable.

5125.7003 Restrictions on acquisition of specialty metals.

5125.7003-3 Exceptions.

(b)(5)(i)(I) The Secretary of the Army, on a nondelegable basis, is responsible for approving all domestic nonavailability determinations under 10 U.S.C. 2533b that apply to only one contract. (See DFARS 225.7003-3(b)(5)(i).) The Under Secretary of Defense (Acquisition, Technology and Logistics) (USD(AT&L)), on a nondelegable basis, is responsible for approving determinations that apply to more than one contract, see DFARS 225.7003-3(b)(5)(ii). The USD(AT&L), on a nondelegable basis, is responsible for approving national security waivers under DFARS 225.7003-3(d). In all cases, the contracting officer shall not release the solicitation until the Secretary approves the determination.

(2) Follow the procedures at 5125.7002-2 when submitting a request for an exception to restrictions on acquisition of specialty metals.

5125.7008 Waiver of restrictions of 10 U.S.C. 2534.

(a)(2) The head of the contracting activity may waive a restriction as stated in DFARS 225.7008(a)(2). See Appendix GG for further delegation.

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Subpart 5125.73 - Acquisitions for Foreign Military Sales

5125.7301 General.

5125.7301-1 Requirement to use firm-fixed-price contracts.

[Defense Pricing and Contracting Class Deviation 2020-00003— Use of Fixed-Price Contracts for Foreign Military Sales valid through December 31, 2020.](#)

(b) The chief of the contracting office shall waive the requirement as described in DFARS 225.7301-1(a). See Appendix GG.

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Subpart 5125.77 - Acquisitions in Support of Operations in Afghanistan

5125.7703 Enhanced authority to acquire products or services from Afghanistan.

5125.7703-2 Determination requirements.

(b)(2)(i) The head of the contracting activity is authorized to make the determination at DFARS 225.7703-2(b)(2)(i). See Appendix GG for further delegation.

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PART 5126 - OTHER SOCIOECONOMIC PROGRAMS

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PART 5127 - PATENTS, DATA, AND COPYRIGHTS

Sec.

5127.201	Subpart 5127.2 - Patents and Copyrights Patent and copyright infringement liability.	5127.7004	Requirements for filing an administrative claim for patent infringement.	
5127.201-2	Contract clauses.	5127.7006-90	Investigation and administrative disposition of claims.	
5127.202	Royalties.	5127.7011	Procurement of rights in inventions, patents, and copyrights.	
5127.202-3	Adjustment of royalties.		Subpart 5127.71 - Rights in Technical Data	
	Subpart 5127.3 - Patent Rights Under Government Contracts	5127.7103	Noncommercial items or processes.	
5127.303	Contract clauses.	5127.7103-13	Government right to review, verify, challenge, and validate asserted restrictions.	
5127.304	Procedures.		5127.7103-14	Conformity, acceptance, and warranty of technical data.
	Subpart 5127.6 - Foreign License and Technical Assistance Agreements		Subpart 5127.72 - Rights In Computer Software and Computer Software Documentation	
5127.675	Foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.	5127.7203	Noncommercial computer software and noncommercial computer software documentation.	
5127.675-2	Review of agreements.	5127.7203-13	Government right to review, verify, challenge, and validate asserted restrictions.	
	Subpart 5127.70 - Infringement Claims, Licenses, and Assignments			

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Subpart 5127.2 - Patents and Copyrights

5127.201 Patent and copyright infringement liability.

5127.201-2 Contract clauses.

(e) Obtain approval to exempt specific United States patents from the patent indemnity clause from:

Commander, US Army Legal Services Agency

Attn: JALS-RL/IP

Regulatory Law and Intellectual Property Division

9275 Gunston Road, Suite 1300

Fort Belvoir, VA 22060-5546.

However, the Commander, U.S. Army Materiel Command and designees that have patent counsel may give approval.

5127.202 Royalties.

5127.202-3 Adjustment of royalties.

(a) The office having cognizance of patent matters must report the results of any action taken in compliance with FAR 27.202-3 to the Chief, Regulatory Law and Intellectual Property Law Division, U.S. Army Legal Services Agency.

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Subpart 5127.3 - Patent Rights Under Government Contracts

5127.303 Contract clauses.

(b)(3) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, may make the determination as described in FAR 27.303(b)(3) and DFARS 227.303(2)(ii)(B).

(e)(1)(ii) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may make the determination as described in FAR 27.303(e)(1)(ii). See Appendix GG for further delegation.

(e)(4)(ii) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, may make the determination as described in FAR 27.303(e)(4)(ii).

5127.304 Procedures.

Refer questions about Army procedures to the Chief, Regulatory Law and Intellectual Property Law Division at the address in 5127.201-2.

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Subpart 5127.6 - Foreign License and Technical Assistance Agreements

5127.675 Foreign license and technical assistance agreements between a domestic concern and a foreign government or concern.

5127.675-2 Review of agreements.

(a) Send proposed agreements through the head of the contracting activity to appropriate patent and technical personnel for review. Send the comments and recommendations of the head of the contracting activity to:

Deputy Assistant Secretary of the Army for Defense Exports and Cooperation (DASA(DE&C))

ATTN: SAAL-ZN

103 Army Pentagon

Washington, DC 20310.

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Subpart 5127.70 - Infringement Claims, Licenses, and Assignments

5127.7004 Requirements for filing an administrative claim for patent infringement.

(c) Forward all communications which –

(1) Claim that the manufacture, use, or disposition of any article, material or process by or for any agency or component of the Army involves the use of any invention, whether patented or un-patented, and

(2) Make a claim for compensation, to the head of the contracting activity (HCA) which ordered the manufacture, use or disposition of the article, material or process, except in Army Materiel Command (AMC), forward them to the Commander, AMC. The HCA and Commander, AMC, shall process the matter in accordance with DFARS subpart 227.70, subpart 5127.70 and Army Regulation (AR) 27-60.

5127.7006-90 Investigation and administrative disposition of claims.

(a) *Settlement.* The office granted clearance to investigate a claim may settle that claim in accordance with DFARS 227.7006, 5127.7006 and AR 27-60 by executing a patent release and settlement agreement, license agreement or assignment.

(b) *Fiscal procedures.*

(1) An agreement to pay a fixed amount for any release and settlement agreement, license agreement or assignment, by either a lump-sum payment or an amount determinable at the time of contract execution, is subject to the provision that the fixed amount to be paid may not exceed the funds available for the purpose. Prior to incurring any obligation, officials charged with making such agreements shall submit the proposed agreements to the cognizant finance and accounting officer for verification of the availability of funds. The following statement shall be included on the face of the agreement:

“The supplies and services obtained by this instrument are authorized by, are for the purpose set forth in, and are chargeable to the following allotments; and available balances are sufficient to cover the cost of the supplies and services.”

(2) An agreement to pay running royalties on future acquisitions is not subject to the requirement for the statement contained in (1).

(3) Contact the Regulatory Law and Intellectual Property Law Division, Office of the Judge Advocate General (see 5127.201-2 for address) for questions on fiscal procedures related to patent matters.

(c) *Delegations of authority and approval requirements.*

(1) Under Section 606(b) of the Foreign Assistance Act of 1961 (75 Stat. 440, 22 U.S.C. 2356(b)) and DoD Directive 2000.3, authority to enter into agreements with claimants in full settlement and compromise of any claim against the United States under Section 606(a) of the Foreign Assistance Act of 1961, subject to the requirements of DFARS subpart 227.70 and subpart 5127.70 and other rules and regulations published by higher headquarters, is authorized for the Commander, AMC; and the Chief of Engineers in accordance with AR 27-60, at 6-13. The Chief of Engineers may not delegate this authority. The Commander, AMC may delegate to the commanders of major subordinate commands only.

(2)(i) All agreements authorized by the Foreign Assistance Act of 1961 (22 U.S.C. 2356), the Invention Secrecy Act (35 U.S.C. 181-188) or 10 U.S.C. 2386 require approval by the Judge Advocate General when the agreement –

(A) Provides for total payment by the Government, including reasonable anticipated royalties, of \$500,000 or more;

(B) Includes a license to different Government agencies on different terms;

(C) Provides for compensation for damages other than for infringement of patents or copyrights, e.g., claims under the Foreign Assistance Act or the Invention Secrecy Act;

(D) Contains a release or license, which may operate to release a contractor from an obligation to indemnify the Government;

(E) Is in settlement of patent or copyright infringement liability for the use of foreign patents or copyrights;

(F) Is with a government or national representative of a government within the scope of a Foreign Assistance Program; or

(G) Requires the signature of, or concurrence on behalf of, another agency of the Government.

(ii) The office requesting approval shall submit the number of executed agreements with original signatures to the Chief, Regulatory Law and Intellectual Property Law Division, Office of the Judge Advocate General (OTJAG). (See 5127.201-2 for address.) The submission package shall include the agreement and a memorandum of facts signed by an authorized official of the office requesting approval.

(iii) Upon approval of the agreement by the Judge Advocate General forward one executed and approved copy of the agreement directly to the United States Patent and Trademark Office for recording. Send the remaining executed and approved copies to the office that requested approval, for distribution.

(d) *Distribution of agreements.*

(1) Each contracting party and each office processing the request for approval shall retain an executed and approved agreement with original signatures.

(2) The office requesting approval shall forward a copy of each license, which provides for the payment of a running royalty, to each interested HCA. Receipt of a copy of the license shall constitute notice that further procurement of the licensed subject matter requires the payment of royalties to the licensor. When necessary, the HCA shall notify the contracting offices affected.

5127.7011 Procurement of rights in inventions, patents, and copyrights.

(1) Subject to the limitations in DFARS subpart 227.70 and subpart AFARS 5127.70, the following may acquire the items and rights described in 10 U.S.C. 2386 and may enter into agreements in settlement of resulting claims:

(i) The Commander, AMC.

(ii) The Chief of Engineers.

(iii) The Surgeon General.

(iv) The Commander, U.S. Army Space and Missile Defense Command.

(2) Other contracting activities must obtain written approval of any proposed agreement from the addressee at 5101.290(b)(1) through the Chief, Regulatory Law and Intellectual Property Law Division, OTJAG, (see 5127.201-2 for address), except for agreements for acquisition of the right to reproduce copyrighted material when acquisition cost is \$2,500 or less.

(3) Immediately send all communications relating to proposed patent licenses or assignment to the chief patent counsel or legal officer supporting the contracting office.

(4) To assist national defense, various patent owners voluntarily grant royalty-free licenses, assignments and releases to the Government to use the inventions covered by their patents and applications for patents. Obtain a recommended, standardized format for such a grant from the Chief, Regulatory Law and Intellectual Property Law Division, OTJAG.

Subpart 5127.71 - Rights in Technical Data

5127.7103 Noncommercial items or processes.

5127.7103-13 Government right to review, verify, challenge, and validate asserted restrictions.

(d)(6)(iii) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, shall make the notification as described in DFARS 227.7103-13(d)(6)(iii).

5127.7103-14 Conformity, acceptance, and warranty of technical data.

(a)(2) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) is authorized to perform the duties described at DFARS 227.7103-14(a)(2). See Appendix GG for further delegation.

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Subpart 5127.72 - Rights In Computer Software and Computer Software Documentation

5127.7203 Noncommercial computer software and noncommercial computer software documentation.

5127.7203-13 Government right to review, verify, challenge, and validate asserted restrictions.

(e)(1) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, shall make the notification as described in DFARS 227.7203-13(e)(1).

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PART 5128 - BONDS AND INSURANCE

Sec.

5128.101	Subpart 5128.1 - Bonds and Other Financial Protections	5128.204	Alternatives in lieu of corporate or individual sureties.
5128.101-1	Bid guarantees.	5128.204-1	United States bonds or notes.
5128.105	Policy and use.		Subpart 5128.3 - Insurance
5128.106	Other types of bonds.	5128.301	Policy.
5128.106-2	Administration.	5128.305	Overseas workers compensation and war hazard insurance.
5128.106-6	Substitution of surety bonds.	5128.307	Insurance under cost-reimbursement contracts.
	Furnishing information.	5128.307-1	Group insurance plans.
	Subpart 5128.2 - Sureties and Other Security for Bonds	5128.311	Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
5128.202	Acceptability of corporate sureties.		
5128.203	Acceptability of individual sureties.	5128.311-1	Contract clause.
5128.203-5	Exclusion of individual sureties.	5128.370	Additional clauses.

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Subpart 5128.1 - Bonds and Other Financial Protections

5128.101 Bid guarantees.

5128.101-1 Policy and use.

(c) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may authorize class waivers at FAR 28.101-1. See Appendix GG for further delegation.

5128.105 Other types of bonds.

The head of the contracting activity may approve using other types of bonds in connection with acquiring particular supplies or services. See Appendix GG for further delegation.

5128.106 Administration.

5128.106-2 Substitution of surety bonds.

(a) The head of the contracting activity may approve actions at FAR 28.106-2. See Appendix GG for further delegation.

5128.106-6 Furnishing information.

(c) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination at FAR 28.106-6(c). See Appendix GG for further delegation.

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Subpart 5128.2 - Sureties and Other Security for Bonds

5128.202 Acceptability of corporate sureties.

(c) If corporate surety information from the U.S. Department of the Treasury website is not available, distribute in accordance with head of the contracting activity (HCA) instructions.

5128.203 Acceptability of individual sureties.

(g) Refer evidence to the local contracting office's procurement fraud advisor. See Army Regulation 27-40 Litigation.

5128.203-5 Exclusion of individual sureties.

(d) Send the determination and findings justifying acceptance to the HCA. If the HCA concurs, send the request and concurrence through the addressee in 5101.290(b)(5) to the Assistant Secretary of the Army (Acquisition, Logistics and Technology) for a determination. See Appendix GG for further delegation.

5128.204 Alternatives in lieu of corporate or individual sureties.

5128.204-1 United States bonds or notes.

When a contractor furnishes security in lieu of corporate or individual sureties on bonds, the contracting officer must send a certified copy of the receipt for the deposited security and a certified copy of any required power of attorney and agreement to legal counsel along with the bond.

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Subpart 5128.3 - Insurance

5128.301 Policy.

(b) When more than one agency is involved and the Army retains contract administration functions, the contracting officer responsible for contract administration is the point of contact. Contracting officers shall review and approve the contractor's insurance program and coordinate with other interested agencies before acting on significant insurance matters.

5128.305 Overseas workers compensation and war hazard insurance.

(d) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the recommendation as described in FAR 28.305(d). See Appendix GG for further delegation.

5128.307 Insurance under cost-reimbursement contracts.

5128.307-1 Group insurance plans.

(a) *Prior approval requirement.* Group insurance plans under cost-reimbursement contracts administered by the Army must be submitted for approval to the contracting officer.

5128.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

5128.311-1 Contract clause.

The head of the contracting activity may waive the requirement at DFARS 228.311-1. See Appendix GG for further delegation. When required in paragraph (g) of the clause at FAR 52.228-7, Insurance – Liability to Third Persons, the contracting officer must send a notification to the following address with a request to inform the Director, Torts Branch, Civil Division, Attorney General:

Attn: JALS-LTT Army Litigation Division
U.S. Army Legal Services Agency (USALSA)
9275 Gunston Road
Fort Belvoir, VA 22060.

5128.370 Additional clauses.

(a)(2) The head of the contracting activity makes the decision at DFARS 228.370(a)(2). See Appendix GG for further delegation.

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PART 5129 - TAXES

Sec.

5129.101	Subpart 5129.1 - General Resolving tax problems.	5129.303	Subpart 5129.3 - State and Local Taxes Application of state and local taxes to government contractors and subcontractors.
5129.201	Subpart 5129.2 - Federal Excise Taxes General.		

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Subpart 5129.1 - General

5129.101 Resolving tax problems.

- (a) The contracting officer shall provide to the legal counsel a comprehensive statement of facts and issues supported by –
- (i) Copies of correspondence and documents needed to understand the problem;
 - (ii) A copy of the contract or relevant portion; and
 - (iii) The comments and recommendations of the contracting officer, the reviewer and local counsel at each echelon of command through which the correspondence passes.

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Subpart 5129.2 - Federal Excise Taxes

5129.201 General.

(b) Process applications to the Bureau of Alcohol, Tobacco, and Firearms for permits to procure alcohol free of tax pursuant to guidance at Title 27 Code of Federal Regulations, Section 22.172 Application and permit. The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has signature authority. See Appendix GG for further delegation.

Alcohol and Tobacco Tax and Trade Bureau Director National Revenue Center
550 Main Street, Suite 8002,
Cincinnati, Ohio 45202-5215.

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Subpart 5129.3 - State and Local Taxes

5129.303 Application of state and local taxes to government contractors and subcontractors.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall perform the review as set forth in FAR 29.303(a). See Appendix GG for further delegation.

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PART 5130 - COST ACCOUNTING STANDARDS ADMINISTRATION

Sec.

5130.201	Subpart 5130.2 - CAS Program Requirements	5130.202	Disclosure requirements.
5130.201-5	Contract requirements.	5130.202-6	Responsibilities.
	Waiver.		

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Subpart 5130.2 - CAS Program Requirements

5130.201 Contract requirements.

5130.201-5 Waiver.

(a)(2) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall perform the duties at FAR 30.201-5(a) and (b). See Appendix GG for further delegation.

5130.202 Disclosure requirements.

5130.202-6 Responsibilities.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, shall make the authorization as described in FAR 30.202-6(b).

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PART 5131 - CONTRACT COST PRINCIPLES AND PROCEDURES

Sec.

5131.205

Subpart 5131.2 - Contracts with Commercial Organizations
Selected costs.

5131.205-6

Compensation for personal services.

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Subpart 5131.2 - Contracts with Commercial Organizations

5131.205 Selected costs.

5131.205-6 Compensation for personal services.

(g)(6) *Severance pay*. The Assistant Secretary of the Army (Acquisition, Logistics and Technology) is permitted to waive certain cost allowability limitations as set forth in FAR 31.205-6(g)(6). See Appendix GG for further delegation.

(p)(4)(iii) *Limitation on allowability of compensation*. The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may establish exceptions as described at FAR 31.205-6(p)(4)(iii). See Appendix GG for further delegation.

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PART 5132 - CONTRACT FINANCING

Sec.

<p>5132.006</p> <p>5132.006-1</p> <p>5132.006-2</p> <p>5132.006-3</p> <p>5132.007</p> <p>5132.111</p> <p>5132.114</p> <p>5132.201</p> <p>5132.202</p> <p>5132.202-1</p> <p>5132.402</p> <p>5132.407</p> <p>5132.501</p>	<p>Reduction or suspension of contract payments upon finding of fraud.</p> <p>General.</p> <p>Definition.</p> <p>Responsibilities.</p> <p>Contract financing payments.</p> <p>Subpart 5132.1 - Non-Commercial Item Purchase Financing</p> <p>Contract clauses for non-commercial purchases.</p> <p>Unusual contract financing.</p> <p>Subpart 5132.2 - Commercial Item Purchase Financing</p> <p>Statutory authority.</p> <p>General.</p> <p>Policy.</p> <p>Subpart 5132.4 - Advance Payments for Non-Commercial Items</p> <p>General.</p> <p>Interest.</p> <p>Subpart 5132.5 - Progress Payments Based on Costs</p> <p>General.</p>	<p>5132.501-2</p> <p>5132.606</p> <p>5132.607</p> <p>5132.607-2</p> <p>5132.671</p> <p>5132.702</p> <p>5132.803</p> <p>5132.901</p> <p>5132.903</p> <p>5132.906</p> <p>5132.1106</p> <p>5132.7101</p>	<p>Unusual progress payments.</p> <p>Subpart 5132.6 - Contract Debts</p> <p>Debt collection.</p> <p>Installment payments and deferment of collection.</p> <p>Deferment of collection.</p> <p>Bankruptcy reporting.</p> <p>Subpart 5132.7 - Contract Funding</p> <p>Policy.</p> <p>Subpart 5132.8 - Assignment of Claims</p> <p>Policies.</p> <p>Subpart 5132.9 - Prompt Payment</p> <p>Applicability.</p> <p>Responsibilities.</p> <p>Making payments.</p> <p>Subpart 5132.11 - Electronic Funds Transfer</p> <p>EFT mechanisms.</p> <p>Subpart 5132.71 - Levies on Contract Payments</p> <p>Policy and procedures.</p>
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(Revised 23 March 2022)

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5132.006 Reduction or suspension of contract payments upon finding of fraud.

5132.006-1 General.

(c) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to reduce or suspend contract payments where there is substantial evidence that the contractor's request for advance, partial, or progress payments is based on fraud. See Appendix GG for further delegation.

5132.006-2 Definition.

The Army's remedy coordination official is the Chief, Procurement Fraud Branch, Office of The Judge Advocate General; telephone (703) 696-1550; Fax (703) 696-1559.

5132.006-3 Responsibilities.

(b) Report suspected fraud related to advance, partial, or progress payments to the contracting office's procurement fraud advisor, who will coordinate the matter as prescribed in Army Regulation 27-40.

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Subpart 5132.1 - Non-Commercial Item Purchase Financing

5132.111 Contract clauses for non-commercial purchases.

(a)(7) The contracting officer must document the contract file with the rationale to support the amount of payments withheld under FAR 52.232-7(a)(7).

5132.114 Unusual contract financing.

The Director, Defense Procurement and Acquisition Policy, on a non-delegable basis, shall approve actions as stated in FAR 32.114 and DFARS 201.402(1)(vi).

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Subpart 5132.2 - Commercial Item Purchase Financing

5132.201 Statutory authority.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described at FAR 32.201. See Appendix GG for further delegation.

5132.202 General.

5132.202-1 Policy.

(d) The Director, Defense Procurement and Acquisition Policy, on a non-delegable basis, shall approve actions as stated in FAR 32.202-1 and DFARS 201.402(1)(vi).

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Subpart 5132.4 - Advance Payments for Non-Commercial Items

5132.402 General.

(c)(1)(iii)(A) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, shall make the determination that the advance payment is in the public interest as described at FAR 32.402(c)(1)(iii)(A).

(c)(1)(iii)(B) The Secretary of the Army, on a non-delegable basis, shall make the determination that the advance payment facilitates the national defense as described at FAR 32.402(c)(1)(iii)(B).

5132.407 Interest.

(d) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the authorization as described at FAR 32.407(d).

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Subpart 5132.5 - Progress Payments Based on Costs

5132.501 General.

5132.501-2 Unusual progress payments.

- (a)(2) Requests for approval of unusual progress payments must include the following documentation from the contractor:
 - (A) Monthly cash flow forecasts for the period, which include the additional financing.
 - (B) Estimated profit and loss statements and balance sheets for the same period as the cash flow forecast.
 - (C) The most recent, audited financial statements.
 - (D) A description of significant events before or after preparation of financial statements that materially affect the financial condition of the company, the operating statement, or the cash flow statement.
- (3) See DFARS PGI 232.501-2. Submit all unusual progress payments requests to the addressee in 5101.290(b)(3).

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Subpart 5132.6 - Contract Debts

5132.606 Debt collection.

(c)(i) Send case files to the contract financing office within 15 calendar days after the end of the 30-day period following the contracting officer's demand for payment. The address is as follows:

Defense Finance and Accounting Service-Columbus Center

Attn: DFAS-JDCBB/CO

Debt Management Office, P.O. Box 182559

Columbus, Ohio 43218-2559.

(ii) The case file must include a copy of the contracting officer's demand; a statement as to whether or not the contract contains an interest clause; and, if so, a copy of the clause or a reference to the clause number.

(iii) If the debt represents excess costs incurred in purchasing supplies or services against the account of a defaulted contractor, the case file shall include –

(A) The name and address of the replacement contractor;

(B) The disbursing office voucher number;

(C) The date paid;

(D) Bills of lading numbers, if any;

(E) The name of the carrier, when applicable; and

(F) The name and symbol number of the disbursing officer.

(iv) If the debt represents liquidated damages, the case file shall include an explanation of the basis for assessing liquidated damages.

5132.607 Installment payments and deferment of collection.

5132.607-2 Deferment of collection.

(b) When a request for deferment of a contract debt is received from a contractor, the contracting officer must notify the payment office and advise the payment office identified in the contract that the contractor's request is under consideration IAW FAR 32.607-2(b). See AFARS PGI 5132.607-2(c)(2)-1 for further instruction.

5132.671 Bankruptcy reporting.

Send information required in Defense Finance and Accounting Service – Indianapolis Regulation 37-1 to the addressee in 5132.606(c).

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Subpart 5132.7 - Contract Funding

5132.702 Policy.

(a)(i) Except as authorized in FAR subparts 17.1 and 32.7 and in paragraphs (a)(ii) and (iii) in this section, before issuing a solicitation, the contracting officer must have a written statement or equivalent indicating that sufficient funds are available.

(ii) Contracting officers may issue solicitations for high priority requirements and Research, Development, Test and Evaluation incrementally funded contracts before ensuring availability of funds when there is a high probability that the requiring activity will not cancel the requirement. For foreign military sales cases, contracting officers may issue solicitations after the acceptance of a foreign military sales case, but before assurance of funds availability when the United States Army Security Assistance Command determines in writing that the offer appears certain to be accepted.

(A) The contracting officer shall not issue a solicitation under the circumstances in (a)(ii) unless the comptroller has signed the following statement on the purchase request:

“This requirement is included or provided for in the financial plan for fiscal year _____. The accounting classification will be _____. This statement is not a commitment of funds.”

(B) The contracting officer shall include the following statement in all solicitations issued pursuant to this authority when the clause at FAR 52.232-18, Availability of Funds, is not used:

“Funds are not presently available for this acquisition. No contract award will be made until appropriated funds are made available.”

(C) The operating official designated, by local regulations or by a “delegation of authority” letter, as the official authorized to certify funds availability, must certify funds available prior to contract award.

(D) The contracting officer shall not issue a research and development solicitation for a contract that is incrementally funded over successive years without sufficient planned funds (Future Years Defense Program) to cover the entire period of the multi-year performance. The head of the contracting activity may approve an exception, provided the approval identifies steps to revise the approved Future Years Defense Program to include adequate resources.

(iii) Industrial-funded public activities need not comply with (i) and (ii), when they solicit offers under the Defense Depot Maintenance Competition Program (Pub. L. 102-396), the Partnership Program (10 U.S.C. 2208(j)) or competition under the Arsenal Act (10 U.S.C.4532(a)).

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Subpart 5132.8 - Assignment of Claims

5132.803 Policies.

(d) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, shall make the determination as described at FAR 32.803(d).

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Subpart 5132.9 - Prompt Payment

5132.901 Applicability.

(1)(ii) The head of the contracting activity, after consultation with the cognizant comptroller, will make the determination at DFARS 232.901(1)(ii). See Appendix GG for further delegation.

(3) The head of the contracting activity will make the determination at DFARS 232.901(3). See Appendix GG for further delegation.

5132.903 Responsibilities.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall perform the duties as set forth in FAR 32.903(a). See Appendix GG for further delegation.

5132.906 Making payments.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described in FAR 32.906(a). See Appendix GG for further delegation.

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Subpart 5132.11 - Electronic Funds Transfer

5132.1106 EFT mechanisms.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall make the determination as described in FAR 32.1106 (a) and (b). See Appendix GG for further delegation.

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Subpart 5132.71 - Levies on Contract Payments

5132.7101 Policy and procedures.

(b)(4) Subject to DFARS 232.7101(b) and the procedures at the DFARS PGI 232.7101(b), the contracting officer shall ensure the senior contracting official (SCO) endorses the notification memorandum sent to the Director, Defense Procurement and Acquisition Policy (DPAP). The SCO may not delegate this endorsement to a lower level. In addition to the assessment the contractor provides, the contracting officer shall obtain from the appropriate requiring activity any other information necessary to prepare the notification. The contract file will clearly show all reviews and coordination for the action at the SCO and lower levels, to include legal counsel review. When the contracting officer sends the notification memorandum to the Director, DPAP, the contracting officer shall provide a copy of this memorandum to the address at 5101.290(b)(2)(ii)(A).

(c) When the contracting officer receives a response from DPAP, the contracting officer shall send a copy of the response to the address at 5101.290(b)(2)(ii)(A).

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PART 5133 - PROTESTS, DISPUTES, AND APPEALS

Sec.

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(Revised 20 May 2022)

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5133.090 Definition.

“Alternative dispute resolution (ADR)” means any procedure, in lieu of litigation, used to resolve issues in controversy, including but not limited to facilitation, conciliation, mediation, early neutral evaluation, non-binding arbitration, minitrial, fact-finding, ombudsman process, or any combination thereof.

Subpart 5133.1 - Protests**5133.102 General.**

(a)(1) See 5104.802(f) for the requirement to use the Protest and Claims Tracking tool.

(2) Contracting officers and their legal counsel are encouraged to use the Government Accountability Office’s (GAO’s) flexible alternative procedures, including alternative dispute resolution, when appropriate in defending a GAO protest.

(b)(i) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may make agency head determinations regarding actions described in FAR 33.102(b)(1) through (b)(3). See Appendix GG for further delegation.

(ii) Actions taken must be consistent with 10 U.S.C. 2305(f), 31 U.S.C. 3554, and FAR part 33.

(iii) For award of costs, contracting officers must attempt to reach an agreement on the amounts the Government will pay to a protester or an interested party. If the contracting officer and the protester or interested party do not reach agreement, persons exercising authority as cited in paragraph (b)(i) of this section may make the agency determination on the amount the Government will pay, at the request of the protester or an interested party.

(iv) Officials must consult legal counsel in exercising this authority.

5133.103 Protests to the agency.

(d)(3) As soon as practicable, the contracting officer must consult with the legal office concerning the protest. Refer protests received at a level higher than the contracting office to the contracting office for resolution. Concurrent with this referral, the office that initially received the protest must inform the protester, identifying the contracting office that will handle the protest and giving the point of contact within that office.

(4) Handle requests for independent review of a protest at a level above the contracting officer as follows:

(i) For contracting officers under the jurisdiction of the Army Materiel Command (AMC), in accordance with AMC established procedures.

(ii) For contracting officers under the jurisdiction of the United States Army Corps of Engineers (USACE), in accordance with the USACE established procedures.

(iii) For contracting officers in all other contracting activities, in accordance with activity established procedures. If contracting personnel will conduct the independent review, the HCA will appoint a review authority. See Appendix GG for further delegation. The HCA or delegated designee, may also appoint individuals assigned outside contracting channels as a review authority (e.g., attorneys, chief of staff, installation commanders).

5133.103-90 Annual agency bid protest report.

HCAs must prepare an annual report of agency bid protests and send it to the addressee in AFARS 5101.290(b)(2)(ii)(B) not later than 30 calendar days following the end of the fiscal year. The analysis must include –

(a) The number of protests received during the reporting period, to include their disposition;

(b) An assessment of the causes of the most frequently recurring issues, including a description of all corrective actions taken to include the award of protest costs;

(c) The distribution of protests by subordinate contracting offices; and

(d) Any additional information considered necessary to a full understanding of the efficiency and effectiveness of the activity’s agency protest procedures.

5133.104 Protests to GAO.

(a) *General procedure.* The contracting officer must take the action required of the “agency” in FAR 33.104.

(3)(i)(I) Contracting offices must use the following reporting procedures; the SCO may require the contracting offices to send the report through the SCO’s office:

(7). (i) Contracting offices reporting to AMC must send the report directly to the addressee in 5101.290(b)

(ii) Contracting offices reporting directly to the USACE must send the report directly to the following address:

U.S. Army Corps of Engineers
 Attn: CECC-C
 441 G St., N.W.
 Washington, DC 20314-1000.

(iii) All other Army contracting offices must send the report via courier or express mail service to:

U.S. Legal Services Agency, ATTN: JALS-KFLD
 Contract and Fiscal Law Division
 9275 Gunston Road, Suite 2100
 Fort Belvoir, VA 22060-5546.

(iv) The contracting officer must send the report not later than 20 days after the Government Accountability Office (GAO) notifies the agency by telephone that a protest has been filed. If the GAO decides to use the express option and the contracting officer concludes that the report cannot be furnished in time, he/she must notify the appropriate office in (i)-(iii) at once so that it may request an extension from GAO.

(2) Before forwarding the report to the GAO Comptroller General, the addressees in paragraphs (a)(3)(i)(I)(i)-(iii) of this section must review the report and recommend any changes required to ensure that the report is accurate, complete, and legally sufficient.

(b) *Protests before award.* See Appendix GG.

(1)(A) The contracting officer must prepare a determination and findings (D&F) for HCA concurrence when it is necessary to request authorization to award a contract notwithstanding a protest. The D&F must clearly address –

(1) Whether significant adverse consequences will necessarily occur if the stay is not overridden;

(2) Whether reasonable alternatives to the override exist that would adequately address the circumstances presented;

(3) How the potential costs of proceeding with the override, including the costs associated with the potential that GAO might sustain the protest, compare to the benefits associated with the approach being considered for addressing the agency's needs; and

(4) The impact of the override on competition and the integrity of the procurement system.

(B) The contracting officer must have approval from the Deputy Assistant Secretary of the Army (Procurement) (DASA(P)) prior to any award or selection, except for contracting offices reporting to AMC, where the HCA provides approval. The contracting officer must also prepare a request for approval that identifies all protest issues and addresses the merits and expected resolution of the protest. Include details of any congressional interest in the protest. After legal review, the HQAMC, Office of Command Counsel, will forward the request, with the D&F, in accordance with agency procedures to the HCA. (See *Override of Competition in Contracting Act (CICA) Stays: A Guidebook*, which is available via the Internet at [https://www.jagcnet.army.mil/Sites%5C%5Ccontractandfiscallaw.nsf/0/9DE4D2C744ABFC3F85257B42004536AC/\\$File/CICA%20Override%20Guidebook%20_June%2008_.pdf](https://www.jagcnet.army.mil/Sites%5C%5Ccontractandfiscallaw.nsf/0/9DE4D2C744ABFC3F85257B42004536AC/$File/CICA%20Override%20Guidebook%20_June%2008_.pdf))

(C) Within three days after the contracting office receives notification of the protest, the HCA may endorse the request for approval and electronically transmit the request and the D&F to the appropriate office in paragraphs (a)(3)(i)(I)(i)-(iii) of this section. That office shall immediately distribute the request and the D&F to the addressee in 5101.290(b)(1).

(c) *Protests after award.* See Appendix GG.

(2) Process the finding as required at paragraph (b) of this section. The D&F must clearly address the areas identified in paragraph (b)(1)(A). The DASA(P) must approve the D&F before the contracting officer authorizes continuing performance, except for contracting offices reporting to AMC, where the HCA provides approval. Process the request for approval as required in paragraph (b).

(g) *Notice to GAO.* The head of the contracting activity shall report to GAO as described at FAR 33.104(g). See Appendix GG for further delegation. Send the report to the addressee in 5101.290(b)(1) not later than 45 days after receipt of the recommendations.

5133.170 Briefing requirement for protested acquisitions valued at \$1 billion or more.

5133.170-90 Procedures.

(a) Within 10 days of receipt of a protest, provide an initial, written notification of the protest via email to the Office of the DASA(P) and furnish a copy to the SCO, field attorney and trial attorney. The initial notification shall be in the form of a briefing and shall include the following items:

(1) Buying activity and contracting officer with phone number and email address.

- (2) Protester and counsel.
- (3) Protest number and date filed.
- (4) Protest forum (GAO or Court of Federal Claims).
- (5) Description of the protested acquisition, estimated dollar value and whether it is a pre- or post-award protest.
- (6) Summary of protest allegations.
- (7) Status of the stay or stop work order.
- (8) Anticipated date of protest resolution.
- (9) Any other information deemed appropriate.
- (10) Attach a copy of the protest.

(b) After the contracting officer formulates the agency response, he/she may provide more detailed information relating to the position that the agency will take before filing the agency report in the protest action.

(c) If required, the contracting officer shall schedule a formal briefing on the protest with the DASA(P) or Defense Procurement and Acquisition Policy subsequent to the submission of the follow-up information.

5133.190 Reporting and analysis of bid protests.

5133.190-1 Bid protest action report.

Within 15 calendar days following notification of resolution of a GAO protest, the contracting officer must send a bid protest action report in the format in 5153.303-6 (double spaced between item numbers) to the following addressees:

- (a) AMC contracting activities send the report to the addressee in 5101.290(b)(7).
- (b) USACE contracting activities send the report to

U.S. Army Corps of Engineers

Attn: CECC-C

441 G St., N.W.

Washington, DC 20314-1000.

- (c) All other contracting activities send the report to the addressee in 5133.104(a)(3)(i)(I)(iii).

5133.190-2 Quarterly bid protest analysis report.

(a) AMC, USACE and the Contract and Fiscal Law Division, U.S. Army Legal Services Agency must prepare a quarterly bid protest analysis report for GAO protests in the format in 5153.303-7 (double space between item numbers) and send it with the bid protest action reports to the addressee in 5101.290(b)(2)(ii)(B) not later than 30 calendar days following the end of the quarter. The analysis will include the number of protests in which a flexible alternative procedure was used, in accordance with 4 C.F.R. 21.10, and will also include an assessment of the causes of the most frequently recurring issues and recommendations for appropriate corrective action. Reconcile the numbers submitted with the most current data available from the GAO.

(b) The DASA(P) will prepare a consolidated quarterly report not later than 45 calendar days following the end of each quarter.

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Subpart 5133.2 - Disputes and Appeals

5133.203 Applicability.

(b)(2) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall determine the application at FAR 33.203. See Appendix GG for further delegation.

5133.204 Policy.

(a) As used in this section:

“Dispute Resolution Specialist” means the official designated by the head of an agency to implement agency ADR policy as prescribed by Section 3(b) of the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571-584 and Note. The Principal Deputy General Counsel of the Army is designated the Army Dispute Resolution Specialist.

“Issue in controversy” means a material disagreement between the Army and a contractor that may result in a claim, or is all or part of an existing claim.

(b) Contracting officers and their legal counsel, assisted by other members of the Acquisition Team as necessary, are encouraged to use alternative dispute resolution (ADR) techniques to resolve pre-appeal disputes (e.g., claims, unresolved requests for equitable adjustment, and other issues in controversy) to the maximum extent practicable and appropriate. For any dispute in which unassisted negotiations have reached impasse or in which the contracting officer has received a request for ADR, the contracting officer shall review the dispute to determine whether ADR is appropriate for resolving it, applying the reasons listed in paragraph (c) of this section. If the contracting officer finds ADR to be appropriate, the contracting officer should offer or agree to ADR. Participation in ADR does not obligate any party to settle or accept a proposal for settlement. This section does not create any right to ADR for any contractor or prospective contractor, and a decision by the contracting officer finding ADR to be inappropriate is not subject to appeal.

(c) The use of ADR to resolve an issue in controversy is generally authorized if the parties agree. However, the contracting officer or other authorized official may decide that ADR is inappropriate to resolve the issue for any of the following reasons:

- (1) A definitive or authoritative resolution of the matter is required for precedential value, and an ADR proceeding is not likely to be accepted generally as an authoritative precedent.
- (2) The matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and an ADR proceeding would not likely serve to develop a recommended policy for the Army.
- (3) Maintaining established policies is of special importance, so that variations among individual decisions are not increased, and an ADR proceeding would not likely reach consistent results among individual decisions.
- (4) The matter significantly affects persons or organizations who are not parties to the ADR proceeding.
- (5) A full public record of the proceeding is important, and an ADR proceeding cannot provide such a record.
- (6) The Army must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the Army’s fulfillment of that requirement.
- (7) The issue is amenable to a disposition that will fully resolve the matter quickly and with a high probability of finality, including procedures under Rules 11 and 12 of the Rules of the Armed Services Board of Contract Appeals (ASBCA).
- (8) The anticipated transaction costs of ADR in money and time materially exceed the anticipated transaction costs of litigation.
- (9) The dispute involves one or more credible allegations or indications of fraud, gross mismanagement, abuse of official authority, or violation of federal or state criminal laws.
- (10) Any other specific reason why the contracting officer determines ADR is inappropriate. Sole reliance on this provision to find ADR inappropriate must be approved by the cognizant senior contracting official (SCO), or higher authority. Forward a copy of any decision based on this provision, with supporting rationale, to the Army Dispute Resolution Specialist at usarmy.pentagon.hqda-ogc.mbx.adr@mail.mil. Include the name, telephone number and email address of the point of contact for the decision.

(d) The contracting officer, legal advisor, attorney of record, or other official responsible for procurement ADR matters within the cognizant interested organization(s) may contact the Army ADR Program Office in the Office of the Army General Counsel (SAGC-ADR) for advice and guidance on ADR processes, strategies, and other informal dispute resolution matters. Send correspondence to:

Department of the Army General Counsel

ADR Program Office (SAGC-ADR)

104 Army Pentagon

Washington DC 20310-0104;

by fax to 703-614-8073; or by email to: usarmy.pentagon.hqda-ogc.mbx.adr@mail.mil. Ensure appropriate coordination through command channels before contacting SAGC-ADR directly for assistance under this section. USACE contracting activities may also contact

U.S. Army Corps of Engineers

Attn: CECC-C Alternative Dispute Resolution Specialist

441 G St., N.W.

Washington, DC 20314-1000,

for dispute resolution guidance.

(e) Appeals filed with the ASBCA are eligible for ADR consideration, consistent with the Chief Trial Attorney's authority over litigation of all ASBCA matters. Apply the reasons in paragraph (c) of this section when considering whether to participate in ADR. All decisions whether to participate in ADR for any issue in controversy are within the Chief Trial Attorney's discretion, and are not subject to appeal.

5133.212 Contracting officers duties upon appeal.

5133.212-90 Appeal procedures.

(a) For purposes of this section and DFARS Appendix A, the Army Chief Trial Attorney or the Engineer Chief Trial Attorney performs the duties and responsibilities of the Chief Trial Attorney as follows:

(1) In accordance with Army Regulation (AR) 27-1, the Army Chief Trial Attorney is the authorized representative of the Secretary of the Army with sole authority and responsibility for the conduct and control of litigation of contract disputes for all Department of the Army cases docketed with the ASBCA, except for United States Army Corps of Engineers cases described in (2) and (3). The Judge Advocate General appoints the Army Chief Trial Attorney.

(2) The Engineer Chief Trial Attorney is the authorized representative of the Secretary of the Army and has sole authority and responsibility for the conduct and control of litigation of contract disputes for all Corps of Engineers cases docketed with the ASBCA of a value of less than \$3 million. The Chief Counsel, Corps of Engineers appoints the Engineer Chief Trial Attorney.

(3) The Director, Civil Law and Litigation, U.S. Army Legal Services Agency may determine, on a case-by-case basis, to delegate Corps of Engineer cases of a value of \$3 million or more to the Engineer Chief Trial Attorney.

(b) All contract disputes addressed in this section remain subject to the litigation oversight authority and responsibility of the General Counsel of the Department of the Army.

5133.212-91 Notice of an appeal.

Contracting officers must perform the following actions concurrently:

(a) Send any notice of appeal received directly, including the envelope showing the postmark directly to:

Chairman, ASBCA

5109 Leesburg Pike

Skyline 6, Room 703

Falls Church, VA 22041-3208.

(b) When the Defense Contract Management Agency staff has participated in contract award and/or administration, send to the Defense Contract Management Agency office involved a notice of the appeal with direction to preserve all documents pertaining to the contract.

5133.212-92 Comprehensive report to the Chief Trial Attorney.

(a) Concurrent with forwarding the appeal file to the ASBCA, the contracting officer must send the following documents to the addressee in 5133.104(a)(3)(i)(I)(ii) or (iii) as applicable with a copy to the reviewing official designated in accordance with 5133.212-93:

(1) A copy of the appeal file.

(2) A trial attorney's litigation file, except the report in paragraph 5-2e(4) of AR 335-15. The contracting officer shall not provide this report to the ASBCA or the contractor. The litigation file shall include the information listed in paragraphs (2)(i) through (iv) of this section.

(i) The names, current addresses and telephone numbers of all potential witnesses (including the contractor's) who have information concerning the facts in dispute.

(ii) A signed statement of each Government witness itemizing personal knowledge of the facts to which the witness will testify under oath at hearing, or a summary if it is impossible to obtain a signed statement. Include the following:

(A) Background and circumstances surrounding the generation of pertinent documents.

(B) Explanation, basis and/or rationale of those portions of the available documents which will require clarification at the hearing.

(C) List of any facts and events not shown by available documents.

(D) Identification of any other persons who have personal knowledge of pertinent facts.

(E) A statement regarding the expected availability of the witness for the hearing.

(iii) An analysis for the Chief Trial Attorney discussing the contractor's individual allegations and overall position with an opinion of the validity of each, and an appraisal of the strengths and weaknesses apparent in both parties' positions.

(iv) A memorandum by the legal advisor or the official making the decision, with input from legal counsel, setting forth an analysis of the legal issues involved in the dispute, including comments about the adequacy of the findings of fact and the legal sufficiency of the decision.

(b) The contracting officer must send a copy of all correspondence, and other data pertinent to the dispute, to the Chief Trial Attorney. This includes all documents received after submitting the trial attorney's litigation. The contracting officer shall forward copies to the reviewing official.

(c) The Chief Trial Attorney may, upon discovery of new facts or circumstances, have the reviewing official reconsider the matter.

5133.212-93 Review of appeal.

(a) The head of the contracting activity (HCA) shall –

(1) Furnish technical and legal assistance to the contracting officer as required; and

(2) Establish procedures to ensure that review of all appeals filed under the disputes clause occur at a level higher than the contracting officer.

(b) The HCA designated reviewing official shall –

(1) Ensure that the findings cover all issues in dispute and are consistent with the decision from the appeal;

(2) Ensure that the contracting officer's comprehensive report to the Chief Trial Attorney, including the evidence submitted in support of the contracting officer's decision, is complete;

(3) Within 10 calendar days after receiving the contracting officer's comprehensive report, forward to the Chief Trial Attorney –

(i) Evaluations, conclusions and recommendations;

(ii) Any additional evidence considered essential to enable the Chief Trial Attorney to protect the interests of the Government before the ASBCA; and

(iii) If the reviewing official decides that the available evidence does not sufficiently support contracting officer's decision, or that the decision is erroneous, an estimated date by which the contracting office will either furnish additional support or withdraw the decision; and

(4) Assist the Chief Trial Attorney in obtaining additional evidence or in making other necessary preparations for presenting the Government's position before the ASBCA.

5133.212-94 Receipt of complaint.

(a) See DFARS Appendix A, Part 2, Preliminary Procedures, Rule 6, paragraph b. If the contracting officer receives the complaint after forwarding the comprehensive report to the Chief Trial Attorney, he/she must, within 15 calendar days after receipt of the complaint, send directly to the Chief Trial Attorney supplementary information regarding any issues raised in the complaint that the comprehensive report did not sufficiently cover. Include specific admissions or denials of each allegation of fact contained in the complaint and a statement of any affirmative defenses or counterclaims applicable.

(b) Provide copies of the supplementary information furnished the Chief Trial Attorney to the reviewing official.

5133.212-95 Litigation.

(a) See 5133.212-90(a)(1) regarding the authority and responsibility of the Chief Trial Attorney.

(b) The Chief Trial Attorney will present all Army cases to the ASBCA, using trial attorneys assigned to the office, except the Chief Trial Attorney may authorize local contract attorneys to act as trial attorneys or to assist in the presentation of Army

cases if the appeal has particular significance to the contracting activity and that it involves difficult operational issues and technical facts.

(c) Local legal counsel and personnel within the contracting activity assist and support the Office of the Chief Trial Attorney in preparing the case.

(d) The Chief Trial Attorney and the attorneys assigned may communicate directly with any person or organization to secure any witnesses, documents, or information considered necessary in connection with representing the Government in matters before the ASBCA. The Chief Trial Attorney must inform the contracting officer of any actions taken in connection with these matters.

5133.212-96 Disposition.

(a) The authority and responsibility to settle contract disputes docketed with the ASBCA remains with the contracting officer, subject to (b) and the following:

(1) The contracting officer must advise the Chief Trial Attorney of all offers of settlement from a contractor, whether directly from the contractor or through the contractor's attorney.

(2) The contracting officer must consult with the Chief Trial Attorney before accepting a contractor's offer of settlement and before making a settlement offer to the contractor.

(b) The Chief Trial Attorney has all necessary authority to conclude settlement agreements with the concurrence of the contracting officer, the reviewing official, or the Deputy Assistant Secretary of the Army (Procurement). He/she must notify the appropriate Army Command legal office/staff judge advocate of any disagreement regarding the settlement of a case before raising the matter to the Assistant Secretary of the Army (Acquisition, Logistics and Technology).

(1) The Chief Trial Attorney or an individual trial attorney may enter into an agreement on matters for which there is no substantial controversy and which will not have the effect of disposing of an appeal, provided that, in the case of a pre-hearing written stipulation or agreement, the Chief Trial Attorney has granted this authority to the individual trial attorney in advance.

(2) In appropriate cases, such as those where time-consuming delays would occur by returning the appeal to the contracting officer, the Chief Trial Attorney or an individual trial attorney acting with the prior approval of the Chief Trial Attorney may enter into an agreement with an appellant which will have the effect of disposing of an appeal after obtaining concurrence from a representative of the HCA. Such agreement may then become the basis of an ASBCA decision disposing of the appeal.

5133.212-97 Review of ASBCA decisions.

(a) *Contracting activity review.*

(1) The contracting activity must review ASBCA decisions and, if the HCA thinks that the ASBCA should reconsider a decision or appeal to the U.S. Court of Appeals for the Federal Circuit, the HCA may within 10 calendar days after receipt of the decision, request the Chief Trial Attorney to either –

(i) File a motion for reconsideration, stating the grounds relied upon to sustain the motion; or

(ii) Initiate action seeking an appeal to the U.S. Court of Appeals for the Federal Circuit, stating the basis for such an appeal pursuant to the review standards of section 7107(b) of the Disputes statute (41 U.S.C. chapter 71).

(2) If the Chief Trial Attorney does not concur with a request of the HCA within five calendar days, the Chief Trial Attorney shall forward the request, together with reasons for opposition, through the Judge Advocate General to the addressee in 5101.290(b)(1) for the decision in coordination with the General Counsel of the Army. If the Deputy Assistant Secretary of the Army (Procurement) determines that the Government will not make a motion for reconsideration or that the Government will not take an appeal to the U.S. Court of Appeals for the Federal Circuit, the Chief Trial Attorney may certify this fact to the ASBCA.

(3) When it appears that an adverse decision of the ASBCA has resulted from flaws in the regulations that implement DoD policy rather than an error by the ASBCA, recommendations for changes to acquisition regulations should be developed following the format in DFARS 201.201-1(d)(i) and submitted to the addressee in 5101.290(b)(2)(ii)(B).

(b) *Chief Trial Attorney review.* The Chief Trial Attorney independently reviews all ASBCA decisions involving Army contracts to determine whether the ASBCA should reconsider any decision or if the Army should appeal a decision to the U.S. Court of Appeals for the Federal Circuit.

5133.212-98 Dispute settlement and judgments, use of the Judgment Fund.

(a) *Judgment Fund.*

(1) The Disputes statute provides for the use of the Judgment Fund (“the Fund”) (31 U.S.C. 1304) to pay for adverse judgments against the Government. Under certain circumstances, the Army can convert settlement agreements in Disputes statute cases before the ASBCA into consent judgments to access the Judgment Fund to pay for settlements. In Disputes statute cases before federal courts where Department of Justice represents the Army, the Department of Justice may use its independent authority to use the Judgment Fund for settlements. Contracting officers should consult with their legal counsel and their local resource management office prior to taking any actions related to the use of the Judgment Fund. Only authorized officials of a federal agency may submit a request for payment from the Judgment Fund. Requests submitted by anyone other than an authorized federal official are deemed fraudulent. Filing a false or fraudulent claim constitutes a Federal offense that is punishable by fines, imprisonment, or both. (See 31 U.S.C. 3729 and 18 U.S.C. 287.) The authorized official for Army is the Assistant Secretary of the Army (Financial Management and Comptroller). See Appendix GG for further delegation. Army contracting activities shall follow the policy set forth in this section of the AFARS.

(2) The Army must reimburse the Judgment Fund with funds current as of the date of the judgment. According to the Department of Defense Financial Management Regulation, (DoD FMR), Volume 3, Chapter. 8, paragraph 080304F.5, approval authority is required from the cognizant Assistant Secretary of the Military Department (Financial Management and Comptroller) or Defense Agency Comptroller for all Judgment Fund Reimbursements to the Department of the Treasury in excess of \$1,000,000.

(b) *Fiscal considerations in settlements.* If funds appropriate to pay a settlement are expired but the account remains open, contracting officers must use expired funds to pay the settlement. If the account remains open but no expired funds remain, contracting officers must use the Judgment Fund to access current funds to pay the settlement. Access to the Fund requires a consent judgment from the Board or use of the Department of Justice’s independent authority to use the Fund. The contracting officer may use current funds to pay the settlement if appropriate accounts are canceled or closed.

(c) *Settlement procedures.*

(1) The Office of the Assistant Secretary of the Army (Financial Management and Comptroller) (ASA(FM&C)), tracks available expired funds within the Service.

(2) The Army shall use the following procedures for settlements:

(i) In situations where contract funds have expired but the accounts have not closed, the Army shall fund settlements with expired funds if available. Contracting officers will ascertain the availability of appropriate expired funds through their resource management office.

(ii) If the resource management office determines that no expired funds exist within the Army to fund the settlement and the accounts are not closed, the contracting officer must access the Judgment Fund through a consent judgment in order to use current year funds to pay the settlement (i.e., reimburse the Fund).

(iii) If no expired funds exist but the account remains open, use the following procedure. If current year funds are available to reimburse the Fund, then the contracting officer may enter into a consent decree and allow the Fund to pay the judgment. If there is not sufficient current funding to reimburse the Fund, the contracting officer must receive authorization from the ASA(FM&C) prior to entering into a consent decree.

(iv) If the accounts are closed, use the following procedure. If the contracting officer has sufficient funds to pay the settlement, he/she will not use the Fund, and pay the settlement with Agency funds. If sufficient current funds are not available, ASA(FM&C) will provide approval to access the Fund prior to the contracting officer entering into a consent judgment.

(v) When use of the Judgment Fund is authorized, the contracting officer shall work with the resource management office to ensure execution of the appropriate Certificate of Finality and Financial Management Service forms (FMS Forms 195, 196, 197A and 198 (if appropriate)) and submit the payment request to the FMS. The “reimbursement contact” on FMS Form 196 shall be the ASA(FM&C).

(d) *Judgments.* Use the following procedures to pay judgments using the Judgment Fund.

(1) The contracting officer shall ascertain the availability of current funds through financial management channels. If current funds are available, the contracting officer will not use the Fund, and will pay the judgment with Agency funds.

(2) If current funds are not available, the contracting officer will pay the judgment using the Fund after proper coordination and authorization from the ASA(FM&C).

(e) *Settlement agreements.* All settlements converted to consent judgments and funded by the Judgment Fund shall be in writing and contain appropriate release language. The contracting officer, local attorney and trial attorney shall insure that all settlement amounts are fair and reasonable.

(f) *Expeditious handling.* To expedite handling of settlements, inquiries and approvals that these procedures require may be oral so long as the contracting officer documents them in a memorandum for record.

5133.213 Obligation to continue performance.

(a) The HCA must approve the determination to use the alternate paragraph in the clause at FAR 52.233-1. See Appendix GG for further delegation.

5133.215 Contract clauses.

(3) The head of the contracting activity shall make the determination at DFARS 233.215(3). See Appendix GG for further delegation.

Subpart 5133.90 - Grant and Cooperative Agreement Claims, Disputes and Appeals

5133.9001 Designation of grant appeal authority.

(a) Procedures governing grants and cooperative agreements are set forth in Department of Defense Directive 3210.06, Defense Grant and Agreement Regulatory System (DGARS) and the Code of Federal Regulation (CFR) provisions cited in that directive.

(b) 32 CFR section 22.815(e)(1) requires the designation of grant appeal authorities to decide formal administrative appeals brought under 32 CFR section 22.815(e).

(c) The head of the contracting activity (HCA) that awarded the grant or cooperative agreement shall serve as the grant appeal authority, provided that the individual is a general officer or member of the Senior Executive Service. The grant appeal authority may utilize a board in accordance with 32 CFR section 22.815(e)(1). (d) The HCA may not delegate grant appeal authority. In the event that the HCA is not a general officer or member of the Senior Executive Service, the Deputy Assistant Secretary of the Army (Procurement) shall designate a qualified individual as the grant appeal authority on a case-by-case basis.

(d) The grant appeal authority shall utilize the procedures specified in 32 CFR sections 22.815(e) and (f).

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PART 5134 - MAJOR SYSTEM ACQUISITION

Sec.

5134.003	Subpart 5134.0 - General Responsibilities. Subpart 5134.2 - Earned Value Management System	5134.7002	Subpart 5134.70 - Acquisition of Major Weapon Systems as Commercial Items Policy.
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Subpart 5134.0 - General

5134.003 Responsibilities.

See Army Regulation 70-1, Army Acquisition Policy.

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Subpart 5134.2 - Earned Value Management System

See Army Class Deviation, [Approval of Class Deviation from the Earned Value Management System Requirements of the Defense Federal Acquisition Regulation Supplement for Certain Fixed-Price Incentive \(Firm Target\) \(FPIF\) Contracts, dated 6 December 2015](#). This class deviation allows a deviation from the Earned Value Management System (EVMS) requirements prescribed in DFARS 234.2 and associated DFARS clauses 252.234-7001 and 252.234-7002. The class deviation applies to FPIF contracts for full rate production (FRP) subsequent to the first FRP lot, in support of Defense acquisition programs, supporting services contracts where work is not measurable and discrete, and contracts for non-developmental services not supporting a Defense acquisition program. This deviation is effective until incorporated in the DFARS or rescinded.

See Army Class Deviation, [Approval of Class Deviation from the Earned Value Management System Requirements of the DFARS for Requirements with an Approved Department of Defense Instruction \(DoDI\) 5000.02 Earned Value Management Applicability Determination or Waiver](#). This class deviation applies when a DoDI 5000.02 EVM applicability determination finds that EVM is not applicable or an EVM waiver has been executed by the designated officials.

Subpart 5134.70 - Acquisition of Major Weapon Systems as Commercial Items

5134.7002 Policy.

(d)(4) The head of the contracting activity shall make the determination under DFARS 234.7002(d)(4). See Appendix GG for further delegation.

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PART 5135 - RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

5135.006	Contracting methods and contract type.	5135.015-70	Special use allowances for research facilities acquired by educational institutions.
5135.014	Government property and title.	5135.070	Indemnification against unusually hazardous risks.
5135.014-90	Special requirements for research and development contracts.	5135.070-1	Indemnification under research and development contracts.
5135.015	Contracts for research with educational institutions and nonprofit organizations.		

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5135.006 Contracting methods and contract type.

(b)(i) The contracting officer cannot release the solicitation until the milestone decision authority approves the contract method and contract type.

5135.014 Government property and title.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) makes the determination as set forth in FAR 35.014(b). See Appendix GG for further delegation.

5135.014-90 Special requirements for research and development contracts.

(a) Prior to entering into a contract for research or development or both which provides for the acquisition or construction by, or furnishing to, the contractor of research, development, or test facilities and equipment, the Secretary of the Army must determine that the facilities and equipment are necessary for the performance of the contract (10 U.S.C. 2353). See 5101.707.

(b) Send each request for secretarial determination to the addressee in 5101.290(b)(2)(ii)(C). Each request must contain the following:

(1) A detailed description of the acquisition supporting a finding that the contract is for research or development or both.

(2) The contract type.

(3) The type of funds, appropriation and amount.

(4) Required property or services.

(5) Name of the potential contractor.

(6) Any urgency considerations.

(7) A description of the research, development or test facilities and associated equipment and specialized housing which the contractor will acquire or construct or which the Government will furnish to the contractor. Include the contractor or Government-furnished property estimated cost and the reasons this property is necessary for the performance of the contract.

(8) When the Government will furnish property to the contractor, an explanation of how it will do so, e.g., loan, lease, sale, or other. When the Government will seek reimbursement under a lease or sale, provide the fair market value that Government will charge to the contractor.

(9) Details concerning ownership of land on which the facilities or equipment are to be located, e.g., Government owned, private, etc.

(10) Details concerning whether the installed or constructed facilities will be removable or separable without unreasonable expense or unreasonable loss of value.

(11) In the case of installed or constructed facilities on property the United States does not own, and that are not removable or separable without unreasonable expense or unreasonable loss of value, describe the provisions to be included in the contract for –

(i) Reimbursing the United States for the fair value of the facilities at the completion or termination of the contract or within a reasonable time thereafter;

(ii) An option for the United States to acquire the underlying land; or

(iii) An alternative provision considered adequate to protect the interests of the United States in the facilities and an explanation of why it is adequate.

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5135.015 Contracts for research with educational institutions and nonprofit organizations.**5135.015-70 Special use allowances for research facilities acquired by educational institutions.**

(c) The head of the contracting activity may approve special use allowances as described at DFARS 235.015-70(c). See Appendix GG for further delegation.

(d)(3)(ii) The head of the contracting activity shall make the determination at DFARS 235.015-70(d)(3)(ii). See Appendix GG for further delegation.

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5135.070 Indemnification against unusually hazardous risks.

5135.070-1 Indemnification under research and development contracts.

- (1) Send requests for authorization through contracting channels to the addressee in 5101.290(b)(2)(ii)(C) in time to reach the addressee at least 30 working days prior to the planned release of the solicitation.
- (2) Each secretarial request for authorization must contain –
 - (i) The information required by FAR 50.104-3(b) except (b)(1)(iii);
 - (ii) The clause and facts showing that the contract is for research or development or both;
 - (iii) A statement that the proposed indemnification clause complies fully with the requirements of 10 U.S.C. 2354;
 - (iv) The reasons the use of the indemnification clause would be in the Government's interest; and
 - (v) The signatures of the head of the contracting activity or the senior contracting official and the contracting officer.
- (3) Handle requests for indemnification under Pub. L. 85-804 in accordance with FAR 50.104-3 and DFARS 250.104-3-70.

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PART 5136 - CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Sec.

	Subpart 5136.2 - Special Aspects of Contracting for Construction		Subpart 5136.6 - Architect-Engineer Services
5136.201	Evaluation of contractor performance.	5136.601	Policy.
5136.2-90	Special procedures for job order contracts.	5136.601-90	Authority for architect-engineer contracting.
5136.208	Concurrent performance of firm-fixed-price and other types of construction contracts.	5136.601-3	Applicable contracting procedures.
5136.209	Construction contracts with architect-engineer firms.	5136.601-3-90	Limitations.
5136.213	Special procedures for sealed bidding in construction contracting.	5136.602	Selection of firms for architect-engineer contracts.
5136.213-2	Presolicitation notices.	5136.602-1	Selection criteria.
5136.270	Expediting construction contracts.	5136.602-4	Selection authority.
5136.272	Prequalification of sources.	5136.602-5	Short selection process for contracts not to exceed the simplified acquisition threshold.
	Subpart 5136.3 - Two-Phase Design-Build Selection Procedures	5136.604	Performance evaluation.
5136.301	Use of two-phase design-build selection procedures.	5136.609	Contract clauses.
	Subpart 5136.5 - Contract Clauses	5136.609-1	Design within funding limitations.
5136.570	Additional provisions and clauses.		

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Subpart 5136.2 - Special Aspects of Contracting for Construction

5136.201 Evaluation of contractor performance.

(1) See 5142.1503-90 for the requirements to prepare contractor past performance evaluations on construction contracts.

(2) At a minimum, prepare the report (DD Form 2626, Performance Evaluation (Construction)) at the final acceptance of work. The contracting officer's representative, or ordering officer if there is no contracting officer's representative, must be responsible for monitoring contract performance.

5136.2-90 Special procedures for job order contracts.

Before awarding a job order contract, contracting officers must review all performance evaluations in the Contractor Performance Assessment Rating System on those offerors in range for award. Contracting officers may rely solely on the Contractor Performance Assessment Rating System database information in assessing past performance.

5136.208 Concurrent performance of firm-fixed-price and other types of construction contracts.

The head of the contracting activity may approve contracts with cost variation or cost adjustment features as described at FAR 36.208. See Appendix GG for further delegation.

5136.209 Construction contracts with architect-engineer firms.

Subject to the resolution of organizational conflict of interest concerns, the Assistant Secretary of the Army (Acquisition, Logistics and Technology) may approve award of a construction contract to the firm that designed the project. See Appendix GG for further delegation.

5136.213 Special procedures for sealed bidding in construction contracting.

5136.213-2 Presolicitation notices.

(a) The head of the contracting activity may waive the requirement as stated in FAR 36.213-2(a). See Appendix GG for further delegation.

5136.270 Expediting construction contracts.

The Secretary of the Army shall make the approval set forth in DFARS 236.270. This approval authority may not be redelegated.

5136.272 Prequalification of sources.

(b) The head of the contracting activity must perform the functions at DFARS 236.272(b). See Appendix GG for further delegation.

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Subpart 5136.3 - Two-Phase Design-Build Selection Procedures

5136.301 Use of two-phase design-build selection procedures.

(b)(3)(vi) The head of the contracting activity, on a non-delegable basis, shall establish other criteria as described at FAR 36.301(b)(3)(vi).

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Subpart 5136.5 - Contract Clauses

5136.570 Additional provisions and clauses.

(b)(2) The head of the contracting activity shall approve actions as described at DFARS 236.570(b)(2). See Appendix GG for further delegation.

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Subpart 5136.6 - Architect-Engineer Services

5136.601 Policy.

5136.601-90 Authority for architect-engineer contracting.

(a) Army contracting activities, and subordinate offices, authorized to contract for architect-engineer services are as follows:

- (1) The U.S. Army Corps of Engineers (USACE).
- (2) The National Guard Bureau (NGB).
- (3) The U.S. Army Mission and Installation Contracting Command, Enterprise and Installation Operations.
- (4) The U.S. Expeditionary Contracting Command, 414th Contracting Support Brigade, Vicenza, Italy, for architect-engineer services for operations and maintenance appropriations and Army Family Housing (Operations) funded projects.

(b) Other Army contracting activities, as mutually agreed with the USACE, may execute task orders for architect-engineer services, under USACE indefinite-delivery contracts. The installation contracting officer and facilities engineering personnel must comply with the instructions of the USACE contracting officer regarding the negotiation, issuance, and administration of task orders.

5136.601-3 Applicable contracting procedures.

5136.601-3-90 Limitations.

Headquarters, USACE, and Headquarters, NGB, must establish appropriate controls on the use of indefinite-delivery contracts for architect-engineering services by subordinate contracting offices.

5136.602 Selection of firms for architect-engineer contracts.

5136.602-1 Selection criteria.

(b) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA(ALT)) has the authority to approve design competition. See Appendix GG for further delegation.

5136.602-4 Selection authority.

(a) The ASA(ALT) has the authority to make the final selection decision in accordance with all appropriate source selection guidance. See Appendix GG for further delegation.

5136.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

The USACE and the NGB may use both short processes.

(b)(2) The ASA(ALT) has the authority to approve the selection report or return it to the chairperson for appropriate revision. See Appendix GG for further delegation.

5136.604 Performance evaluation.

See 5142.1503-90 for the requirements to prepare contractor past performance evaluations on architect-engineer contracts.

5136.609 Contract clauses.

5136.609-1 Design within funding limitations.

(c)(1) The head of the contracting activity shall make the determination at FAR 36.609-1(c)(1). See Appendix GG for further delegation.

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PART 5137 - SERVICE CONTRACTING

Sec.

5137.102-90	Subpart 5137.1 - Service Contracts - General	5137.590-6	Acquisition strategy content.
5137.104	Policy.	5137.590-7	Data collection and reporting.
5137.112	Personal services contracts.		Subpart 5137.72 - Educational Service Agreements
5137.113-1	Government use of private sector temporaries.	5137.7204	Format and clauses for educational service agreements.
5137.170	Waiver of cost allowability limitations.	5137.7204-90	Establishing educational service agreements.
5137.170-2	Approval of contracts and task orders for services.	5137.7204-91	Purchase requests.
	Approval requirements.	5137.7204-92	Ordering procedures.
	Subpart 5137.2 - Advisory and Assistance Services	5137.7204-93	Distribution of orders.
5137.204	Guidelines for determining availability of personnel.	5137.7204-94	Gratuitous agreements.
	Subpart 5137.5 - Management Oversight of Service Contracts		Subpart 5137.74 - Services at Installations Being Closed
5137.503	Agency-head responsibilities.	5137.7401	Policy.
5137.590-1	Definitions.		Subpart 5137.90 - Security Clearances and Identification for
5137.590-2	Applicability.		Contractor Personnel
5137.590-3	Review thresholds.	5137.9001	Responsibilities.
5137.590-4	Review procedures.		Subpart 5137.91 - Accounting for Contract Services
5137.590-5	Reserved.	5137.9101	Policy.

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Subpart 5137.1 - Service Contracts - General

5137.102-90 Policy.

Department of Defense Instruction (DoDI) 5000.74, Defense Acquisition Services, dated 5 January 2016, is the primary authority for service acquisitions.

5137.104 Personal services contracts.

(b)(i) The head of the contracting activity (HCA) will make the determination as required by DFARS 237.104(b)(i) to authorize contracts pursuant to 10 U.S.C. 129b and 5 U.S.C. 3109. See [Appendix GG](#) for further delegation. When a blanket determination and findings (D&F) applies, the contracting officer will include in the contract file a copy of the blanket D&F and a statement signed by the contracting officer clearly showing why the blanket D&F is applicable to the proposed contract.

(ii)(C)(2) The HCA for the U.S. Army Medical Command must approve requirements for services at DFARS 237.104(b)(ii)(C)(2). See [Appendix GG](#) for further delegation.

(iii)(A)(2) The HCA will make the determination as required by DFARS 237.104(b)(iii) to authorize contracts pursuant to 10 U.S.C. 129b(d). See [Appendix GG](#) for further delegation.

(S-90) Contracting officers will ensure that purchase requests for personal services in the areas listed in DA Pamphlet 25-91 (Visual Information Procedures) have been approved by the local multimedia/visual information activity. See Army Regulation 25-1.

5137.112 Government use of private sector temporaries.

Direct questions about acquisition of these services to the civilian personnel office.

5137.113-1 Waiver of cost allowability limitations.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has authority to make the determination at FAR 37.113-1. See [Appendix GG](#) for further delegation.

5137.170 Approval of contracts and task orders for services.

5137.170-2 Approval requirements.

(a) *Acquisition of services through a contract or task order that is not performance based.*

(1) The HCA has authority to approve actions for the dollar threshold identified at DFARS 237.170-2(a)(1). See [Appendix GG](#) for further delegation.

(2) The senior procurement executive has authority to approve actions for the dollar threshold identified at DFARS 237.170-2(a)(2). See [Appendix GG](#) for further delegation.

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Subpart 5137.2 - Advisory and Assistance Services

5137.204 Guidelines for determining availability of personnel.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has authority to make the determination at FAR 37.204. See [Appendix GG](#) for further delegation.

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Subpart 5137.5 - Management Oversight of Service Contracts

5137.503 Agency-head responsibilities.

Army Regulation 70-13, Management and Oversight of Service Contracts, chapter 2, implements the responsibilities set forth in FAR 37.503(a), (b) and (d). See 5107.5 for implementation of FAR 37.503(c) and DFARS 237.503.

5137.590-1 Definitions.

As used in this section –

“Acquisition of services” means the execution of one or multiple contracts or other instruments committing or obligating funds (e.g., fund transfer, orders under the Federal Supply Schedules or other existing contracts, etc.) to acquire services for a specified requirement.

“Decision authority” means the official with review and approval responsibility as designated and associated with the thresholds at 5137.590-3.

“Information Technology (IT) services” means the performance of any work related to IT and the operation of IT, including National Security Systems. This includes outsourced IT-based business processes, outsourced information technology and outsourced information functions.

“Service” means the engagement of the time and effort of a contractor whose primary purpose is to perform an identifiable task, or tasks, rather than to furnish an end item of supply.

5137.590-2 Applicability.

(a) Oversight of services acquisition is the shared responsibility of requiring activities, contracting activities, and the Office of the ASA(ALT). See DoDI 5000.74, Defense Acquisition of Services, section 2 for applicability of the instruction and this subpart.

(b) Except as provided in paragraphs (d) and (e) below, and DoDI 5000.74, paragraph 1.1. b, the requirements in this section apply to service acquisitions including any service acquisition determined to be of special interest by the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)), the ASA(ALT), the Deputy Assistant Secretary of the Army (Procurement) (DASA(P)), and the Senior Services Manager (SSM).

(c) The requirements in this section also apply to any acquisition of services that is made through the use of a contract or task order entered into or issued by an agency other than the DoD, unless the non-defense agency has certified in accordance with FAR 17.703(a).

(d) Task orders executed within a service acquisition reviewed pursuant to this subpart do not require a separate acquisition strategy or review, provided the contracting officer issues the task order consistent with any conditions specified by the acquisition strategy decision authority. A separate acquisition strategy may be executed for complex task orders.

(e) Decision authorities shall retain the ability to respond rapidly to emergencies. Accordingly, the decision authority may approve either verbally or electronically services determined to be an emergency acquisition in accordance with FAR 18.001(a), (b) or (c). This procedure requires a formal notification of intent by the contracting officer to the decision authority. This procedure also requires the submission of a formal acquisition strategy to the decision authority within 30 days of the notice to proceed.

5137.590-3 Review thresholds.

(a) DoDI 5000.74, Defense Acquisition of Services, dated 5 January 2016 (incorporating change 2, 31 August 2018) sets forth review thresholds for review of Acquisition Strategies. The Army Acquisition Executive (AAE) has delegated the authority for Army Acquisition of Services Categories. See [Appendix GG](#) for delegations. Special interest programs may be designated by the USD(AT&L) regardless of the estimated dollar value.

(b) After approval of the acquisition strategy, the acquisition may proceed, and the contracting officer may release the final solicitation, subject to the separate peer review process outlined in DFARS 201.170 and in AFARS 5101.170, and any other required local reviews.

5137.590-4 Review procedures.

The HCA shall establish procedures for reviews of service acquisitions as delegated. Contracting officers shall forward, through the contracting chain as necessary, service acquisitions meeting the review thresholds identified in [Appendix GG](#) to the appropriate approval authority for review and approval prior to issuance of the solicitation. For service acquisitions requiring USD(AT&L), DASA(P) or SSM review and approval, the HCA (or SCO if delegated) will submit the acquisition

strategy via the TMT to the Office of the DASA(P), ATTN: Senior Services Manager usarmy.pentagon.hqda-asa-alt.list.saal-p-ssm@mail.mil. At a minimum, the strategy will contain all the information included at 5137.590-6.

5137.590-5 Reserved.

5137.590-6 Acquisition strategy content.

(a) At a minimum, the acquisition strategy will address the following:

(1) *Requirement.* The outcomes to be satisfied and if such outcomes are performance-based (see FAR subpart 37.6). If not performance-based, obtain the Senior Procurement Executive's approval for acquisitions exceeding the dollar threshold identified at DFARS 237.170-2(a)(2). Address the service acquisition measures of success and how the requirement will be satisfied or was previously satisfied.

(i) Will the requirement be satisfied through the use of a non-DOD contract? If so, indicate whether the appropriate official has approved the acquisition in accordance with the policy and procedures described at 5117.770.

(ii) Include a discussion of the procurement history.

(iii) Address challenges that drive the mission or acquisition approach.

(iv) Indicate if there is any congressional interest in the requirement.

(v) Discuss opportunities for strategic sourcing.

(vi) All acquisitions of IT services, regardless of dollar value, are subject to the Clinger-Cohen Act: 40 U.S.C. 11101 et seq. Discuss the specific applicability and implications of the Clinger-Cohen Act.

(vii) Describe the use of Category Management procedures when planning for this acquisition. Category Management is the business practice of buying common goods and services using an enterprise approach to reduce redundancies, increase efficiencies and drive savings from Government acquisition programs. All Category Management guidance/terminology is explained in Memorandum 19-13, dated 20 March 2019, titled, Category Management: Making Smarter Use of Common Contract Solutions and Practices. The Army implemented Category Management in a memorandum released on 06 February 2020, titled Category Management Implementation and Execution.

(a) Discuss review of existing Spend Under Management (SUM) contracts and how the command analyzed specific requirement in context of all forecasted contract requirements within the command/enterprise.

(b) If a SUM contract was not utilized, provide rationale for utilizing a Tier 0 contract.

(2) *Risk Management.* Provide an assessment of current and potential technical, cost, schedule and performance risks, the level of stated risks, and a risk mitigation plan.

(3) *Competition.* Explain how the acquisition will provide for full and open competition. If other than full and open competition applies to the acquisition, explain why and include a citation of the statutory authority that allows for other than full and open competition. Address plans for competition for any foreseeable follow-on acquisitions.

(i) Describe the nature and extent of the market research that the Government acquisition team conducted. This should, at a minimum, address the identification of small business sources capable of performing the services and discuss how this information impacted the acquisition strategy for both prime and subcontracting opportunities.

(ii) Is this a consolidated requirement? If so, indicate whether appropriate official has approved the consolidation (see 5107.170-3(a)(3)).

(4) *Socio-Economic Implications.* Address how the new acquisition will support the achievements of small business goals and targets. Address how the new acquisition will support any other socio-economic program and/or required-source program, such as AbilityOne.

(i) If this is a bundled requirement, include the benefit analysis as prescribed in the DoD Benefit Analysis Guidebook located at: http://www.acq.osd.mil/osbp/docs/benefits_analysis_guidebook.pdf.

(ii) Indicate whether the Small Business Administration procurement center representative has concurred on the DD Form 2579.

(iii) Include a discussion of subcontracting potential and goals.

(5) *Business Arrangements.* Address how the acquisition will be funded, the type of business arrangements anticipated (e.g., single contract, multiple award task order contract, task orders under existing multiple award contracts, interdepartmental transfers, and interdepartmental purchase requests), the duration of each business arrangement (base period and all option periods), cost estimate for the total planned acquisition, and pricing arrangements (e.g., fixed price, cost reimbursement, time and materials, labor hour, or variations, based on guidance in FAR part 16 and, for commercial services, in FAR part 12). At a minimum, address the following:

(i) Include the total estimated dollar value of the procurement, to include all options.

- (ii) Address whether funding is available and the type of funds that will be used.
 - (iii) Address the contract type and the basis for selection. If the contracting officer anticipates using a contract type with award fee, include a discussion of the award fee plan, related criteria and evaluation process to include how the award fee evaluation will incorporate attainment of the metrics.
 - (iv) Assess long-term continuing requirements using cost-type contracts for conversion to fixed price or other lower risk contractual arrangement, especially when the contracting officer decides to use a cost-type contract after initial analysis indicates that a fixed-price or other low-risk contract instrument may be appropriate.
 - (v) Discuss the source selection process, including whether it will be formal or informal, proposed evaluation criteria, and the basis for award. If the procurement will use a formal source selection process, do not identify the name of the SSA in the strategy.
 - (vi) Discuss any waivers or deviations that will be required.
 - (vii) Discuss contract administration to include the involvement of the contracting officer's representative and/or the Defense Contract Management Agency.
 - (viii) Discuss the existing or planned management approach following contract award to include the tracking procedures or processes used to monitor contract performance. This approach could include, but not be limited to, a quality assurance surveillance plan and written oversight plans and responsibilities.
 - (ix) Include a milestone schedule which contains key points up to time of award.
- (6) *Multi-year contracts*. If the acquisition strategy calls for a multi-year service contract as defined in FAR subpart 17.1 (see also DFARS 217.171) under the authority of 10 U.S.C. 2306c, the acquisition strategy must address the Army's plans for budgeting for termination liability.
- (7) *Leases*. Include a lease-purchase strategy if required by OMB Circular A-94, Section 13.
- (8) *Metrics*. Address the cost, the schedule and the performance metrics to include the plan for measuring service acquisition outcomes against requirements. If the acquisition strategy does not include metrics, the contracting officer must submit the metrics for the decision authority approval prior to execution of any business instrument (e.g., contract, military interdepartmental purchase request (MIPR)) that initiates the acquisition.

5137.590-7 Data collection and reporting.

- (a) Data identified in DoDI 5000.74 Enclosure 6 should be collected by the Office of the Senior Service Manager, for all requirements regardless of dollar amount, and reported in the Annual DoD Services Acquisition Report. Data collection will be automated, as it is already captured in the DoD standard procurement data systems.
- (b) Post award peer reviews will be done in accordance with 5101.170(b)(vi) for actions with a total planned dollar value of \$250 million or more but less than \$1 billion. For actions over \$1 billion, reviews will be done in accordance with 5101.170(a).

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Subpart 5137.72 - Educational Service Agreements

5137.7204 Format and clauses for educational service agreements.

Contracting officers may use DD Form 1155 or Standard Form 26, as appropriate, as order forms under educational service agreements.

5137.7204-90 Establishing educational service agreements.

One of the offices in 5137.7204-93 will furnish requests and information necessary for the establishment of an educational service agreement.

5137.7204-91 Purchase requests.

- (a) Requests to issue an order under the educational service agreement must include –
- (1) The estimated cost of training by year, semester, term, or quarter;
 - (2) The authority to adjust cost figures without requesting approval whenever the actual cost of a course will exceed the estimated cost by less than \$100, except when the course is taught by professors of military science; and
 - (3) The information in 5137.7204-92(c)(1)-(4).
- (b) The contracting officer shall obtain additional funds in writing from the funding activity when the actual cost of a course will exceed the estimated cost by \$100 or more, except when professors of military science teach the course.

5137.7204-92 Ordering procedures.

- (a) The contracting officer shall issue a separate order for each required training session (e.g. year, semester, term, or quarter), and obligate funds to cover the instruction of those individuals identified on the order form for the period specified.
- (b) The contracting officer may issue an order for the next fiscal year prior to the availability of funds, notwithstanding 5132.7 to preclude delays in enrollment. Insert the clause in FAR 52.232-18, Availability of Funds, in the order. When the funds become available, the contracting officer shall use Standard Form 30 to modify the order to cite the appropriation chargeable and to delete the Availability of Funds clause.
- (c) An order may authorize the enrollment of any number of military personnel or Reserve Officers' Training Corps (ROTC) scholarship cadets and must –
- (1) Identify each individual authorized to enroll by name and rank; for ROTC scholarship cadets, show social security number in lieu of rank;
 - (2) Identify the individual as an Army Medical Department member or ROTC scholarship cadet, when applicable;
 - (3) Identify each course for which the individual is enrolling and its actual or estimated cost;
 - (4) State the appropriation chargeable for the instruction of each individual; and
 - (5) Include the statement: "Whenever the actual cost of a course will exceed the estimated cost shown on this order by \$100 or more, the Contractor shall submit a written request for approval to the Contracting Officer prior to commencing instruction."

5137.7204-93 Distribution of orders.

Distribute one copy of each order, modification, and payment voucher as follows –

- (a) For Army Medical Department personnel,
Commander, AMEDDC&S, Department of Health Education and Training
Attn: MCCS-HE
2377 Greeley Road, Suite B
Fort Sam Houston, TX 78234-5075;
- (b) The appropriate professor of military science for ROTC scholarship cadets;
- (c) For Army officer personnel other than those identified in (a) and (b),
Office of the Deputy Chief of Staff, G1
Director of Military Personnel Management, Officer Division
Attn: DAPE-MPO-S
300 Army Pentagon
Washington DC 20310-0300;
- (d) For Army enlisted personnel other than those identified in (a),
Office of the Deputy Chief of Staff, G1

Director of Military Personnel Management, Enlisted Division
Attn: DAPE-MPE-PD
300 Army Pentagon
Washington DC 20310-0300.

5137.7204-94 Gratuitous agreements.

- (a) A gratuitous agreement is an agreement with a civilian educational institution or with a commercial firm for training of military personnel for which the Government does not pay.
- (b) One of the offices in 5137.7204-93 will furnish requests and information necessary for the execution of a gratuitous agreement to the contracting office.
- (c) The contracting officer shall furnish two copies of the gratuitous agreement to the appropriate addressee in 5137.7204-93. In addition, the contracting officer shall furnish a copy of the agreement to all Army activities likely to have use for the training covered by the agreement.

Subpart 5137.74 - Services at Installations Being Closed

5137.7401 Policy.

(c) The head of the contracting activity makes the determination at DFARS 237.7401(c). See [Appendix GG](#) for further delegation.

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Subpart 5137.90 - Security Clearances and Identification for Contractor Personnel

5137.9001 Responsibilities.

The contracting officer is responsible for identifying contractor required security clearances in the solicitation and including the DD Form 254 as an attachment. The contracting officer is also responsible for including the process and procedures for contractor personnel to obtain identification cards, tags, and badges.

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Subpart 5137.91 - Accounting for Contract Services

5137.9101 Policy.

(a) Contracting officers shall ensure that the requirement to report contractor manpower is included in all contracts, task/delivery orders and modifications. The cognizant contracting officer shall include a separate line item in Section B of the contract to allow for payment in compliance with this requirement.

(b) Report all services contracts that meet the threshold outlined in FAR 4.1703 – Reporting Requirements. The list of contracts for which reporting is not applicable is located on the Assistant Secretary of the Army Manpower and Reserve Affairs (ASA(M&RA)) website <http://www.asamra.army.mil/scra/documents/ServicesContractApprovalForm.pdf>.

(c) The Under Secretary of Defense for Acquisition & Sustainment established services contractor reporting in www.SAM.gov on October 15, 2020. It provides most of the source data for compliance with section 2330a of Title 10, United States Code.

(d) Enter data into the www.SAM.gov system at any time during the contract's period of performance. However, data must be accurate and complete and entered into www.SAM.gov not later than October 31 after the completion of each fiscal year or part of a fiscal year for which such contract is active.

(e) The Contractor Manpower Reporting application is available at <https://www.SAM.gov>.

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PART 5138 - FEDERAL SUPPLY SCHEDULE CONTRACTING

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PART 5139 - ACQUISITION OF INFORMATION TECHNOLOGY

Sec.

5139.101	Subpart 5139.1 - General	5139.7402	Policy.
5139.101-90	Policy.	5139.7602	Subpart 5139.76 - Cloud Computing
	Policy.		Policy and Responsibilities.
	Subpart 5139.74 - Telecommunications Services		

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Subpart 5139.1 - General

5139.101 Policy.

(1) The head of the contracting activity has the authority to make the determination under DFARS 239.101(1). See Appendix GG for further delegation.

(2) All information technology (IT) purchases must be submitted through the Information Technology Approval System (ITAS). The ITAS approval memo and supporting documentation shall be part of the requirements package submitted to the Contracting Officer and shall also be part of the resulting solicitation and contract file documentation. The ITAS Approval website is located at <https://cprobe.army.mil/enterprise-portal/web/itas/home>.

5139.101-90 Policy.

(a) *Commercial information technology hardware and software.*

(1) The Army's Computer Hardware, Enterprise Software and Solutions (CHES) program, under the Program Executive Office Enterprise Information Systems, is the mandatory source for commercial IT hardware and software purchases. CHES contracts provide IT products and services that comply with U.S. Army Network Enterprise Technology Command, Army and DoD policy and standards. Purchasers of commercial hardware and software must satisfy their IT requirements by utilizing the Joint and Enterprise License Agreements (J/ELA), DoD Enterprise Software Initiative (ESI) agreements, and/or CHES contracts first, regardless of dollar value or financial appropriation. Additionally, purchasers of IT requirements through a third party such as a system integrator must ensure solicitations and contract vehicles include the requirement to purchase through the CHES and the DoD ESI agreements.

(2) Any IT hardware or software purchase made outside of the CHES contracts requires an Army Deputy Chief of Staff (DCS), G-6 approved ITAS Approval, unless the purchase meets one of the exceptions in (a)(3) below. The ITAS Approval along with supporting documentation shall be part of the procurement package submitted to the Contracting Officer and shall also be part of the resulting solicitation and contract file(s). Supporting documentation must include documentation submitted with the ITAS Approval request such as a CHES Statement of Non-Availability (SONA) for items that are not available from CHES or other rationale for not using CHES. The CHES website located at <http://ches.army.mil> provides a complete list of CHES contracts, the DoD ESI as well as information concerning ITAS Approvals and CHES SONAs. The ITAS Approval website is located at <https://cprobe.army.mil/enterprise-portal/web/itas/home>.

(3) *Exceptions.*

(i) The Product Lead, Common Hardware Systems (PdL CHS) coordinates across the Army's computing environments and tactical program offices to modify commercially available off-the-shelf IT to meet specific program requirements for transport or ruggedization, to ensure configuration and end of life management. Organizations that receive written authorization from PdL CHS to use a CHS contract are exempt from the requirement to obtain a CHES SONA. In such circumstances, requiring activities will provide PdL CHS's written authorization to the contracting officer as part of the procurement package. Contracting Officers shall place the written authorization in the contract file.

(ii) Upon receipt of the CHES SONA from the requiring activity, Contracting Officers may purchase commercial IT hardware or software outside of the CHES contracts, for procurements in support of

Non-Program Executive Officer (PEO)/Project Manager (PM) managed Military Intelligence Program (MIP) systems (Non-PEO/PM managed MIP systems will be requested using the Army G-2 Automated Systems Integration Database system).

(b) *Information technology services.*

(1) The Army's CHES program is the mandatory source for the purchase of commercial IT services. Purchasers of commercial IT services must satisfy their requirements by utilizing the CHES contracts first, regardless of dollar value or financial appropriation. When procuring IT services, contracting personnel must consider setting aside requirements for small businesses and other small business categories in accordance with FAR 13.003(b)(1) and FAR subpart 19.5. Contracting Officers shall ensure that the procurement package contains sufficient supporting documentation to assist the contracting officer in determining whether to set aside the requirement for small businesses and other small business categories in accordance with FAR 13.003(b)(1) and FAR subpart 19.5. Purchasers of commercial IT services that meet the requirement for small business set-asides shall use the small business/socioeconomic set-aside functions within the CHES RFP tool. If no small business within the CHES contracts can satisfy the requirement, a CHES SONA should be requested.

(2) Any purchase of commercial IT services made outside of the CHES contracts requires an Army DCS, G6 approved ITAS Approval. The ITAS Approval along with supporting documentation shall be part of the procurement package submitted to the Contracting Officer and shall also be part of the resulting solicitation and contract file(s). Supporting

documentation must include documentation submitted with the ITAS Approval request such as a CHES SONA for items that are not available from CHES S, market research analysis, or other rationale for not using CHES S. The CHES S website located at <http://chess.army.mil> provides a complete list of CHES S contracts as well as information concerning ITAS Approval and CHES S SONAs. The ITAS Approval website is located at <https://cprobe.army.mil/enterprise-portal/web/itas/home>.

(3) If a services requirement includes any IT hardware and/or software, the Contracting Officer must ensure solicitations and contract vehicles include the requirement to purchase through the J/ELA, DoD ESI agreements, and/or CHES S contracts. If a services requirement includes non-CHES S IT hardware or software, personnel must secure an Army DCS, G-6 approved ITAS Approval for the non-CHES S IT hardware and software per paragraph (a)(2) in this section. The procurement package and contract file documentation requirements of paragraph (a)(2) apply to hardware and software purchased as part of IT services requirements.

(c) *Training*. Senior contracting officials must ensure that contracting personnel receive appropriate CHES S training, and should ensure that contracting personnel document the training on their individual development plans. Personnel can request CHES S training and view the training slides at <https://chess.army.mil/UserTrainingRequest>.

(d) *Cloud Computing*. The Army Enterprise Cloud Management Office (ECMO) is the central point for all efforts and processes related to cloud adoption across the Army. The ECMO will establish a standardized cloud architecture which is intended for use by all Army mission areas.

ECMO will provide enterprise-level contracts for commercial CSP offerings, common services, and application migration support. Where feasible and cost effective, the ECMO will leverage DoD Enterprise contracts such as the Joint Enterprise Defense Infrastructure (JEDI) contract; while establishing Army Enterprise Cloud Contracts based on mission requirements.

Subpart 5139.74 - Telecommunications Services

5139.7402 Policy.

(b)(4) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may authorize actions as described in DFARS 239.7402(b)(4). See Appendix GG for further delegation.

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Subpart 5139.76 - Cloud Computing

5139.7602 Policy and Responsibilities.

(1) Contracting Officers are responsible to ensure that Purchase Request Packages for NEW Contracts include a PWS with the approved/standard language in accordance with 5111.106 unless a waiver approved by ECMO is included. The standard language is provided in Appendix HH. The waiver must be filed in the official contract file. This includes follow-on contracts.

(2) Contracting Officers are responsible to ensure Purchase Request Packages for Exercising an Option on an Existing Contracts are coordinated with ECMO IAW 5111.106. The coordination document shall be filed in the contract file.

(3) Contracting Officers are responsible to ensure Purchase Request Packages for issuing a New Order against an Existing Contract are coordinated with ECMO IAW 5111.106. The coordination documentation shall be filed in the contract file.

(4) For New contracts to Cloud Service Providers, Contracting Officers are responsible to ensure maximum use of the Common and Data Service Descriptions as defined by ECMO in the Army Cloud Plan and issued to Contracting by DASA(P). See Appendix HH.

(5) For New contracts for Cloud Migration, Hosting, and Managed Services, Contracting Officers and requiring activities will maximize use of the CLIN/SLIN descriptions. See Appendix HH.

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PART 5140 - RESERVED

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PART 5141 - ACQUISITION OF UTILITY SERVICES

Sec.

5141.102 Subpart 5141.1 - General
Applicability.

5141.201 Subpart 5141.2 - Acquiring Utility Services
Policy.

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Subpart 5141.1 - General

5141.102 Applicability.

See Army Regulation 420-41 Acquisition and Sale of Utilities Services.

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Subpart 5141.2 - Acquiring Utility Services

5141.201 Policy.

In accordance with Army Regulation 420-41, the Chief of Engineers is the Department of the Army power procurement officer and is responsible for the administration of the purchase and sale of utility services and for policies, engineering, rates, and legal sufficiency in connection with all utility services transactions and contracts in which the Army has a monetary interest. The Chief of Engineers may enter into definite term utility contracts for utility services for periods not to exceed 10 years. The Chief of Engineers may redelegate this authority to the deputy Army power procurement officer.

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PART 5142 - CONTRACT ADMINISTRATION AND AUDIT SERVICES

Sec.

5142.190	Subpart 5142.1 - Contract Audit Services	5142.602	Assignment and location.
5142.190-1	Follow-up on contract audit reports.	5142.703	Subpart 5142.7 - Indirect Cost Rates
5142.190-2	Responsibilities.	5142.703-2	General.
5142.190-3	Tracking of contract audit report recommendations.	5142.1502	Certification of indirect costs.
5142.190-4	Reporting.	5142.1503	Subpart 5142.15 - Contractor Performance Information
	Overage Audit Review Boards.	5142.1503-90	Policy.
	Subpart 5142.2 - Contract Administration Services	5142.7100	Procedures.
5142.202	Assignment of contract administration.		Subpart 5142.71 - Voluntary Refunds
	Subpart 5142.3 - Contract Administration Office Functions		General.
5142.302	Contract administration functions.		
	Subpart 5142.6 - Corporate Administrative Contracting Officer		

(Revised 23 March 2022)

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Subpart 5142.1 - Contract Audit Services

5142.190 Follow-up on contract audit reports.

5142.190-1 Responsibilities.

- (a) The Deputy Assistant Secretary of the Army (Procurement) is the Army's contract audit follow-up official.
- (b) The senior contracting official (SCO) shall perform the functions of the Army's contract audit follow-up official for their respective commands. SCOs shall –
- (1) Establish Overage Audit Review Boards;
 - (2) Ensure that the effective resolution and disposition of audit findings and recommendations in a timely manner while fully protecting the Government's interests is a factor in organizational and individual performance standards and objectives; and
 - (3) Maintain close surveillance of all contract audit reports, resolve, and dispose any audit reported.
- (c) Chiefs of contracting or contract administration offices shall track and assist contracting officers in the resolution and disposition of those audit recommendations which appear unlikely to be resolved within six months of the date of an audit report.
- (d) Contracting officers shall –
- (1) Resolve the recommendations as described in DoD Instruction (DoDI) 7640.02 not later than six months from the date of the audit report and dispose those recommendations within 12 months;
 - (2) Invite the auditor to participate in the review when it is considered necessary; and
 - (3) Appear before the Overage Audit Review Board to discuss the resolution and disposition of any audit reported in accordance with [5142.190-4 Overage Audit Review Boards.](#)(a)(4).

5142.190-2 Tracking of contract audit report recommendations.

- (a) Centrally track all contract audit reports from request for audit through receipt, resolution and disposition. Each contracting or contract administration office, including satellite offices such as Government-owned contractor-operated, shall establish a single entity for requesting, receiving and tracking all audit reports. Provide the activity name, address, attention symbol, point of contact and telephone number of the single entity to the contract administration services office and Defense Contract Audit Agency regions involved.
- (b) Centrally track and report audit report data in accordance with DoDI 7640.2. Maintain a file for each audit report and include in each file the following information:
- (1) Report number.
 - (2) Activity address code.
 - (3) Issuing agency.
 - (4) Date of report.
 - (5) Contractor name.
 - (6) Contract number(s).
 - (7) Organization responsible for disposition.
 - (8) Contracting officer responsible for disposition.
 - (9) Total amount subjected to audit.
 - (10) Total questioned costs.
- (c) For reportable audit reports, the central files shall also include the following information:
- (1) Type(s) of recommendations contained in report. Use the codes in DoDI 7640.2.
 - (2) Target date of resolution.
 - (3) Actual date of resolution.
 - (4) Target date for disposition.
 - (5) Date of final decision (if any) of contracting officer.
 - (6) Date of filing with Armed Services Board of Contract Appeals or court (if any) and docket or case number.
 - (7) Disposition results in terms of questioned costs sustained.

5142.190-3 Reporting.

Each contracting or contract administrative office shall submit the Status Report on Specified Contract Audit Reports (RCS DD-IG (SA)1580), as required by DoDI 7640.2 to reach the addressee at 5101.290(b)(2)(ii)(A), not later than 15 April

and 15 October of each year. Obtain the program and instructions from the addressee at 5101.290(b)(2)(ii)(A). Negative reports are required.

5142.190-4 Overage Audit Review Boards.

(a) Make every effort to resolve audit recommendations within six months of the date of an audit report and dispose them within 12 months. Each SCO shall establish and chair an Overage Audit Review Board (the Board) to review the status of open audits reported as overage or unresolved on the Status Report on Specified Contract Audit Reports. The SCO shall chair the Board. The Board shall –

- (1) Be comprised of the contracting activity's senior legal, contracting, and pricing personnel;
- (2) Review all open, unresolved audits over six months old and resolved audits over 12 months old that are reported as open on the most recent Status Report on Specified Contract Audit Reports;
- (3) Meet early in November to consider those audits reported on the report due 15 October and early in May to consider those audits listed on the report due 15 April. The Board may meet at other times, as necessary;
- (4) Hear the contracting officer's presentation of efforts to resolve and dispose the audit recommendations;
- (5) Assist the contracting officer in developing a plan of action for timely resolution and disposition of the audit recommendations; and
- (6) Provide the contracting officer with necessary guidance and assistance to resolve and dispose the audit recommendations. This shall include reordering priorities, assigning additional or alternate resources or committing the personal attention of the HCA or the SCO to the effort.

(b) Upon completion of its review, but not later than 30 November and 31 May, the Overage Audit Review Board shall submit to the addressee in 5101.290(b)(2)(ii)(A), under a summary cover letter from the SCO, a detailed plan of action for the resolution and disposition of each audit report in the four major categories listed in (1).

- (1) The Board shall separate the audits into the following four major categories for reporting:
 - (i) 6-12 months old, unresolved.
 - (ii) Overage (over 12 months old), unresolved.
 - (iii) Overage (over 12 months old), resolved.
 - (iv) Resolution date slip from previous report.
- (2) Each plan of action shall contain the following information:
 - (i) Audit report number.
 - (ii) Report date.
 - (iii) Contractor name.
 - (iv) Type of audit.
 - (v) Cost questioned or cost avoidance.
 - (vi) A narrative plan of action for resolution and disposition of the audit findings.
 - (vii) Target resolution date.
 - (viii) Target disposition date.
 - (ix) Contracting officer's name.
 - (x) Contracting officer's phone number.
- (3) The Board's report shall describe the action taken to resolve the audit and identify attendees and their role in the process, such as the contracting officer.

Subpart 5142.2 - Contract Administration Services

5142.202 Assignment of contract administration.

(c)(2) The head of the contracting activity shall approve the delegation as stated in FAR 42.202(c)(2). See Appendix GG for further delegation.

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Subpart 5142.3 - Contract Administration Office Functions

5142.302 Contract administration functions.

(a)(S-75)(c)(1)(i)(C) The head of the contracting activity shall direct a formal program of Government monitoring of contractor policies, procedures, and practices for controlling costs at contractor locations as stated in DFARS PGI 242.302(a)(S-75)(c)(1)(i)(C). See Appendix GG for further delegation.

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Subpart 5142.6 - Corporate Administrative Contracting Officer

5142.602 Assignment and location.

(a)(2) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) approves the need for a CACO. See Appendix GG for further delegation.

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Subpart 5142.7 - Indirect Cost Rates

5142.703 General.

5142.703-2 Certification of indirect costs.

(b)(1) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may waive the certification requirement at FAR 42.703-2. See Appendix GG for further delegation.

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Subpart 5142.15 - Contractor Performance Information

5142.1502 Policy.

(d) *Orders under single-agency contracts.* Where the scope of the indefinite delivery contract is narrow or orders will be essentially similar, the contracting officer shall prepare reports at the base contract level.

5142.1503 Procedures.

(a)(1)(ii)(I) Contracting officer's representatives (CORs) will assist the contracting officer with entering objective performance information in the Contractor Performance Assessment Reports System (CPARS) for each contract or order assigned. The contracting officer may assign the COR the role of assessing official representative in CPARS.

(2) Include the contracting officer in the assessment process prior to forwarding a report to the contractor for review.

(2) See 5142.1503-90(a) for a list of CPARS assessing officials (AOs) for contracts in different business sectors.

(b)(2)(vi) The AO shall consider the extent to which the contractor complied with Department of Defense policy for item unique identification; see DFARS 211.274-2 Policy for item unique identification, and AFARS 5111.274-2.

(b)(4) The AO shall support the rating assigned to an element or sub-element with narrative rationale. Narratives shall clearly convey the rationale behind the rating to the contractor, as well as to a Government source selection official who is not familiar with the instant contract. This is especially important for any rating above or below satisfactory. The AO should support narratives with quantifiable or verifiable documentation. While larger or more complex efforts warrant greater detail, narratives should be clear and concise.

(f) See Army Regulation 715-30, as revised, for maintenance of past performance information that cannot be maintained in an unclassified database.

(h)(2) The contracting officer shall process the CPARS initial registration consolidated format and a CPARS access request form and shall ensure the CPARS focal point receives both documents to ensure completion of registration within 30 calendar days from award of a contract. CPARS registration formats are located at 5153.303-9 Initial registration and 5153.303-10 Access request.

5142.1503-90 Policy.

(a) The CPARS AOs are as follows:

Business Sector	CPARS Assessing Official
Systems	Program Manager (PM)
Operations Support	Contracting Officer
Services	Contracting Officer or PM*
Information Technology	Contracting Officer
Construction	Contracting Officer
Architect-Engineering	Contracting Officer
All other contracts	Contracting Officer

* The PM (program/project/product manager) is the assessing official for those service contracts providing technical or management support to the program office.

(b) The AO may prepare an out-of-cycle or "addendum" report if there is a need to record an extraordinary event prior to the next regularly scheduled evaluation or if it is necessary to report a meaningful occurrence during the period between physical completion of the contract and contract closeout. The AO shall prepare an addendum report in CPARS if any unusual or extraordinary action occurs during contract execution including the issuance of a show cause letter, stop work order or termination of the contract. Additionally, the AO may prepare addendum reports to record contractor's performance relative to contract close-out and other administrative requirements (e.g., final indirect cost proposals, technical data, etc.).

(c) For job order contracts, the contracting officer shall ensure completion of an assessment report for each order of \$700,000 or more.

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Subpart 5142.71 - Voluntary Refunds

5142.7100 General.

(4) Voluntary refunds must be approved by the head of the contracting activity as described in DFARS PGI 242.7100(4). See Appendix GG for further delegation.

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PART 5143 - CONTRACT MODIFICATIONS

Sec.

5143.204 Subpart 5143.2 - Change Orders
Administration.
5143.204-70-5 Exceptions.

5143.204-70-6 Allowable profit.
5143.205 Contract clauses.

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Subpart 5143.2 - Change Orders

5143.204 Administration.

5143.204-70-5 Exceptions.

(c) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) may waive the limitations under DFARS 243.204-70-2, 243.204-70-3, and 243.204-70-4. See Appendix GG for further delegation.

5143.204-70-6 Allowable profit.

The head of the contracting activity shall ensure the profit allowed reflects the conventions under DFARS 243.204-70-6. See Appendix GG for further delegation.

5143.205 Contract clauses.

(c) The contracting officer may change the period in which the contractor may assert claims under the clause at FAR 52.243-3, Changes—Time-and-Materials or Labor-Hours, to a period less than “30 days.”

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PART 5144 - SUBCONTRACTING POLICIES AND PROCEDURES

Sec.

Subpart 5144.3 - Contractors Purchasing System Reviews

5144.302

Requirements.

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Subpart 5144.3 - Contractors Purchasing System Reviews

5144.302 Requirements.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology), on a non-delegable basis, may raise or lower the \$50 million review level for contracts administered by the Army, if it is considered to be in the Government's best interest.

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PART 5145 - GOVERNMENT PROPERTY

Sec.

5145.102	Subpart 5145.1 - General Policy.	5145.301	Use and rental.
5145.190	Leasing personal property.	5145.390	Documentation of Government property in contracts.
	Subpart 5145.3 - Authorizing the Use and Rental of Government Property	5145.570-90	Subpart 5145.5 - Support Government Property Administration Storage at the Governments expense.

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Subpart 5145.1 - General

5145.102 Policy.

(e) The head of the contracting activity shall make the determination at FAR 45.102(e). See Appendix GG for further delegation.

(4) *Government-furnished property identification.*

(ii)(B) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has the authority to determine exceptions to the item unique identification requirement to tag, mark and label items used to support a contingency operation, or to facilitate defense against or recovery from nuclear, biological, chemical or radiological attack as set forth in DFARS 245.102(4)(ii)(B). See Appendix GG for further delegation.

(C)(1)(i) The responsible Program Executive Officer shall execute the determination and findings for all ACAT I programs.

(ii) The head of the contracting activity shall execute the determination and findings for all non-ACAT I programs. See Appendix GG for further delegation.

5145.190 Leasing personal property.

See Army Regulation 700-131.

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Subpart 5145.3 - Authorizing the Use and Rental of Government Property

5145.301 Use and rental.

(f) The head of the contracting activity shall provide prior approval where non-Government use is expected to exceed 25 percent of the total use of Government and commercial work performed. See Appendix GG for further delegation.

5145.390 Documentation of Government property in contracts.

Contracting officers must ensure that changes to Government property made over time are reflected by modifications to the contract.

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Subpart 5145.5 - Support Government Property Administration

5145.570-90 Storage at the Governments expense.

The approval authority for determinations that contractor inventory may be stored at the Government's expense for one year or more must be one level higher than the contracting officer.

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PART 5146 - QUALITY ASSURANCE

Sec.

5146.501 Subpart 5146.5 - Acceptance
5146.503 General.
Place of acceptance.

5146.702 Subpart 5146.7 - Warranties
General.

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Subpart 5146.5 - Acceptance

5146.501 General.

Include acceptance documentation as a permanent part of the contract file prior to contract closure.

5146.503 Place of acceptance.

When contemplating destination acceptance in solicitations and contracts, contracting officers shall—

(1) Verify the Department of Defense Activity Address Code (DoDAAC) of each receiving activity in the solicitation or contract (DoDAAC verification information is available via the Internet at <https://www.transactionservices.dla.mil/daasing/>);

(2) Prior to assigning acceptance responsibility, ensure that there is a registered acceptor available in Wide Area Workflow (WAWF) for each destination acceptance point (WAWF acceptor information is available at <https://wawf.eb.mil> under “Active DoDAACs and Roles”);

(3) When no WAWF acceptor is available at destination, use source acceptance or “acceptance at other” in WAWF;

(4) Not designate destination acceptance at a contractor location, but shall instead clearly designate a Government acceptance point within Section E of the contract schedule; and

(5) Clearly define the acceptance procedures in Section E.

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Subpart 5146.7 - Warranties

5146.702 General.

(c) See Army Regulation 700-139 for procedures on tracking and accumulating data on warranty costs.

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PART 5147 - TRANSPORTATION

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PART 5148 - VALUE ENGINEERING

Sec.

5148.102 Subpart 5148.1 - Policies and Procedures
Policies.
5148.104 Sharing arrangements.
5148.104-3 Sharing collateral savings.

Subpart 5148.2 - Contract Clauses
5148.201 Clauses for supply or service contracts.
5148.202 Clause for construction contracts.

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Subpart 5148.1 - Policies and Procedures

5148.102 Policies.

(a) The Assistant Secretary of the Army (Acquisition, Logistics and Technology) has authority to exempt individual contracts, or specific classes of contracts, from including value engineering provisions as prescribed by FAR 48.201 and 48.202. See Appendix GG for further delegation.

(b) Refer to the Department of the Army Pamphlet 70-3, 11 March 2014, paragraph 6-14, which is available via the Internet at https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/p70_3.pdf.

5148.104 Sharing arrangements.

5148.104-3 Sharing collateral savings.

(a) The head of the contracting activity shall make the determination at FAR 48.104-3(a). See Appendix GG for further delegation.

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Subpart 5148.2 - Contract Clauses

5148.201 Clauses for supply or service contracts.

(a)(6) See 5148.102(a).

(e) The head of the contracting activity shall make the determination at FAR 48.201(e). See Appendix GG for further delegation.

5148.202 Clause for construction contracts.

The head of the contracting activity shall make the determination at FAR 48.202. See Appendix GG for further delegation.

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PART 5149 - TERMINATION OF CONTRACTS

Sec.

	Subpart 5149.1 - General Principles	5149.402	Termination of fixed-price contracts for default.
5149.101	Authorities and responsibilities.	5149.402-3	Procedure for default.
5149.101-90	Contracts resulting from military interdepartmental purchase requests.	5149.501	Subpart 5149.5 - Contract Termination Clauses General.
5149.102	Notice of termination.	5149.501-70	Special termination costs.
5149.107	Audit of prime contract settlement proposals and subcontract settlements.	5149.7001	Subpart 5149.70 - Special Termination Requirements Congressional notification on significant contract terminations.
	Subpart 5149.4 - Termination for Default	5149.7003	Notification of anticipated contract terminations or reductions.
5149.401	General.		

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Subpart 5149.1 - General Principles

5149.101 Authorities and responsibilities.

(b)(i) Contracting officers should exercise the authority to terminate a contract for convenience of the Government only after full coordination with senior officials of the activity which requested establishment of the contract.

5149.101-90 Contracts resulting from military interdepartmental purchase requests.

Terminate contracts resulting from military interdepartmental purchase requests in accordance with DFARS 208.7004, DFARS PGI 208.7004-6 and 208.7004-7.

5149.102 Notice of termination.

The contracting officer shall notify the cognizant suspension and debarment official of all decisions to terminate a contractor for default. Send the notification to the suspension and debarment official in accordance with 5109.403. Include a copy of the contracting officer's notice of termination for default or cause to the contractor in accordance with FAR 49.102(a).

5149.107 Audit of prime contract settlement proposals and subcontract settlements.

(a) Within five calendar days after receipt from the contractor, send electronically all settlement proposals to the responsible audit office. Include inventory and accounting information and related documents.

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Subpart 5149.4 - Termination for Default

5149.401 General.

See 5142.1503-90(b) for the requirement to prepare a contractor past performance assessment report for all contracts or orders immediately upon termination for default.

5149.402 Termination of fixed-price contracts for default.

5149.402-3 Procedure for default.

(e)(4) Contracting officers should not terminate for default any contract with a small business firm to whom a Certificate of Competency was issued, or to whom loans were made with the Small Business Administration's participation, without prior written approval of the head of the contracting activity.

(f)(6) When unliquidated progress payments, advance payments, guaranteed loans, or anticipated excess repurchase costs are involved, the contracting officer must –

(A) Obtain from the administrative contracting officer a statement of the value of the inventory that may be available for offset against the outstanding financing; and

(B) Identify and state the approximate amount of the excess acquisition costs applicable.

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Subpart 5149.5 - Contract Termination Clauses

5149.501 General.

5149.501-70 Special termination costs.

(a) IAW DFARS 249.501-70, the Assistant Secretary of the Army (Acquisition, Logistics and Technology) shall approve use of clause at DFARS 252.249-7000. See Appendix GG for further delegation.

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Subpart 5149.70 - Special Termination Requirements

5149.7001 Congressional notification on significant contract terminations.

- (1) The contracting officer shall send to the Office of the Deputy Assistant Secretary of the Army (Procurement) (ODASA(P)) notifications of significant contract terminations –
 - (i) As soon as the contracting officer identifies a potential full or partial termination; and
 - (ii) Once the contracting officer has made a final decision to terminate.
- (2) The contracting officer is not authorized to release any termination notice or any information concerning the proposed significant contract termination until the Office of the Chief Legislative Liaison clears the termination notice. The ODASA(P) will coordinate notification with the Office of the Chief Legislative Liaison. ODASA(P) will then notify the contracting officer whether the action is cleared for termination.
- (3) The contracting officer shall send termination notifications in the format in DFARS PGI 249.7001. Send the unclassified notices through the senior contracting official (SCO) to the address at AFARS 5101.290(b)(2)(ii)(C).
- (4) See FAR 3.104-4(f)(1) if the notification discloses any contractor bid or proposal information or source selection information.

5149.7003 Notification of anticipated contract terminations or reductions.

- (b)(i) The requirements in DFARS 249.7003 apply for terminations or substantial reductions under major defense programs, notwithstanding the separate congressional notification required in DFARS 249.7001 and AFARS 5149.7001.
- (ii) Contracting officers shall send the Secretary of Labor notice required in DFARS 249.7003 to ODASA(P). ODASA(P) will be responsible for coordinating the notification to the Secretary of Labor.
- (iii) The contracting officer shall send termination notifications in the format in DFARS PGI 249.7001. Send the unclassified notices through the SCO directly to the address at 5101.290(b)(2)(ii)(C). Contracting officers and SCOs shall ensure the Secretary of Labor notice arrives at ODASA(P) with sufficient time for ODASA(P) to process and send the notice to the Secretary of Labor.
- (iv) If both DFARS 249.7001 and 249.7003 apply, the timing requirements of 249.7003 may necessitate release of the 249.7003(b)(2) notification before the 249.7001 notification. In such cases, the contracting officer shall provide the DFARS 249.7003(b)(2) notices within the required timeframe, but shall not provide the contractor with other information on the anticipated termination until the requirements at DFARS 249.7001 and 5149.7001 have been satisfied.

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**PART 5150 - EXTRAORDINARY CONTRACTUAL
ACTIONS AND THE SAFETY ACT**

Sec.

5150.101	Subpart 5150.1 - Extraordinary Contractual Actions	5150.102-1	Delegation of authority.
5150.101-3	General.	5150.102-2	Contract adjustments boards.
5150.102	Records.	5150.103	Contract adjustments.
	Delegation of and limitations on exercise of authority.	5150.103-5	Processing cases.

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Subpart 5150.1 - Extraordinary Contractual Actions

5150.101 General.

5150.101-3 Records.

(1)(iii) See DFARS PGI 250.103. Unless otherwise specified, the contracting officer is responsible for maintaining all records under subpart 5150.1. The Office of the Deputy Assistant Secretary of the Army (Procurement) will maintain a record of all memorandums of decision executed at the Secretariat level.

5150.102 Delegation of and limitations on exercise of authority.

5150.102-1 Delegation of authority.

(b) Contractor requests for contract adjustments are addressed by the Army Contract Adjustment Board. See AFARS 5150.102.

(d) The Secretary of the Army, on a non-delegable basis, has the authority to indemnify against unusually hazardous or nuclear risks, including extension of such indemnification to subcontracts.

5150.102-2 Contract adjustments boards.

The Assistant Secretary of the Army (Acquisition, Logistics and Technology) convenes the Army Contract Adjustment Board (ACAB) on an as-needed basis. In accordance with Headquarters, Department of the Army General Orders Number 2017-01 (and any successor document) the Office of the Army General Counsel provides the ACAB Recorder.

5150.103 Contract adjustments.

5150.103-5 Processing cases.

(1) Within five working days of receipt of a request for contract adjustment, regardless of dollar amount, the contracting officer shall send a copy, through procurement channels (See AFARS [5101.290 Routing documents and mailing addresses](#).(b)(2)(ii)(B)), to the following address:

Attn: SAGC, Recorder, Army Contract Adjustment Board
Office of the General Counsel
104 Army Pentagon
Washington, DC 20310-0104.

(2) Send documentation to the addressee in paragraph (1) of this section.

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PART 5151 - USE OF GOVERNMENT SOURCES BY CONTRACTORS

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PART 5152 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Sec.

5152.101	Subpart 5152.1 - Instructions for Using Provisions and Clauses Using part 5152.	5152.211-9001	Variations in Estimated Quantities—Subline Items.
5152.211-9000	Subpart 5152.2 - Texts of Provisions and Clauses Evaluation of Subline Items.	5152.237-9000	Adjustments to Contractors Coefficient for Option Years (Job Order Contracts).
		5152.247-7027	Riding gang members requirements.

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Subpart 5152.1 - Instructions for Using Provisions and Clauses

5152.101 Using part 5152.

(b) *Numbering.*

(2) *Provisions or clauses that supplement the FAR.*

(i)(C) Requests for approval of nonstandard clauses or provisions which are deviations, one time and recurring, must be processed in accordance with 5101.4.

(ii)(A) The Office of the Deputy Assistant Secretary of the Army (Procurement) (ODASA(P)) Procurement Policy Directorate (SAAL-PP), will assign clause and provision numbers for the AFARS and Army suborganizational level clauses in accordance with Appendix FF, the Department of the Army Plan for Control of Nonstandard Clauses. SAAL-PP will number Army provisions and clauses in the same manner in which the FAR numbers provisions and clauses, except if the contracting activity must publish the provision or clause in the *Federal Register* and codify it in Title 48, Code of Federal Regulations (see FAR 1.3 and 1.5), precede the number with "51."

(B) AFARS provision or clause numbers use a four digit sequential number in the 9000 series, e.g., -9000, -9001, and 9002. Army command, subordinate command or contracting offices provision or clause numbers also use a four-digit sequential number in the 9000 series.

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Subpart 5152.2 - Texts of Provisions and Clauses

5152.211-9000 Evaluation of Subline Items.

As prescribed in 5111.703(c)(i), insert the following provision:

EVALUATION OF SUB LINE ITEMS (DEC 2019)

Item Nos. _____ are subdivided into two or more estimated quantities and are to be separately priced. The Government will evaluate each of these items on the basis of total price of its subline items.

(End of provision)

5152.211-9001 Variations in Estimated Quantities—Subline Items.

As prescribed in 5111.703(c)(ii), insert the following clause:

VARIATIONS IN ESTIMATED QUANTITIES — SUB LINE ITEMS (DEC 2019)

This variation in estimated quantities clause is applicable only to item Nos. ____.

(a) Variation from the estimated quantity in the actual work performed under any second or subsequent subline item or elimination of all work under such a second or subsequent subline item will not be the basis for an adjustment in contract unit price.

(b) Where the actual quantity of work performed for item Nos. _____ is less than 85% of the quantity of the first subline item listed under such item, the contractor will be paid at the contract unit price for that subline item for the actual quantity of work performed and, in addition, an equitable adjustment shall be made in accordance with the clause at Federal Acquisition Regulation (FAR) 52.211-18, Variation in Estimated Quantities.

(c) If the actual quantity of work performed under item Nos. _____ exceeds 115% or is less than 85% of the total estimated quantity of the subline item under that item and/or if the quantity of the work performed under the second subline item or any subsequent subline item under item Nos. _____ exceeds 115% or is less than 85% of the estimated quantity of any such subline item, and if such variation causes an increase or a decrease in the time required for performance of this contract the contract completion time will be adjusted in accordance with the clause FAR 52.211-18, Variation in Estimated Quantities.

(End of clause)

5152.237-9000 Adjustments to Contractors Coefficient for Option Years (Job Order Contracts).

For job order contracts, insert the following clause in solicitations and contracts in accordance with 5117.9004-2(h).

ADJUSTMENTS TO CONTRACTOR'S COEFFICIENT FOR OPTION YEARS (JOB ORDER CONTRACTS) (FEB 2005)

Pricing of option periods, to include consideration of any adjustments shall be performed by an economic price adjustment for those periods, as follows:

An economic adjustment will be applied to the contract coefficient(s) addressing changes in the cost of labor, equipment and material in the Unit Price Book (UPB) (this includes consideration of Davis Bacon issues). This allows for economic increase or decrease of the prices in the UPB and serves to adjust line item prices by the percentage increase or decrease of the economic trend in the construction market. The economic price adjustment will be based on the Building Cost Index (BCI) found in the Market Trend pages of the Engineering News Record (ENR). The economic adjustment is not applied to the cost items comprising the coefficient. No upward adjustment shall apply to task orders awarded prior to the effective date of the adjustment, regardless of the date of commencement of work hereunder.

The adjustment will be made in accordance with the following equation. The resulting revised coefficient(s) shall be applied throughout the option year.

$$N = C + I$$

Where: N = New Coefficient

C = Base Year Coefficient

I = Change Factor (% increase or decrease from base to option year)

The Index Factor, I, shall be computed according to the following equation:

$$I = (BCIN/BCIC) - 1$$

Where:

BCIN is the Building Cost Index, published in the most current issue of ENR at the time of award of the option period.

BCIC is the Building Cost Index, as published in the ENR on the date of the award of the contract. The BCIC is _____, based on the award date of _____.

If the BCI or the ENR ceases to be published, the parties shall agree on substitute indices.

EXAMPLE: For the base year of a contract the coefficient is 1.10. The cost to the government for a line item whose cost is \$100.00 is $1.10 \times \$100.00 = \110.00 .

OPTION YEAR 1. For the first option year the coefficient will be adjusted as follows:

$$I = (\text{BCIN}/\text{BCIC}) - 1$$

$$I = (3111.86/3071.10) - 1$$

$$I = 1.0133 - 1$$

$$I = 0.0133$$

The new coefficient would be calculated as follows:

$$N = C + I$$

$$N = 1.10 + 0.0133$$

$$N = 1.1133$$

The above line item under the option period would be

$$1.1133 \times \$100.00 = \$111.33.$$

OPTION YEAR 2. For the second option year, if the BCI is 3062.99, the coefficient will be adjusted as follows:

$$I = (\text{BCIN}/\text{BCIC}) - 1$$

$$I = (3062.99/3071.10) - 1$$

$$I = 0.9974 - 1$$

$$I = -0.0026$$

The new coefficient will be calculated as follows:

$$N = C + I$$

$$N = 1.10 + (-0.0026)$$

$$N = 1.0974$$

The above line item under the second option period would be

$$1.0974 \times \$100.00 = \$109.74.$$

Note 1. Round calculations for the Change Factor (I) to the nearest ten thousandth.

[End of clause.]

5152.247-7027 Riding gang members requirements.

(c)(2)(ii) The head of the contracting activity may waive the requirement, under certain circumstances, for riding gang members to pass a Department of Defense background check. See Appendix GG for further delegation.

PART 5153 - FORMS

Sec.

	Subpart 5153.2 - Prescription of Forms	5153.245-90	Sample withdrawal of approval of property control system letter.
5153.201	Federal acquisition system.	5153.245-91	Consumption reports for ammunition.
5153.201-90	Sample contracting officers representative designation letter.		Subpart 5153.3 - Illustration of Forms
5153.201-91	Sample ordering officer appointment letter.	5153.303	Agency forms.
5153.206	Competition requirements.	5153.303-1	Sample contracting officers representative (COR) designation.
5153.206-90	Format for justification review document.	5153.303-2	Sample ordering officer appointment.
5153.206-91	Format for justification and approval for other than full and open competition.	5153.303-3	Reserved.
		5153.303-4	Format for a justification review document for other than full and open competition.
5153.213	Simplified acquisition procedures.	5153.303-5	Format for a justification and approval for other than full and open competition.
5153.213-70	Completion of DD Form 1155, order for supplies or services.		
5153.233	Protests, disputes, and appeals.	5153.303-6	Format for a bid protest action report.
5153.233-90	Format for bid protest action report.	5153.303-7	Format for a quarterly bid protest analysis report.
5153.233-91	Format for quarterly bid protest analysis report.	5153.303-8	Withdrawal of approval of property control system.
5153.242	Contract administration and audit services.	5153.303-9	Contractor Performance Assessment Report System initial registration consolidated format.
5153.242-90	Contractor Performance Assessment Reporting System initial registration consolidated format.		
5153.242-91	CPARS access request format.	5153.303-10	Contractor Performance Assessment Report System access request format.
5153.245	Government property.		

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Subpart 5153.2 - Prescription of Forms

5153.201 Federal acquisition system.

5153.201-90 Sample contracting officers representative designation letter.

In accordance with 5101.602-2-91, the Army will use the Virtual Contracting Enterprise Contracting Officer's Representative (COR) module to nominate, appoint, track, and revoke COR appointments. When the Virtual Contracting Enterprise COR module is unavailable, contracting officers shall use the sample COR designation letter format in 5153.303-1 to designate a COR. Designate CORs using official letterhead and follow standard procedures for correspondence. Address the designation to the individual by name, including rank or grade, and full mailing address.

5153.201-91 Sample ordering officer appointment letter.

Use the sample ordering officer appointment letter format in 5153.303-2 to appoint an ordering officer in accordance with 5101.602-2-92. Use official letterhead and follow standard procedures for correspondence. Address the appointment to the individual by name, including rank or grade, and full mailing address.

5153.206 Competition requirements.

5153.206-90 Format for justification review document.

Use the justification review document format at 5153.303-4 to document the requesting activity's internal review of a proposed justification when using other than full and open competition. Contracting officers will tailor the justification review document format to accommodate the justification's approval threshold. For example, justifications approved by a contracting officer may not require command advocate for competition, senior contracting official or head of the contracting activity review. The completed format becomes the cover page(s) of the justification. Do not use letterhead for this document.

5153.206-91 Format for justification and approval for other than full and open competition.

Use the justification and approval format at 5153.303-5 to support justifications for other than full and open competition in accordance with the Competition in Contracting Act as implemented in the FAR. Contracting officers shall tailor the justification and approval format to accommodate other type justifications in accordance with the FAR approval thresholds and required content. Do not use letterhead for this document. The approval page is separate from the certifications.

5153.213 Simplified acquisition procedures.

5153.213-70 Completion of DD Form 1155, order for supplies or services.

(a) *Instructions for DD Form 1155 entries.* (See DFARS PGI 253.213-70.)

Block 19, Schedule of Supplies or Services, for task orders under job order contracts, see 5117.9004-3(g)(1).

5153.233 Protests, disputes, and appeals.

5153.233-90 Format for bid protest action report.

Use the format for a bid protest action report at 5153.303-6 to provide notification of a Government Accountability Office protest resolution. Contracting officers will email the report to the addressees provided at 5133.190-1 within 15 calendar days of its resolution.

5153.233-91 Format for quarterly bid protest analysis report.

Use the sample format for the quarterly bid protest analysis report at 5153.303-7 to submit quarterly bid protest reports in accordance with 5133.190-2. The quarterly bid protest analysis report for Government Accountability Office protests is emailed with copies of the bid protest action reports to the addressee in 5101.290(b)(5), not later than 30 calendar days following the end of the quarter.

5153.242 Contract administration and audit services.**5153.242-90 Contractor Performance Assessment Reporting System initial registration consolidated format.**

Use the sample Contractor Performance Assessment Reporting System (CPARS) initial registration consolidated format at 5153.303-9 to submit contract registration information to the CPARS contracting activity focal point upon award of a contract eligible for a past performance assessment report. Retain the completed document in the official contract file.

5153.242-91 CPARS access request format.

Use the sample CPARS access request format at 5153.303-10 to submit contract access information to the CPARS contracting activity focal point upon award of a contract eligible for a past performance assessment report. Retain the completed document in the official contract file.

5153.245 Government property.**5153.245-90 Sample withdrawal of approval of property control system letter.**

Use the sample withdrawal of approval of property control system letter at 5153.303-8 in accordance with FAR subpart 45.5 and DFARS subpart 245.5 to notify a contractor that approval of his property control system is withdrawn. Use official letterhead and follow standard procedures for correspondence.

5153.245-91 Consumption reports for ammunition.

When the contract, including a delivery or task order, will involve the furnishing of munitions as Government Furnished Material (GFM), contracting officers shall include a contract line item and Section J attachment for the Contract Data Requirements List (CDRL), DD Form 1423-2 (Rev. Aug 96) to collect periodic consumption data for the GFM from the contractor as authorized by Federal Acquisition Regulation clause 52.245-1, Government Property. The CDRL shall identify the format, frequency, and addressee(s), to include the Defense Contract Management Agency when applicable, for submission of the periodic consumption reports as identified by the requiring activity.

Subpart 5153.3 - Illustration of Forms

5153.303 Agency forms.

This subpart sets forth standard Army formats for specified actions. Contracting officers may tailor these formats where appropriate, and when they are not otherwise limited, to fit the specific acquisition or contracting action.

5153.303-1 Sample contracting officers representative (COR) designation.

Subject: Designation of Contracting Officer's Representative (COR) for Contract (Enter number.).

1. Pursuant to DFARS 201.602-2, you are designated as the contracting officer's representative (COR) in administration of the following contract:

Contract Number:

For: (Enter item/system/services.)

Contractor:

Contract Period:

2. You are authorized by this designation to take action with respect to the following:

a. Verify that the contractor performs the technical requirements of the contract in accordance with the contract terms, conditions and specifications. Specific emphasis should be placed on the quality provisions, for both adherences to the contract provisions and to the contractor's own quality control program.

b. Perform, or cause to be performed, inspections necessary in connection with paragraph 2.a. and verify that the contractor has corrected all deficiencies. Perform acceptance for the Government of services performed under this contract.

c. Maintain liaison and direct communications with the contractor. Written communications with the contractor and other documents pertaining to the contract shall be signed as "Contracting Officer's Representative" and a copy shall be furnished to the contracting officer.

d. Monitor the contractor's performance, notify the contractor of deficiencies observed during surveillance and direct appropriate action to effect correction. Record and report to the contracting officer incidents of faulty or nonconforming work, delays or problems. In addition, you are required to submit a monthly report concerning performance of services rendered under this contract.

e. Coordinate site entry for contractor personnel, and insure that any Government-furnished property is available when required.

3. You are not empowered to award, agree to or sign any contract (including delivery orders) or contract modification or in any way to obligate the payment of money by the Government. You may not take any action which may affect contract or delivery order schedules, funds or scope. All contractual agreements, commitments, or modifications which involve price, quantity, quality, delivery schedules, or other terms and conditions of the contract must be made by the contacting officer. You may be personally liable for unauthorized acts. You may not re-delegate your COR authority.

4. This designation as a COR will remain in effect through the life of the contract, unless sooner revoked in writing by the contracting officer or unless you are separated from Government service. If you are to be reassigned or to be separated from Government service, you must notify the contracting officer sufficiently in advance of reassignment or separation to permit timely selection and designation of a successor COR. If your designation is revoked for any reason before completion of this contract, turn your records over to the successor COR or obtain disposition instructions from the contracting officer.

5. You are required to maintain adequate records to sufficiently describe the performance of your duties as a COR during the life of this contract and to dispose of such records as directed by the contracting officer. As a minimum, the COR file must contain the following:

a. A copy of your letter of appointment from the contracting officer, a copy of any changes to that letter, and a copy of any termination letter.

b. A copy of the contract or the appropriate part of the contract and all contract modifications.

c. A copy of the applicable quality assurance (QA) surveillance plan.

d. All correspondence initiated by authorized representatives concerning performance of the contract.

e. The names and position titles of individuals who serve on the contract administration team. The contracting officer must approve all those who serve on this team.

f. A record of inspections performed and the results.

g. Memoranda for record or minutes of any pre-performance conferences.

h. Memoranda for record of minutes of any meetings and discussions with the contractor or others pertaining to the contract or contract performance.

- i. Applicable laboratory test reports.
 - j. Records relating to the contractor's quality control system and plan and the results of the quality control effort.
 - k. A copy of the surveillance schedule.
 - l. Documentation pertaining to your acceptance of performance of services, including reports and other data.
6. At the time of contract completion, you will forward all records to the contracting officer for retention in the contract files.
7. All personnel engaged in contracting and related activities shall conduct business dealings with industry in a manner above reproach in every aspect and shall protect the U.S. Government's interest, as well as maintain its reputation for fair and equal dealings with all contractors. DoD 5500.7-R sets forth standards of conduct for all personnel directly and indirectly involved in contracting.
8. A COR who may have direct or indirect financial interests which would place the COR in a position where there is a conflict between the COR's private interests and the public interests of the United States shall advise the supervisor and the contracting officer of the conflict so that appropriate actions may be taken. CORs shall avoid the appearance of a conflict of interests to maintain public confidence in the U.S. Government's conduct of business with the private sector.
9. You are required to summarize the contractor's contractual performance at least annually using the Contractor Performance Assessment Reporting System (CPARS) at <http://www.cpars.gov>. The narrative you write must support the rating given based on the rating definitions in the CPARS Guide on the website.
10. You are required to acknowledge receipt of this designation on the duplicate copy and return it to the contracting officer. Your signature also serves as certification that you have read and understand the contents of DoD 5500.7-R. The original copy of this designation should be retained for your file.

Signature Block Of
Contracting Officer

Receipt of this designation is acknowledged.

Name: _____ (Print or type)	Signature: _____
Title: _____	Date: _____
Rank/Grade: _____	Telephone: _____

5153.303-2 Sample ordering officer appointment.

Subject: Appointment of Ordering Officer

1. **Appointment.** Under AFARS 5101.602-2-92, you are appointed an Ordering Officer for the purposes set forth in paragraph 2. Your appointment becomes effective (enter date) and will remain effective, unless sooner revoked, until expiration of the contract(s) enumerated in paragraph 2 or until you are reassigned or your employment is terminated. You are responsible to and under the technical supervision of the chief of the (enter name of installation or activity) contracting office for your actions as an Ordering Officer.

2. **Authority, Limitations and Requirements.** Your appointment is subject to the use of the following method(s) of purchase, limitations and requirements:

a. Subject to your ensuring that local purchase authority exists for the transaction, you may make purchases using imprest funds for payments and using Standard Form 1165, Receipt for Cash - Subvouchers, provided all of the following conditions are satisfied:

(1) The aggregate amount of a purchase transaction is not in excess of \$500 under emergency conditions. You may not split purchases to avoid this monetary limitation.

(2) The supplies or nonpersonal services are available for delivery within 60 calendar days, whether at the supplier's place of business or at destination.

(3) The purchase does not require detailed, technical specifications or technical inspection.

b. Subject to your ensuring that funds are available and that local purchase authority exists for the transaction, you may make purchases using Standard Form 44, Purchase Order -- Invoice -- Voucher, provided all of the following conditions are satisfied:

(1) The aggregate amount of the purchase transaction is not in excess of \$3,000. You may not split purchases to avoid this monetary limitation.

(2) Supplies or nonpersonal services are immediately available.

(3) One delivery and one payment shall be made.

c. Subject to your ensuring that funds are available and that local purchase authority exists for the transaction, you may place delivery orders (DD Form 1155) without monetary limitation, except that specified in individual contracts, against --

- (1) Brand Name contracts published in Defense Personnel Support Center Supply Bulletins in the SB 10-500 or SB 10-600 series;
- (2) Defense Personnel Support Center requirements contracts for subsistence items;
- (3) Defense Fuel Supply Center and Defense General Supply Center requirements contracts; and
- (4) The following indefinite delivery contracts, copies of which are attached: (List contracts by number and name of contractor.)

d. Subject to your ensuring that funds are available and that local purchase authority exists for the transaction, you may place Service Orders for Household Goods, DD Form 1164, against Commercial Warehousing and Related Services for Household Goods contracts for military and civilian personnel, subject to the criteria and procedures prescribed in DoD 4500.34-R, Chapter 2, and provided that no Service Order shall be in excess of \$10,000.

e. You are responsible for --

- (1) Distributing and administering delivery orders that you place;
- (2) Establishing controls necessary to ensure that all contract terms and conditions are met and that supplies or nonpersonal services ordered conform to contract requirements before acceptance is made or payment authorized, and
- (3) Reporting deficiencies in contractor performance promptly to the contracting officer who awarded the contract against which the delivery order was placed. You may not make any changes in the terms or conditions of any contracts against which you place delivery orders.

f. The authority granted in this appointment may not be redelegated to any other person.

3. ***Standards of Conduct and Contracting Action Reporting Requirements.***

a. You shall comply with the standards of conduct prescribed in DoD 5500.7-R.

b. You shall furnish the undersigned and the contracting officer to whom you are responsible such information as may be required for contracting action reporting purposes in the manner and the time specified.

4. ***Termination of Appointment.***

a. Your appointment may be revoked at any time by the undersigned authority or successor and shall be terminated in writing, except that no written termination of your appointment shall be made upon expiration or termination of contracts enumerated in paragraph 2.

b. Should you be reassigned from your present position or separated from Government service while this appointment is in effect, you shall promptly notify the appointing authority in writing. Your appointment will be terminated in writing if you are reassigned; it shall automatically be terminated on the date you are separated from Government service, if it is not revoked sooner.

5. ***Acknowledgement of Receipt.*** You are required to acknowledge receipt of this appointment on the duplicate copy and return it to the contracting officer. Your signature also serves as certification that you have read and understand the contents of DoD 5500.7-R. The original copy of this designation should be retained for your file.

Signature Block Of
Appointing Authority

Receipt of this appointment is acknowledged.

Name: _____ (Print or type)

Signature: _____

Title: _____

Date: _____

Rank/Grade: _____

Telephone: _____

5153.303-3 Reserved.

5153.303-4 Format for a justification review document for other than full and open competition.

Control No:

Justification Review Document for Other Than Full and Open Competition

Program/Equipment:

Authority:

Amount:

Prepared by:

Typed Name: DSN: _____

Title: Date: _____

E-mail: _____

Contracting Officer:

Typed Name: DSN: _____

Date Reviewed: _____

E-Mail: _____

Technical Representative:

Typed Name: DSN: _____

Title: Date Reviewed: _____

Requirements Representative:

Typed Name: DSN: _____

Title: Date Reviewed: _____

Reviews: I have reviewed this justification and find it adequate to support other than full and open competition.

Program Manager (1)

Typed Name: DSN: _____

Signature: _____ Date: _____

Legal Counsel

Typed Name: DSN: _____

Signature: _____ Date: _____

Command Advocate for Competition

Typed Name: DSN: _____

Signature: _____ Date: _____

Senior Contracting Official

Typed Name: DSN: _____

Signature: _____ Date: _____

(1) Add Program Executive Officer signature block when item is Program Executive Officer managed.

Head of the Contracting Activity

Typed Name:	DSN: _____
Signature: _____	Date: _____

5153.303-5 Format for a justification and approval for other than full and open competition.

This format is mandatory for all justifications and approvals (J&As) in support of other than full and open competition. Contracting officer will tailor the J&A's format to accommodate other type justifications in accordance with the FAR approval thresholds and required content.

Control No:

Justification and Approval for Other Than Full and Open Competition

- 1. Contracting Activity:** Specify the contracting activity responsible for this action.
- 2. Description of Action:** State whether the approval is for a new contract or a modification. Include the type of contract, type of funds to be used (Military Construction; Research, Development, Test and Evaluation; Other Procurement, Army; or Operation and Maintenance, Army) and, when applicable, the estimated share and ceiling arrangements, and fee or profit.
- 3. Description of Supplies/Services:** Name and describe the required supplies/services. Include the estimated total value, including options, if any.
- 4. Authority Cited:** Identify the statutory authority permitting other than full and open competition followed by the specific FAR citation and its title. For example: 10 United States Code 2304(c)(1) as implemented in Federal Acquisition Regulation 6.302-1(a)(2)(iii)(B), Only one responsible source and no other supplies or services will satisfy agency requirements.

5. **Reason for Authority Cited:** Describe how this action requires the use of the authority cited. If applicable, identify the proposed or potential contractor(s) and include a discussion of the proposed contractor's unique qualifications for fulfilling the contract requirements.

(a) The rationale used for justifying the cited authority should be consistent throughout the document as appropriate.

(b) Justifications citing FAR 6.302-1(a)(2)(ii) or (iii) as the authority for less than full and open competition on a follow-on contract must reflect (1) substantial duplication of cost that is not expected to be recovered through competition and/or (2) unacceptable delays in filling agency requirements. If the authority cited is substantial duplication of costs, then paragraph 5 should compare the duplicate costs the government would incur to create competition and the estimated savings expected to be recovered through subsequent competition. In addition, the justification must include an explanation for how the requesting office derived their estimates and why they believe they are a substantial duplication. Justifications citing unacceptable delays must identify firm schedule limitations that do not result from a lack of planning. For example, firm schedule limitations could include an approved Army campaign plan or significant loss of life or property.

(c) Justifications citing FAR 6.302-2 must explain how failure to limit sources would seriously injure the Government, and include a discussion of the required delivery schedule and lead-time involved. If the delay associated with the requirement for first article testing is the principal reason for not awarding the contract on a full and open basis, clearly describe the reasons why first article testing is required and why other quality assurance techniques are inadequate. Contracting officers may submit J&As citing this authority for approval after the contract has been awarded (see FAR 6.302-2(c)(1)).

(d) Justifications citing FAR 6.302-2 or 6 must request offers from as many potential sources as practicable under the circumstances.

(e) If applicable, explain why technical data packages, specifications, engineering descriptions, statements of work or purchase descriptions suitable for full and open competition were not developed or are not available.

6. **Efforts to Obtain Competition:** Describe the efforts to solicit offers from as many potential sources as is practicable.

a. *Effective competition.* Describe the extent of effective competition anticipated for this acquisition. Also, state that the notices required by FAR 5.201 shall be or have been published, and that any bids or proposals received shall be considered. If a notice is not posted, state which exception in FAR 5.202 applies.

b. *Subcontracting competition.* In single source situations, address efforts by the Government to assure that the prime contractor obtains as much competition as possible in its subcontracting.

7. **Actions to Increase Competition:** There may be instances when it is not possible to compete the current acquisition. In these cases, include a statement of the actions taken, or to be taken, to increase competition (e.g., procure needed technical data for full and open competition or breakout subsystems or components for full and open competition) before any subsequent acquisition of the supplies or services. If future competition will be based on the procurement of technical data, provide the approximate date the technical data package will be available.

8. **Market Research:** Describe the extent and the results of the market research (FAR Part 10) conducted to identify all qualified sources. Research must have been meaningful (demonstrated attempt to discover all relevant material) and conducted within the previous 12 months.

9. **Interested Sources:** Include a listing of the sources that have written to express interest in the acquisition. If applicable, clearly state "To date, no other sources have written to express an interest." If 10 U.S.C. 2304(c)(1)/FAR 6.302-1 is the authority cited, explain why other sources were rejected.

10. **Other Facts:** Discuss any other facts supporting the use of other than full and open competition, such as the following:

a. *Procurement history.* Reasonable efforts to retrieve the following items from computer records, contract files, competition advocate office files or other sources are expected:

(1) Contract numbers and dates of the last several contracts for these same requirements.

(2) The competitive status of these actions.

(3) Authority previously cited if less than full and open competition was used.

(4) If a justification was prepared to support the procurement made before this one, a summary of the contents of paragraph 7 of the justification for that procurement and an explanation of the results.

(5) If any prior contract for this requirement was accomplished using full and open competition, include a detailed explanation of the changed circumstances causing this action to now limit the sources.

(6) An explanation of any unusual patterns that may be revealed by the history, e.g., several consecutive, urgent buys.

(7) If a justification was prepared to support the procurement made before this one, briefly describe the circumstances justifying the procurement and whether there have been any significant changes.

b. *Other facts.* Provide any other facts necessary to justify limiting competition that were not previously stated.

(Certifications will normally be provided on a separate page at the end of the J&A to allow minor, administrative changes to be made during the review process.)

11. Technical Certification: Include the following statement:

I certify that the supporting data under my cognizance, which are included in the justification are accurate and complete to the best of my knowledge and belief.

Typed Name:	Date: _____
Title:	Signature: _____

12. Requirements Certification: Include the following statement:

I certify that the supporting data under my cognizance, which are included in the justification are accurate and complete to the best of my knowledge and belief.

Typed Name:	Date: _____
Title:	Signature: _____

Only the most senior persons within the organization responsible for acquiring the supplies or services described in the justification (e.g. program manager, depot commander, or senior program engineer) and with specific knowledge of the individual requirement (commodity, technology, and/or function) shall sign the technical and requirements certifications.

13. Fair and Reasonable Cost Determination: Include the following determination:

I hereby determine that the anticipated cost to the Government for this contract action will be fair and reasonable.

Provide the basis for this determination (e.g., describe techniques to be used to determine fair and reasonable price, such as cost analysis, price analysis, audit, should cost, independent Government estimate, etc.). As part of the basis, indicate whether certified cost or pricing data will be required or if one of the exceptions in FAR 15.403 applies.

Typed Name:	Date: _____
Title:	Signature: _____

14. Contracting Officer Certification: This certification shall be made by the contracting officer who will sign the contract resulting from this justification and approval. Include the following statement:

I certify that this justification is accurate and complete to the best of my knowledge and belief.

Typed Name:	Date: _____
Title:	Signature: _____

Note: It is recommended for the contracting officer to annotate at the bottom of each J&A page the following marking, as appropriate, prior to posting on the internet: "Controlled Unclassified Information".

Approval

(The approval statement is drafted on a separate page from the certifications and tailored to the instant contract action)

Based on the foregoing justification, I hereby approve the procurement of (state equipment/services being procured) on an other than full and open competition basis pursuant to the authority of 10 U.S.C. 2304(c) (insert authority and general title), subject to availability of funds, and provided that the services and property herein described have otherwise been authorized for acquisition.

Date: _____	Signature: _____
-------------	------------------

5153.303-6 Format for a bid protest action report.

Bid Protest Action Report
(RCS DD-DR&E(AR)1669)

Protester: _____

Protest number: _____

Protest Forum (GAO/AGENCY): _____

Has there been a Freedom of Information Act request or Congressional, Office of the Secretary of Defense; Headquarters, Department of Army; media, or other high level interest in any aspect of the protested acquisition or action (including the period prior to any protest)?

Circle One: Pre-award/Post Award Negotiated/Sealed Bid

Best Value: Yes No

Description of item or service:

Solicitation Number:

Contract Number:

Awardee:

Award Date: _____. Award Amount:

Estimated Amount (if pre-award):(Do not round off/abbreviate dollar amounts)

Stop Work? Yes No . If Yes, date issued:

Attorney assigned to the protest (include phone):

Contracting Officer (include phone):

Lessons Learned and legal/acquisition costs are to be submitted by letter covering a copy of decision. Include information concerning whether or not a GAO dismissal or withdrawal of a GAO protest was the result of a corrective action taken by the contracting office.

5153.303-7 Format for a quarterly bid protest analysis report.

Quarterly Bid Protest Analysis Report

(Separate Report for Government Accountability Office (GAO) Protests)

For the period covering:

1. Protests filed this quarter:
 - a. Total number:
 - b. Numbers filed by Army Command/Major Subordinate Command, Heads of Contracting Activities (HCAs):
2. Number of protests sustained/granted in this quarter:
3. Number of protests resolved using GAO Flexible Alternative Procedures in accordance with 4 CFR 21.10 this quarter:
4. Costs:
 - a. Costs and fees awarded by GAO to protester:
 - b. Dollar value of award:
 - (1) Preaward protests:
 - (2) Postaward protests:
5. Lessons Learned, Issues and Trends, Divergence from Precedent. Provide a copy of all decisions for sustained protests along with the lessons learned.

5153.303-8 Withdrawal of approval of property control system.

(Official Letter Head)

Office Symbol

Contractor's Name and Address

Government contract (insert contract number) requires (insert contractor's name) to establish and maintain, in accordance with FAR Subpart 45.5 and DFARS Subpart 245.5, a system to control, protect, preserve, and maintain Government property in your possession. The applicable provisions of the referenced contract provide that failure of the contractor to maintain and administer an acceptable program or system shall be presumed to be a failure resulting from willful misconduct or lack of good faith on the part of the contractor's managerial personnel.

The Property Administrator, by letter dated (insert date) gave notification that (insert contractor's name) system for the maintenance, protection, preservation, and control of Government property was reviewed and found not to meet the requirements of FAR Subpart 45.5 and DFARS Subpart 245.5 in the following respects:

(list all deficiencies)

By letter of (insert date) you were advised that approval of the property control system would be withdrawn unless the noted deficiencies were corrected by (insert date). As of this date, these corrections have not been accomplished. This undue delay in complying with your contractual requirements concerning Government property and your continued delay in rectifying noted deficiencies indicate a lack of concern by (insert contractor's name) managerial personnel. Therefore,

the approval of your Property Control System is withdrawn as of (insert date). As a result of this action, (insert contractor’s name) shall be liable for any loss or damage to the Government property occurring after receipt of this notice in accordance with the provisions of the contract.

A copy of this letter is being furnished to the Chief of the Contracting Office. Your failure to maintain an acceptable property control system could adversely affect future recommendations for the award of contracts. Restoration of approval of your property system is dependent upon the correction of the above listed deficiencies to the satisfaction of the contracting officer.

Sincerely,
 (Signature)
 Contracting Officer

(Note: Send by registered or certified mail.)

5153.303-9 Contractor Performance Assessment Report System initial registration consolidated format.

(Submit a copy to the Contractor Performance Assessment Report System (CPARS) focal point upon award, along with the CPARS access request format at 5153.303-10. Other formats may be used if all applicable information below is included.)

CONTRACT NUMBER: _____
ORDER NUMBER _____ (Include General Services Administration (GSA) number and basic procurement instrument identification “F” order number.)
CONTRACT TITLE/EFFORT DESCRIPTION: _____

CAGE CODE: _____ **DUNS:** _____ **PSC:** _____ **NAICS:** _____
CONTRACTOR NAME, ADDRESS (as listed in System for Award Management, www.sam.gov): _____

BUSINESS SECTOR (Circle one): Systems or Non-systems
LOCATION OF CONTRACTOR PERFORMANCE (if other than contractor address above): _____

CONTRACT AWARD DATE _____ **EFFECTIVE DATE:** _____
COMPLETION DATE (Include last possible date, if all options exercised): _____

DOLLAR VALUES:
AWARDED VALUE (Grand total, including unexercised options): _____
CURRENT VALUE (Current funded amount as of registration date. Use target price or total estimated amount for incentive contracts.): _____

CONTRACT TYPE (Circle one. For hybrid, put a “P” next to the predominate type and identify other type with an “O” next to it.):

FFP ___ **FPI** ___ **FPR** ___ **CPEF** ___ **CPIF** ___ **CPAF** ___ **HYBRID** ___ **OTHER:** _____

COMPETITIVE (Basis of award): YES or NO

PROGRAM/PRODUCT/PROJECT MANAGER _____

E-MAIL: _____ **TELE:** _____

CONTRACT SPECIALIST _____

E-MAIL: _____ **TELE:** _____

CONTRACTING OFFICER _____

E-MAIL: _____ **TELE:** _____

GOVERNMENT CONTRACTING OFFICER’S REPRESENTATIVE / QUALITY ASSURANCE EVALUATOR _____

E-MAIL: _____ **TELE:** _____

CONTRACTOR PROGRAM MANAGER: _____ **TELE:** _____ **E-**

MAIL: _____

PERIOD OF PERFORMANCE (POP) FOR 1 ST ASSESSMENT:

FROM: _____ **TO:** _____ **CPAR COMPLETED:** _____

OPTION 1 POP FROM: _____ **TO:** _____ **CPAR COMPLETED:** _____

OPTION 2 POP FROM: _____ **TO:** _____ **CPAR COMPLETED:** _____

OPTION 3 POP FROM: _____ **TO:** _____ **CPAR COMPLETED:** _____

OPTION 4 POP FROM: _____ **TO:** _____ **CPAR COMPLETED:** _____

(View completed reports in the Past Performance Information Retrieval System-Report Card, available via the Internet at <https://www.ppirs.gov>.)

5153.303-10 Contractor Performance Assessment Report System access request format.

(Submit a copy to the Contractor Performance Assessment Report System (CPARS) focal point upon award, along with the CPARS initial registration consolidated format at 5153.303-9. Other formats may be used if all applicable information below is included.)

Note: For report completion and security measures, user(s) are responsible for notifying the focal point for removal of person(s) no longer associated with the contract(s) below. A change in Assessing Official Representative or Assessing Official requires that person to start an Interim Assessment for continuity.

A. Enter Contract Numbers/Order Numbers:

Note: For General Services Administration (GSA) orders, you must include a GSA schedule number.

1.	6.
2.	7.
3.	8.
4.	9.
5.	10.

B. Enter Name of Assessing Official:

The Assessing Official may input ratings and narrative, sign the assessment report, and release it to the contractor, and modify the report following contractor comments or close the report if it is not contentious. The Assessing Official is the person with overall responsibility for the program/project or job/task/delivery order. The Assessing Official must be a U.S. Army employee.

Name	Email Address
1.	

C. Enter Name(s) of Assessing Official Representative(s) (Optional):

The Assessing Official Representative (AOR) may assist the Assessing Official by inputting ratings and narrative. The AOR may not sign the report. Examples of AORs include technical experts (i.e., engineering, logistics), Defense Contract Management Agency program integrators, quality and other team members. An AOR must be a government employee.

Name	Email Address
1.	
2.	
3.	
4.	

D. Enter Name of Contractor Representative:

This individual, the Contractor's Program Manager equivalent, will comment on the Government Assessing Official's assessment. The contractor representative can input comments for the contracts listed above and view the completed report(s).

Name	Email Address
1.	
2.	

3.	
4.	

E. Enter Name of Reviewing Official:

A Reviewing Official, generally a level above the Assessing Official, provides the check-and-balance whenever the Government Assessing Official and the Contractor Representative disagree on the assessment. The Reviewing Official can input comments for the contracts listed above. The Reviewing Official must be a U.S. Army employee in the Assessing Official's chain of command.

Name	Email Address
1.	

Individual Submitting This Request for Access:

- Name:
- Title:
- Phone:
- Date:

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ARMY SOURCE SELECTION SUPPLEMENT**28 November 2017**

(Appendix G revised 14 October 2018)

CHAPTER 1 : PURPOSE, ROLES, AND RESPONSIBILITIES**1.1 Purpose**

The Army Source Selection Supplement (AS3) implements and supplements the mandatory Department of Defense (DoD) Source Selection Procedures to establish consistent policies and procedures for Army source selections. The Federal Acquisition Regulation (FAR) and its supplements (Defense FAR Supplement (DFARS) and Army FAR Supplement (AFARS)) prescribe the general policies governing these acquisitions.

1.2 Applicability and Waivers

The AS3 applies to best value, negotiated, competitive source selections with an estimated value greater than \$10 million. It may also be used as guidance in all other acquisitions. See DoD Source Selection Procedures, Paragraph 1.2, for applicability and exceptions.

The AS3 is not a stand-alone document, and shall be used in conjunction with FAR Part 15, DFARS Part 215 and the DoD Source Selection Procedures. Any conflicts shall be resolved through the Office of the Deputy Assistant Secretary of the Army (Procurement) (DASA(P)), Policy Directorate.

Any request for waiver of the DoD Source Selection Procedures shall be submitted by the cognizant Senior Contracting Official (SCO), through the Head of the Contracting Activity (HCA), to the DASA(P), Attn: Policy Directorate (SAAL-PP). The Office of the DASA(P) will process all waivers as follows:

For solicitations valued at \$1 billion or more, waivers may only be approved with the express, written permission of the Director, Defense Procurement and Acquisition Policy (DPAP);

For solicitations valued below \$1 billion, waivers must be approved by the DASA(P).

1.3 Best Value Continuum

Subjective Tradeoff . Use of subjective tradeoff is appropriate for most Army source selections. See Appendix B for more information. (*Reference DOD Source Selection Procedures 1.3.1.3*)

Value Adjusted Total Evaluated Price (VATEP). Use of VATEP may be most suitable for procuring developmental items when the Government can determine the value (or worth) of “better performance” and quantify it in the Request for Proposal (RFP). See Appendix B for more information. (*Reference DOD Source Selection Procedures 1.3.1. 4*)

1.4 Source Selection Team Roles & Responsibilities

Source selection is a multi-disciplined team effort. The Source Selection Team (SST) should include representatives from appropriate functional areas such as contracting, small business, technical, logistics, cost/price, legal, and program management. User organizations should also be represented.

The success of any source selection is determined to a large degree by the personnel involved. Likewise, the Source Selection Authority (SSA), with assistance from the SCO, will ensure the appointment of people with the requisite skills, expertise, and experience to ensure the success of the source selection. This includes those members appointed to the Source Selection Advisory Council (SSAC).

The SCO is responsible for determining the capability of the organization to effectively resource the SST as set forth in the hierarchy of source selection expertise below (see Figure 1-1). In the event the SCO determines the required expertise is not obtainable, the HCA will be consulted. If the HCA concurs the resources are still unavailable, the DASA(P) will be notified and will assist in providing resources from other contracting activities, or assign the procurement to another contracting activity for execution.

Look within own organization for expertise.
 Identify and appoint Government personnel outside own organization with the requisite expertise.
 Identify junior personnel to grow expertise and experience in source selection by allowing them to participate on non-technical factors.
 If expertise does not exist, then move acquisition elsewhere.
 Consider establishing and/or hiring, on an ad hoc basis, qualified retired annuitants to supplement source selection teams.
 Establish an advance pool of experts to supplement on an ad hoc and rotational basis.
 In accordance with FAR Subparts 7.5 and 9.5, hire contractor experts to augment the Source Selection Evaluation Board (SSEB) ensuring there is no organizational conflict of interest or inclusion of inherently governmental functions.

Figure 1-1: Hierarchy of Source Selection Expertise

The size and composition of the SST will vary depending upon the requirements of each acquisition. For example, major hardware acquisitions frequently involve requirements organizations from across the Army (or from other services on joint-service programs). In such cases, and when forming the SST, SSEB Factor/Subfactor teams should include evaluator representation from each major requirements organization. These evaluators should be assigned to the evaluation criteria associated with their specific area of requirements interest. Inclusion of technical evaluators who are subject matter experts on the requirement(s) being evaluated is essential to a successful evaluation process and fair/accurate assessment of the proposals, and absolutely critical where joint-service and/or multiple functional requirements are involved.

Whether the team is large or small, it should be structured to ensure teamwork, unity of purpose, and appropriate open communication among the team members throughout the process. This will facilitate a comprehensive evaluation and selection of the best value proposal.

Key Components of the SST

For source selections with a total estimated value of \$100M or more, the SST shall consist of the SSA, a SSAC, and an SSEB. Each of these SST entities has distinct and separate functions (See Figure 1-2).

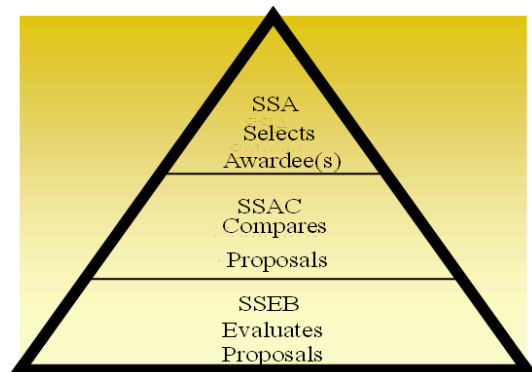


Figure 1-2: SST Responsibilities

The SSEB is usually comprised of multiple groups of evaluators who are responsible for evaluating specific areas of the proposal against the RFP requirements. Additionally, legal counsel, small business advisors, cost/price, and technical experts may also serve as SST advisors. The precise structure of the SSEB is a matter within the SSA’s discretion.

The information below supplements the Roles and Responsibilities found in the DoD Source Selection Procedures (see paragraph 1.4).

The SSA.

Appointment. The AFARS 5115.303 provides the policy on SSA appointments.

All appointed SSAs are considered procurement officials and are subject to the associated statutory / regulatory rules.

Once appointed, the SSA cannot further delegate their SSA authorities.

Note: The identity of the SSA shall be considered procurement sensitive and shall not be disclosed to anyone who has not signed a non-disclosure agreement for that RFP / acquisition.

Ensure the Source Selection Plan (SSP) and evaluation criteria are consistent with the requirements of the solicitation and applicable regulations.

The Procuring Contracting Officer (PCO).

No Army text.

The SSAC.

The SSAC will consist of senior Government personnel, and may include representation from the cognizant contracting office and legal office.

For Acquisition Category I/II Source Selections involving requirements organizations from across the Army (or from other services on joint-service programs), the SSAC must include representation from all significant requirements organizations. The SSAC representatives must be at an organization / grade level commensurate with the other members of the SSAC, usually military 0-6/GS-15 or higher.

The SSEB.

The SSEB Chairperson.

Ensure the SSEB members understand the evaluation criteria and establish a uniform approach to the evaluation and rating effort. Seek to build consensus among the SSEB members.

Isolate policy issues and major questions requiring decision by the SSA.

Relieve and replace SSEB members from assignment ***only*** in the event of a demonstrated emergency or other appropriate cause.

Arrange for the SSEB members to work compensatory time, when necessary, authorized, and approved.

Arrange for the needed administrative staff at the evaluation work site.

The SSEB Members.

Prepare the evaluation notices (ENs).

Brief the SSAC/SSA (as requested), and respond to comments / instructions from the SSAC/SSA.

Legal Counsel.

No Army text.

Other Advisors.

No Army text.

Program Manager (PM) / Requiring Activity (RA).

No Army text.

Administrative Support.

Each acquisition will vary in terms of the administrative support requirements. Figure 1-3 contains a checklist of some important requirements common to many acquisitions.

<p>Adequate facilities (to include space for the evaluators and related meetings and for discussions with Offerors): Consider whether the facilities are of an adequate size, capable of segregation of committees, comfortable, properly furnished, secure, accessible to disabled persons, and close to support services such as copiers, restrooms, and eating facilities.</p> <p>Appropriate security controls, such as identification badges and access control.</p> <p>Adequate secure storage space for proposals and source selection materials.</p> <p>Appropriate computer hardware and software and related support.</p> <p>Adequate telephones, facsimile machines, copiers and/or printing services located in secure areas and secure audio/video teleconferencing capabilities.</p> <p>Adequate office supplies.</p> <p>Adequate lodging and transportation for personnel on temporary duty (TDY).</p>

Figure 1-3: Administrative Support Considerations

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CHAPTER 2 : PRESOLICITATION ACTIVITIES

2.1 Conduct Acquisition Planning

Acquisition Planning. Acquisition planning should start when an agency identifies a need for supplies, construction and/or services. When practical, utilize an Integrated Product Team (IPT) approach to develop the acquisition strategy. This early teaming effort may reduce false starts and resultant delays that frequently accompany the preparation of a complex procurement. (Reference DOD Source Selection Procedures 2.1.1)

Best Practice: *Some of the decisions/determinations made during the planning phase are key and will impact the entire acquisition from source selection through contract administration. Including key stakeholders, such as contract administrators, Contracting Officer's Representatives (CORs), Quality Assurance (QA) and Property Administrator, will help to ensure consideration of issues that may impact the requirements, performance, and acquisition strategy as a whole.*

Risk Assessment. Risk analysis is a critical component of acquisition planning, and the market research results should be a primary consideration as part of this analysis. Early identification, formation, and direct involvement of the acquisition team (and key stakeholders) will help to ensure a comprehensive understanding of the requirements and any marketplace influences on risk and risk mitigation. (Reference DOD Source Selection Procedures 2.1.1.2)

Peer Reviews. See AFARS 5101.170 for Preaward peer reviews. Planning, and including realistic time allowances, for all requisite reviews when establishing milestone schedules is essential to the success of your acquisition.

Market Research. Market research is a continuous process and directly influences how the acquisition strategy and source selection process is shaped. (Reference DOD Source Selection Procedures 2.1.2 and AFARS 5110.002).

Some techniques you may use in conducting market research include:

Use general sources of information available from the marketplace, other DOD/ government agencies, and the internet;

Contact knowledgeable individuals regarding market capabilities and business practices (include the Small Business Advisor);

Review the results of recent market research;

Query government and/or commercial databases;

2.2 Develop a Source Selection Plan

Selection of Evaluation Factors . Selecting the correct evaluation factors is the most important decision in the evaluation process. Structure the evaluation factors and their relative importance to clearly reflect the needs of your acquisition.

Mandatory Evaluation Considerations . In every source selection, you must evaluate cost/price, and the technical quality of the proposed product or service through one or more non-cost evaluation factors (e.g. technical excellence, management capability, and key personnel qualifications).

Additionally, you must evaluate past performance on all negotiated competitive acquisitions expected to exceed the thresholds identified in FAR 15.304 and DFARS 215.304, unless the PCO documents why it would not be appropriate. There may be other required evaluation factors, such as small business participation, based upon regulatory and/or statutory requirements (see FAR 15.304 and its supplements).

From this point, the acquisition team must apply prudent business judgement to add other evaluation factors, subfactors, and elements that are important to selecting the most advantageous proposal(s). The number of factors and subfactors should be kept to the absolute minimum required to effectively assess the proposals. The use of more factors than needed to conduct the evaluation can complicate and extend the process while providing no additional value, and dilute the meaningful discriminators. Limiting factors also serves to reduce the evaluation oversight span-of-control responsibilities of the SSEB leadership, SSA/SSAC, PCO and legal counsel, thereby permitting more focused oversight on the remaining (and most important) factors/subfactors and reducing the likelihood of evaluation errors.

Common evaluation factors are cost/price, technical, past performance, and small business participation. Additionally, as appropriate, you may have other evaluation factors and/or may use one or more levels of subfactors. The standard Army naming convention for the various levels is: Evaluation Factor, Subfactor, and Element.

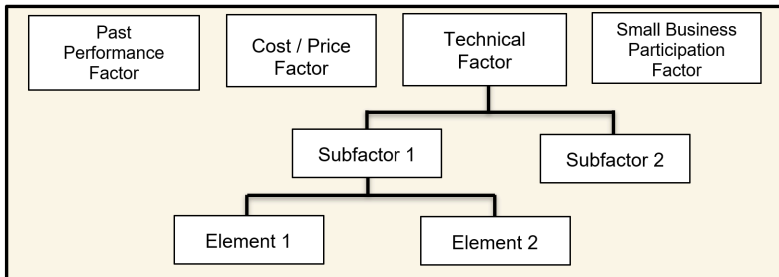


Figure 2-1: Sample Evaluation Factor Structure

Establishing Evaluation Factors and Subfactors . The acquisition team develops the evaluation factors, and any appropriate subfactors and elements. The team should select the factors based on user requirements, acquisition objectives, thorough market research and risk analysis. Figure 2-2 illustrates the steps involved in developing the factors and subfactors.

Once the RFP is issued, the factors and subfactors give the offerors insight into the significant considerations the Government will use in selecting the best value proposal and help them to understand the source selection process. Carefully consider whether minimum “go/no go” or “pass/fail” entry-gates, can be included. When used properly, this use of entry-gate criteria can streamline the evaluation process significantly.

- Conduct market research as a starting point for development of criteria in order to maximize competition**
- Conduct risk analysis in accordance with FAR 7.105 as necessary to support the acquisition.**
- Brainstorm critical factors and subfactors.**
- Identify key discriminators.**
- Define the discriminators as evaluation factors and subfactors, and their relative order of importance.**
- Obtain SSA approval of the list of factors and subfactors.**
- When a draft RFP is used, clearly inform offerors in the draft RFP of the proposed factors and subfactors, and their relative order of importance.**
- Assess feedback during presolicitation exchanges.**
- Get SSA approval as necessary to change the factors and subfactors before issuing the RFP.**
- Clearly inform offerors of the factors and subfactors, and their relative importance, in the formal RFP. Do not change the factors and subfactors after receipt of proposals except in extreme circumstances, and only then after obtaining SSA's approval and amending the RFP and SSP.**

Figure 2-2 : Steps Involved in Formulating Evaluation Factors and Subfactors

Nongovernment Advisors . Nongovernment advisors may assist in, and provide input, regarding the evaluation, but they shall not determine ratings or rankings of the offeror’s proposals. Nongovernment sources can include academia, nonprofit institutions, and industry.

Reminder: When using nongovernment advisors, you must advise potential offerors of the nongovernment advisors’ participation in the source selection, and obtain the offerors consent to provide access of its proprietary information to the nongovernment advisor, or the company which employs the nongovernment advisor. Figure 2-3 identifies suggested RFP language relative to the use of commercial firms to support the source selection process. (Reference DOD Source Selection Procedures 2.2.8)

(1) Offerors are advised that employees of the firms identified below may serve as non-government advisors in the source selection process. These individuals will be authorized access only to those portions of the proposal data and discussions that are necessary to enable them to perform their respective duties. Such firms are expressly prohibited from competing on the subject acquisition.

INSERT NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF FIRMS

(2) In accomplishing their duties related to the source selection process, the aforementioned firms may require access to proprietary information contained in the offerors' proposals. Therefore, pursuant to FAR 9.505⁴, these firms must execute an agreement with each offeror that states that they will (1) protect the offerors' information from unauthorized use or disclosure for as long as it remains proprietary and (2) refrain from using the information for any purpose other than that for which it was furnished. To expedite the evaluation process, each offeror must contact the above companies to effect execution of such an agreement prior to the submission of proposals. Each offeror shall submit copies of the agreement with their proposal.

NOTE: This requirement shall flow down to all Subcontractors.

Figure 2-3: Suggested RFP Language for the use of Nongovernment Advisors

Source Selection for Services . The source selection process for services, including development of the SSP, is often very complex. Organizations must ensure that the SST is comprised of qualified personnel with specific knowledge of the types of services to be acquired.

The use of Sample Tasks is an effective tool in the evaluation of services. Sample Tasks can provide insight as to the offeror's level of understanding of the work to be performed, as well as how the technical approach relates to the cost/price proposed for that Sample Task. See Appendix G for a sample of a Sample Task.

To the maximum extent practicable, sample tasks should set forth requirements that are contemplated for award to establish the expectation that offerors will be held accountable for the resources and costs they propose.

The use of generic or hypothetical sample tasks may unintentionally create an environment encouraging offerors to understate resources and costs in recognition of the fact that the sample tasks will not be awarded. Consequently, care must be taken to draft the sample tasks as closely as possible to the types and scope of services expected to be acquired from the Performance Work Statement (PWS). If possible, consider the use of a "live" task, which would be awarded at time of contract award.

Evaluation criteria should be limited to essential areas of performance that are measurable during the proposal evaluation process. This will permit a more focused evaluation of the offeror's proposed solution to the sample task.

If utilizing a sample task, ensure this is accounted for and aligned with Sections L and M.

2.3 Develop the Request for Proposals

The success of an acquisition is directly linked to the quality of the RFP. A well-written RFP will:

- Facilitate fair competition;
- Convey a clear understanding of the government's requirements;
- Clearly identify the evaluation and award criteria;
- Clearly detail information required by the offerors;
- Limit criteria to discriminators that add value and reduce risk;
- Preserve the offeror's flexibility to propose innovative solutions when appropriate;
- Specify areas where the offerors can make technical and cost tradeoffs in their proposals;
- Ensure that Sections L and M relate back to each other and the SSP.

Ways to Improve the RFP Process

Ensure Consistency in the RFP and Related Documents. RFP inconsistencies can create ambiguity and result in less advantageous offers, require RFP amendments, cause delays in the acquisition, and result in litigation. Inconsistencies between the descriptions of the Government's requirements, instructions on how to prepare a proposal, and information related to the evaluation factors and subfactors are particularly troublesome (may be caused by different groups of people developing the different RFP sections without proper coordination and review). Additionally, when one document is revised, those revisions must also be made to corresponding documents.

You may find it beneficial to develop a matrix that correlates the RFP sections and content to ensure consistency. Figure 2-4 illustrates how the key documents and evaluation standards map to one another and shows the recommended sequencing for document preparation. Provide industry with a copy of the matrix (make it part of the solicitation) as a reference tool to aid in proposal preparation. You may also consider including a column for offerors to complete in the tracking matrix (as

shown in Figure 2-4), denoting where in their proposal the requirement is addressed. This approach promotes understanding of the linkage within the solicitation, explains how all parts of the proposal will be used in the evaluation process, and enables a crosswalk for both the government and offerors to ensure all requirements have been addressed.

SPECIFICATION AND PWS		EVALUATION FACTORS, SUBFACTORS EVALUATION AND SUBMISSION INFORMATION		PROPOSAL REFERENCE
SPECIFICATION	PWS	PROPOSAL EVALUATION INFORMATION RFP Section M Factor - Technical Subfactor - Software Modification Approach	PROPOSAL SUBMISSION INFORMATION RFP Section L	OFFEROR TO COMPLETE Provide Page and Paragraph Number Where Addressed
Software code shall meet the computer software design and coding requirements as defined in International Standards Organization (ISO) 9000-3.	3.1.1. The contractor shall modify, integrate and test software as specified in the system Specification. 3.1.1.3 The contractor shall prepare a software modification plan.	The offeror's software modification approach will be evaluated relative to the modified software's ability to accommodate open architecture, tracking accuracy, and reliability.	The offeror will describe its approach to software modification and explain how the software will accommodate open architecture, conforms to ISO-9000-3, tracks accurately, and maintains reliability.	

Figure 2-4 Requirements to RFP to Proposal Tracking Matrix

Avoid Requesting Too Much Information from the Offerors. Instructions for preparing and submitting proposals are critical to the acquisition. Always keep in mind:

There must be a direct linkage between solicitation requirements and objectives, each evaluation factor and subfactor, and the proposal preparation instructions.

Request only the **essential information** needed to evaluate proposals against the evaluation factors and subfactors.

Never ask for information that will not be evaluated. Instructions that require voluminous information can unintentionally limit or reduce competition by causing potential offerors to forego responding to the solicitation in favor of a less costly business opportunity.

Excessively large proposals may increase the time and costs associated with performing the evaluation. Proposal page limitations or page recommendations are encouraged but need to be clearly defined and tailored to the needs of the acquisition.

Focus exclusively on **true discriminators** (discriminators linked to critical requirements based on market research and the assessment of risk and that enable the evaluation to discern between the values of the offeror's proposal). Failure to do so dilutes the evaluation and compromises the SSA's ability to identify the best value proposal.

Use Performance-Based Requirements. Use of detailed design requirements or overly prescriptive performance work statements severely limits the offerors' flexibility to propose their best solutions. Instead, use functional or performance-based requirements to the maximum extent practicable. While it may be more difficult to develop evaluation criteria and conduct the evaluation process using this approach, the benefits warrant it. These benefits include increased competition, access to the best commercial technology, better technical solutions, and fewer situations for protests.

Drafting Instructions to Offerors (Section L or Equivalent)

Provide specific guidance to offerors regarding the structure of their proposals . The proposal should be divided into distinct volumes or files. These volumes/files should correlate to each of the evaluation teams (e.g. technical, cost/price, past performance, etc.). You should also prescribe how each volume/file is to be structured. These practices will facilitate

distributing the proposal material to the various teams and will make it easier for evaluators to locate specific information in the proposals.

Note: Clearly advise offerors to keep technical and pricing information separate, and not intermixed between proposal volumes.

Past Performance Information . Tailor the proposal submission requirements to reflect the complexity of the procurement and the relative importance assigned to past performance. Request only the information necessary for the evaluation, and consider the following when developing proposal submission requirements:

Contract references. Request offerors to submit a list of Government and non-Government contract references (including contract number, type, and dollar value; place of performance; date of award; whether performance is on-going or complete; extent of subcontracting; and the names, phone numbers, and e-mail addresses of at least two points of contacts for each contract);

Require the list to include all relevant on-going contracts, or contracts completed during a specified period. This approach will provide an ‘unfiltered’ view of the offeror’s contract efforts, not just the ‘select’ contract efforts. If you anticipate the number of contracts will be excessive, limit the submission to a specified number of the most recent, relevant contracts. In such cases, require the contracts to have been active for a specified period of time, since newly awarded contracts will probably not provide sufficient information.

Limit the specified period to contracts performed within the last three years (six years for construction) from the RFP release date. A shorter period may be appropriate for acquisitions where there are numerous actions and/or many vendors providing the required items.

When offerors are likely to be large, multi-function firms, limit the contract references to those performed by the segment of the firm (e.g. division, group, and unit), that is submitting a proposal.

Past Performance Information of a Prospective Subcontractor. When you intend to evaluate subcontractors’ past performance, explain how you will handle any related adverse past performance information. In some acquisitions, an offeror’s prospective subcontractor may be the offeror’s competitor on other acquisitions. In such cases, the prospective subcontractor may be hesitant to have any adverse information related to its past performance released to the offeror. You should tailor your acquisition accordingly and advise offerors in the RFP how you will handle disclosure of such information.

Questionnaires. You may utilize questionnaires or interviews to obtain the information from individuals having knowledge about the offeror’s past performance, such as contract points of contact. Consider the following when using questionnaires:

Keep the questionnaire short. Typically, it should be no longer than 1-2 pages; long surveys are not returned timely, if at all.

Format the questionnaire to easily facilitate electronic completion (e.g. fill-in blocks, and electronic checkboxes).

Include a copy of the questionnaire in the RFP.

Either distribute the questionnaires to the points of contact or have the offerors distribute the questionnaires. Where the government is sending out the questionnaires, and when practical, contact the respective point of contact prior to sending out the survey and emphasize the importance of their returning the completed surveys to the government promptly. Having the offerors send out the questionnaires may save time and resources.

Relevant Past Performance. Include in the RFP a definition of what constitutes relevant past performance. Factors that may be used to define relevancy include similarity size, complexity, dollar value, contract type, and degree of subcontracting/teaming. As appropriate, require the offeror to provide a description of how the contract references are relevant to the immediate acquisition. In some cases, previous contracts as a whole may be relevant to the immediate acquisition, while only portions of other contracts may be relevant.

Small Business Participation . *The Army methodology for evaluating Small Business Participation in unrestricted source selections is to establish a separate factor* (versus a subfactor under technical) *with an assigned relative order of importance* for Small Business Participation as it relates to the other source selection evaluation factors. The factor shall be designed to require all offerors (both small and large businesses) to submit proposed Small Business Participation Plans to identify the extent to which small businesses will participate in the performance of the proposed acquisition.

Proposal Submission Instructions . The submission instructions should be written clearly enough to indicate that:

Large business contractors may achieve the small business participation goals through subcontracting to small businesses.

Small business contractors may achieve small business participation goals through their own performance/participation as a prime and also through a joint venture, teaming arrangement, and subcontracting to other small businesses.

Small Business Participation Proposal . The Small Business Participation proposal format is designed to streamline and bring uniformity to responses and evaluations for Small Business Participation (FAR 15.304). The format provides clarity in that it is distinctly different than the Small Business Subcontracting Plan required for large businesses only (FAR 52.219-9). A sample Small Business Participation Proposal format is located at Appendix E, and can be provided in the Instructions to offerors, or as an attachment to the RFP.

Subcontracting Plan. Separate from the Small Business Participation Plan, other than U.S. Small Business Offerors must also submit a subcontracting plan meeting the requirements of FAR 52.219-9 and DFARS 252.219-7003 (or DFARS 252.219-7004 if the offeror has a comprehensive subcontracting plan).

Other than U.S. Small Businesses must submit acceptable subcontracting plans to be eligible for award. Subcontracting Plans shall reflect and be consistent with the commitments offered in the Small Business Participation Plan.

When an evaluation assesses the extent that small businesses are specifically identified in proposals, the small businesses considered in the evaluation shall be listed in any subcontracting plan submitted pursuant to FAR 52.219-9 to facilitate compliance with 252.219-7003(e).

Drafting Evaluation Criteria (Section M or Equivalent)

In Section M (or equivalent) of the RFP, clearly state how each factor will be evaluated, and its relative importance.

Past Performance Information . Clearly stated how past performance will be evaluated, its relative importance, and how offerors with no relevant past performance will be evaluated. Consider the following when drafting this section:

Use Past Performance to streamline the source selection process. Instead of evaluating management as a separate evaluation factor, consider assessing management effectiveness in meeting Technical and Schedule requirements as part of the past performance evaluation. Using past performance in this way may, under appropriate circumstances, eliminate the need for the offeror to submit management and quality plans.

Past Performance Considerations. At a minimum, consider the offeror's record of complying with contractual requirements in the areas of schedule, technical quality, and cost control (for cost reimbursement contracts). You may also consider the offeror's record of business relations. Tailor the scope of the areas considered to the immediate acquisition.

Small Business Participation . All offerors (both large and small businesses) will be evaluated on the level of proposed participation of U.S. small businesses in the performance of the contract (as small business prime offerors or small business subcontractors) relative to the objectives and goals established herein. The government may evaluate:

The extent to which such firms, as defined in FAR Part 19, are specifically identified in proposals;

The extent of commitment to use such firms (and enforceable commitments will be considered more favorably than non-enforceable ones);

Identification of the complexity and variety of the work small firms are to perform;

The realism of the proposal;

Past performance of the offerors in complying with requirements of the clauses at FAR 52.219-8, Utilization of Small Business Concerns, and 52.219-9, Small Business Subcontracting Plan; and

The extent of participation of small business prime offerors and small business subcontractors. ***The Army's preferred methodology for evaluating Small Business Participation goals in source selections is in terms of the percentage of the value of the total acquisition.*** However, it is permissible to set goals as a percentage of 'planned subcontracting' dollars.

Small Business Participation goals must be based on market research for each acquisition.

The dollars should correlate directly to the percentage of subcontracted dollars in the Small Business Subcontracting Plan for large businesses. The contracting activity's assigned subcontracting goals may be used when market research results show that goals are achievable.

Small business prime offerors shall be advised that their own participation as a prime counts towards the percentages set in this evaluation factor, and small businesses shall not be required to subcontract to other small businesses in order to achieve the small business participation goals.

Requiring offerors to provide both the percentage and total dollars to be performed by small businesses will ensure consistency in the evaluation. (**Note:** Utilizing total contract dollars is more definitive in minimizing negative impacts on small businesses when services previously performed by small businesses are consolidated into an unrestricted acquisition).

Total Contract Dollars Example (Preferred) : This scenario provides clearer results for the evaluation. ***Scenario:*** Small Business Participation goal is set at 15% of total contract dollars on a procurement valued at \$1,000,000:

Large Business Offeror A: 20% (20% of \$1,000,000 = \$200,000)

Large Business Offeror B: 25% (25% of \$1,000,000 = \$250,000)

Small Disadvantaged Business (SDB) Offeror C: 15% (SDB **self-performs** 15% of the \$1,000,000 = \$150,000)

Sample language: The extent to which the Offeror meets or exceeds the goals: Goals for this procurement are -- Small Business: {a%} of the total contract value; Small Disadvantaged Business (SDB): {b%} of the total contract value; Woman-Owned Small Business (WOSB): {c%} of the total contract value; Historically Underutilized Business Zone (HUBZone) Small Business: {d%} of the total contract value; Veteran Owned Small Business (VOSB): {e%} of the total contract value; Service Disabled Veteran Owned Small Business (SDVOSB): {f%} of the total contract value. (**NOTE** : For example, a participation plan that reflects {c%} of the contract value for WOSB would also count towards the overall Small Business Goal; and percentages for SDVOSB also count towards VOSB).

Percentage of Subcontracted Dollars Example (Least Preferred) : Since each Offeror in the scenario below is allowed to determine how much of the work is planned for subcontracting, the basis for the evaluation could be flawed since the planned subcontracting will differ for each Offeror. *Scenario:* Small Business Participation goal is set at 15% of the planned subcontracted dollars on a procurement valued at \$1,000,000:

Large Business Offeror A: 20% (20% of \$200,000 planned for subcontracting = \$40,000)

Large Business Offeror B: 25% (25% of \$10,000 planned for subcontracting = \$2,500)

SDB Offeror C: 15% (SDB **self-performs** 15% of the total contract = \$150,000)

Sample language: (Alternate when using planned subcontracted dollars) The extent to which the Offeror meets or exceeds the goals: Goals for this procurement are -- Small Business: { a %} of the total subcontracted dollars; SDB: {b %} of the total subcontracted dollars; WOSB: { c %} of the total subcontracted dollars; HUBZone: { d %} of the total subcontracted dollars; VOSB: { e %} of the total subcontracted dollars; SDVOSB: { f %} of the total subcontracted dollars.

Establishing Relative Importance . When using the tradeoff process, you must assign relative importance to each evaluation factor and subfactor. Tailor the relative importance to your specific requirements.

Use priority statements to express the relative importance of the evaluation factors and subfactors. Priority statements relate one evaluation factor (or subfactor) to each of the other evaluation factors (or subfactors). Figure 2-5 below contains a sample priority statement. (*Reference DOD Source Selection Procedures 2.3.5*)

Reminder : Numerical weighting (i.e., assigning points or percentages to the evaluation factors and subfactors), is **NOT** an authorized method of expressing the relative importance of evaluation factors and subfactors (see AFARS 5115.304(b)(2) (B)).

The Technical, Past Performance and the Small Business Participation Factors, when combined, are significantly more important than cost or price. Technical is significantly more important than Past Performance and Small Business Participation, which are equal. The Past Performance and Small Business Participation Factors are more important than the Cost Factor.

Figure 2-5 : Sample Priority Statement

2.4 Release the Request for Proposals - No Army Text

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CHAPTER 3 : EVALUATION AND DECISION PROCESS

3.1 Evaluation Activities

While the specific evaluation processes and tasks will vary between source selections, the basic objective remains constant – **to provide the SSA with the information needed to make an informed and reasoned selection.** Towards this end, the evaluators will identify strengths, weaknesses, deficiencies, risks, and uncertainties applicable to each proposal. The process of identifying these findings is crucial to the competitive range determination, the conduct of meaningful discussions and debriefings, and the tradeoff analysis described in the Source Selection Decision Document (SSDD).

Reminder: The SSEB **shall not** perform comparative analysis of proposals or make source selection recommendations unless requested by the SSA (Reference DOD Source Selection Procedures 1.4.4.4.3).

While the below steps are identified in a linear manner, the process is actually iterative and some of the steps may be taken concurrently. Except where noted, these steps apply to the evaluation of both the cost and non-cost factors. The groups responsible for evaluating past performance, other non-cost factors, and cost/price normally perform their evaluations in parallel. The PCO and SSEB Chairperson shall ensure that the evaluation of each proposal is performed in a fair, integrated and comprehensive manner.

Best Practice: Identify acquisition teams at the requirements development phase and provide comprehensive training on the entire process, from acquisition planning through source selection decision. Provide SSEB training covering the final RFP and SSP approximately one to two weeks prior to receipt of proposals.

Step 1: Conduct SSEB Training – Prior to receipt of proposals, each evaluator must become familiar with all pertinent documents (e.g., the RFP and SSP). Training shall be conducted by the PCO, with the assistance of Legal Counsel, and include an overview of these documents and the source selection process. Training will provide a detailed focus on how to properly document each proposal’s strengths, weaknesses, uncertainties, risks, and deficiencies. The training will be based on the contents of the DoD Source Selection Procedures and this supplement, and shall also include ethics / procurement integrity training and protection of source selection information. This training is especially crucial when evaluators do not have prior source selection evaluation experience.

Step 2: Perform Initial Screening of Proposals – Upon receipt of proposals, the PCO or designee shall conduct an initial screening to ensure offerors’ proposals comply with the RFP instructions for submission of all required information, including electronic media, in the quantities and format specified in the RFP. Figure 3-1 is an extract of a sample proposal screening checklist that may be used to accomplish this initial screening and should be tailored to match the specific proposal submission requirements of the RFP.

A key aspect of this step is to also screen proposals for any exceptions taken by offerors to the terms and conditions as set forth within the RFP.

TAB	TECHNICAL PROPOSAL	Circle Applicable Response
1: Executive Summary	Does this tab include a brief synopsis of the technical proposal? Does it identify the offeror’s proposed teaming partners and/or subcontractors and discuss the nature and extent of their proposed involvement in satisfying the Government’s requirements? Is a letter of commitment from each proposed team member and key subcontractor included at this tab?	Y / N Y / N Y / N
2: Matrix	Does this tab include a matrix which cross-references the proposal and Volume 1 RFP paragraphs (at least all titled paragraphs)?	Y / N

3: Exceptions	Are any exceptions identified at this tab?	Y / N
4: Install/ Modify/ Terminate and Restore Service	Does this tab address paragraph 2.1 of the RFP? Is there a description of the format and content of a typical service restoration plan (as required by PWS para 2.1.5.a)?	Y / N
5: Customer Coordination	Does this tab include a detailed description of the proposed customer coordination services....	Y / N

Figure 3-1 : Sample Proposal Screening Checklist (Extract)

Step 3: Sharing of Cost/Price Information – The SSEB Chairperson and PCO, in coordination with the SSA, shall determine whether cost information will be provided to the technical evaluators, when and what information shall be provided, and under what conditions. The SSEB Chairperson and PCO shall ensure the Small Business Participation evaluation team verifies the total proposed price (not individual cost elements), and any subcontracting information with the Cost/Price team. This will ensure the dollar amounts are consistent with what is being proposed in the Small Business Participation Plan.

Step 4: Conduct Initial Evaluation – Evaluators will independently read and evaluate the offeror’s proposal against the criteria identified in the RFP and SSP, document their initial evaluation findings (e.g., strengths, weaknesses, deficiencies, risks and uncertainties), and draft proposed ENs for each finding to be addressed.

Step 5: Identify and Document Areas of the Proposal That May Be Resolvable

Through Clarifications or Communications – If information is required to enhance the Government’s understanding of the proposal, the PCO may request amplification and other information from the offeror by means of the clarification or communication process. The PCO should engage the legal advisor prior to conducting this process. See Figure 3-3 for a detailed discussion of the differences between clarifications, communications, and discussions.

Step 6 : Assign Ratings for Non -Cost Evaluation Factors When Using the Tradeoff Process – At this point, the evaluators may or may not individually assign ratings to each evaluation factor or subfactor for which they are responsible. At a minimum, each evaluation team (factor, subfactor) must convene to discuss the offeror’s proposal. The purpose of the discussion is to share their views on the offeror’s strengths, weaknesses, deficiencies, risks, and uncertainties related to their assigned evaluation factor(s) / subfactor(s), and to reach a team consensus on findings and rating as appropriate.

Note: Ratings must be supported by evaluation findings and narrative statements.

Consensus requires a meeting of the minds on the assigned rating and associated deficiencies, strengths, weaknesses, uncertainties and risks. *Note* : A simple averaging of the individual evaluation results does not constitute consensus.

In exceptional cases where the evaluators are unable to reach consensus without unreasonably delaying the source selection process, the evaluation report shall include the majority conclusion and the dissenting view(s), in the form of a minority opinion, with supporting rationale. The report must be briefed to the SSAC (if used) and the SSA.

Step 7: Finalize ENs – ENs will include deficiencies, significant weaknesses, weaknesses (and any uncertainties not resolved through clarifications or communications) as well as ENs for strengths, if dictated by the SSP.

Step 8: Prepare Summary Evaluation Reports for Each Factor – Each Factor Chair will prepare a summary report for their respective factor which provides a discussion of their associated findings. These reports will help form the Summary SSEB Evaluation Report, and must be prepared at each phase of the process: initial, interim, and final evaluations.

Step 9: Prepare a Summary SSEB Evaluation Report – The final step is for the SSEB Chairperson to prepare a summary report for each proposal that includes the evaluated price, the rating for each evaluation factor and subfactor, and a discussion of the associated findings (strengths, weaknesses, deficiencies, risks, and uncertainties). A Summary SSEB Evaluation Report must be prepared at each stage of the process: initial, interim, and final evaluations.

Cost or Price Evaluation

Figure 3-2 below provides a side-by-side comparison of what price analysis, cost analysis, and cost realism analysis should consist of and when they must be used. For detailed instructions and professional guidance on how to conduct these analyses, refer to FAR 15.4, and the Army Cost and Price Portal on the ODASA(P) Procurement.Army.Mil Knowledge Management Portal.

	Price Analysis	Cost Analysis	Cost Realism Analysis
What is it?	The process of examining and evaluating an offeror's proposed price to determine if it is fair and reasonable without evaluating its separate cost elements and proposed profit/fee. Price analysis always involves some type of comparison with other prices; e.g., comparing an offeror's proposed price with the proposed prices of competing offerors or with previously proposed prices for the same or similar items.	The review and evaluation of the separate cost elements in an offeror's proposal and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.	The process of independently evaluating specific elements of each offeror's cost estimate to determine whether the estimated cost elements are: <ul style="list-style-type: none"> realistic for the work to be performed; reflect a clear understanding of the requirements; and consistent with the unique methods of performance and materials described in the Offeror's technical proposal. The probable cost estimate is a product of a cost realism analysis.
When must you perform it?	When cost and pricing data is not required to determine if the overall price is fair and reasonable. Price realism may be performed to determine that the price offered is consistent with the effort proposed.	When Certified Cost or Pricing Data has been submitted. When Data Other Than Certified Cost or Pricing Data is submitted if being evaluated for cost reasonableness or cost realism. May also be used when a fair and reasonable price cannot be determined through price alone. (See FAR 15.404-1(a)(4).	When cost-reimbursement contracts are anticipated. Also you may use it on fixed price (FP) incentive contracts or, in exceptional cases, on other competitive FP contracts when the Offerors may not fully understand new requirements, there are quality concerns, or past experience indicates contractors' proposed costs have resulted in quality/service shortfalls. However, when cost realism analysis is performed on FP contracts, proposals shall be evaluated using the criteria in the solicitation, and the offered prices shall not be adjusted as a result of the analysis.

Figure 3-2 : Comparison of Price, Cost, and Cost Realism Analysis

The following are some general evaluation guidelines and recommendations for evaluating cost/price:

The Independent Government Cost Estimate (IGCE) may play a key role in cost/price analysis. It serves as a benchmark for price analysis and in cost realism, it may also serve as a benchmark for individual cost elements. The IGCE must contain a rationale for how it was developed, (e.g., what estimating tools were used and what assumptions were made), in order to properly evaluate cost/price.

With the approval of the SSEB Chairperson and the PCO, the cost/price evaluators should coordinate with the non-cost Factor/Functional Team Leads as necessary to ensure consistency between the proposed costs/prices and other portions of the proposal. This interchange between SSEB factor teams is part of the initial validation exercise and should be continued

throughout the evaluation process to ensure that interrelationships are promptly identified and the evaluation findings reflect their recognition. For example, the technical evaluation may reveal areas where each offeror's approach is inadequate or its resourcing unrealistic, given the proposed approach. The technical evaluators and the cost evaluators should crosswalk technical deficiencies and weaknesses and their impact on cost to ensure proper adjustments can be made to the proposed costs.

When conducting price analysis, consider not only the total price, including options, but also the prices for the individual Contract Line Items to ensure they are not unbalanced. Unbalanced pricing exists when the price of one or more contract line items is significantly over or understated as indicated by the application of cost/price analysis techniques. The PCO with concurrence of the SSA (and if permitted by the RFP) may reject the offer if they determine that this poses an unacceptable risk to the Government. For more information on unbalanced pricing, see FAR 15.404-1(g).

For fixed-price contracts, the evaluation can be as simple as consideration of adequate price competition and ensuring prices are fair and reasonable. For cost-reimbursement contracts, you must analyze the offerors' estimated costs for both realism and reasonableness. In a competitive environment, the cost realism analysis enables you to determine each offeror's probable cost of performance. This precludes an award decision based on an overly optimistic cost estimate.

Technical Evaluation

The *Army methodology for evaluating Technical Approach and Related Risk is Methodology 2: Combined Technical/Risk Rating* (Reference DOD Source Selection Procedures 3.1.2. 2). This methodology provides the most flexibility and least complexity in the rating process, in conducting of the comparative analysis, and best value subjective tradeoff analysis process.

Past Performance Evaluation

In past performance evaluations, you examine the offeror's performance record on similar contract efforts, and use the information to predict the probability the offeror will successfully perform under your contract. It is important to understand the difference between an offeror's experience and its past performance – experience is *what* (work) the offeror has done, and past performance is *how well* the offeror did it.

FAR Parts 9, 12, 15, 36 and 42 contain regulatory policies related to the evaluation of past performance. FAR Part 36 provides specific procedures, forms, and thresholds for evaluation of Architect & Engineering and construction acquisitions. Additionally, the Office of Federal Procurement Policy (OFPP) and DOD have published the following guides that pertain to the evaluation of past performance information:

OFPP Guide: Best Practices for Collecting and Using Current and Past Performance Information

DOD Guide: A Guide to Collection and Use of Past Performance Information

Recency. No Army Text.

Relevance. A helpful tool to consider using to assist in determining/verifying the relevancy of a contract reference is to locate and review the contract and requirements in Electronic Document Access (EDA). *Note*: EDA requires user registration within the Wide Area Workflow suite of tools. To ensure your ability to access contract records, complete this process well in advance of SSEB. (Reference DOD Source Selection Procedures 3.1.3.1.2)

Quality of Products or Services. No Army Text.

Sources of Past Performance Information . Where possible, use past performance information available from Government-wide and agency-wide databases. Use of such information will help to expedite and streamline the evaluation process.

If possible, contact two points of contact on each contract effort selected for in-depth review. The PCOs, CORs, Fee Determining Officials, and program management office representatives are often excellent sources of information.

If multiple points of contact are providing past performance information on contract (for example, the PCO and PM), arrange for submission of consolidated input from these sources. This may remove the need for the evaluation team to reconcile variances in past performance information submitted.

In assessing the feedback, pay particular attention to the source of that feedback and their familiarity with the requirements of the contract being assessed. For example, end users may be unfamiliar with the contract requirements or certain issues, and resolution arising from contract performance may not be apparent to them.

The agency has an obligation to consider information that has a bearing on an offeror's past performance, if the SST is aware of (or should have been aware of) the information. For example, an agency may not ignore contract performance by an offeror involving the same agency, the same services, and/or the same PCO, simply because an agency official fails to complete the necessary assessments or documentation. Consult legal counsel on how to address this type of information.

Addressing Adverse Past Performance Information. When adverse past performance is obtained, as appropriate, contact the respective point of contact for that contract to obtain further information about the circumstances surrounding the

situation. Additionally, and when practical, contact at least one other individual to get a second perspective on the offeror's performance on the subject acquisition. Consider the context of the performance problems, any mitigating circumstances, the number and severity of the problems, the demonstrated effectiveness of corrective actions taken, and the overall work record.

If there is past performance information that adversely impacts an offeror's proposal assessment, provide the offeror an opportunity to address any such information on which it has not had a previous opportunity to comment. This opportunity may occur during clarifications, communications, or discussions, depending upon whether discussions are anticipated.

When addressing adverse past performance information, identify the contract, but do not identify the name of the individual who provided the information. Summarize the problem(s) with sufficient detail to give the offeror a reasonable opportunity to respond.

NOTE : Past performance is considered a responsibility-type evaluation factor for purposes of SBA's Certificate of Competency (COC) program. FAR 19.602-1(a) requires agencies to refer a finding of non-responsibility to the SBA if the determination would preclude award. Therefore, if the PCO refuses to consider a small business concern for award after evaluating the concern's past performance on a non-comparative basis (e.g., a pass/fail, go/no go, or acceptable/unacceptable), the matter must be referred to the SBA. Alternatively, when using the trade-off process, the government may use traditional responsibility factors such as past performance as technical evaluation factors where a comparative evaluation of those areas will be performed as opposed to a pass/fail basis. In this case SBA referral is not required because the evaluation of past performance is part of a comparative, best value evaluation and not a responsibility determination.

Small Business Evaluation

The Army methodology for rating the Small Business Participation Factor is to utilize the DoD Source Selection Procedures rating scheme for Small Business Participation (see DoD Source Selection Procedures 3.1.4.1.2 – Table 6). Acceptable/ Unacceptable (Pass/Fail) rating schemes are the least preferred method of evaluating small business participation in best value source selections. This rating scheme does not allow evaluators to give higher ratings to offerors that significantly exceed the stated small business goals or submit proof of binding agreements with small businesses, and therefore are discouraged.

Additionally, Small Business Past Performance should be considered, and in some cases is required (see FAR 15.304(c) (3)(ii) DOD Deviation). In looking at Small Business Past Performance, the Government evaluates how well the offeror has performed on achieving its small business goals. Remember that this should only be evaluated against large businesses in their compliance of FAR 52.219-9. *For example, the Government may request e lectronic Subcontracting Reporting System (eSRS) information.*

Note: Although DFARS PGI 215.304 provides an example that indicates evaluation of Past Performance compliance within a separate Small Business Participation Factor, it may be evaluated instead under the Past Performance Factor, **but not in both factors** .

Small Business offerors proposing on unrestricted requirements are not held to the requirements of FAR 52.219-14 Limitations on Subcontracting because the clause is applicable to small business set-aside procurements only. However, small business offerors should meet the small business participation factor goals through performance as a prime small business or a combination of performance and small business subcontracting.

Types of Exchanges

After receipt of proposals, there are three types of exchanges that may occur between the Government and offerors -- clarifications, communications and negotiations / discussions. They differ on when they occur, their purpose and scope, and whether offerors are allowed to revise their proposals as a result of the exchanges. **All SSEB exchanges must be accomplished through the use of ENs .**

	Clarifications	Communications	Negotiations/Discussions
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When They Occur	Limited exchanges, between the Government and offerors when award WITHOUT discussions is contemplated NOTE: Award may be made without discussions if the solicitation announces that the government intends to evaluate proposals and make award without discussions.	After receipt of proposals, leading to the establishment of the competitive range of offerors with which the government intends to conduct discussions May only be held with those offerors (other than offerors under FAR 15.306 (b)(1) (i)) whose exclusion from the competitive range is uncertain.	After establishing the competitive range NOTE: The term “negotiations” applies to both competitive and non-competitive acquisitions. In competitive acquisitions, negotiations are also called discussions.
Scope of the Exchanges	Most limited of the three types of exchanges. Clarifications are not required to be held with all offerors.	Limited; similar to fact finding	Most detailed and extensive. When conducting discussions with one offeror must conduct with all offerors in the competitive range.
Purpose	To clarify certain aspects of proposals	To enhance the Government’s understanding of the proposal by addressing issues that must be explored to allow a reasonable interpretation of the offeror’s proposal to determine whether a proposal should be placed in the competitive range	To allow the offeror an opportunity to revise its proposal so that the Government obtains the best value, based on the requirement and applicable evaluation factors
Examples of Topics of Exchanges	<ul style="list-style-type: none"> Relevance of an offeror’s past performance Adverse past performance information Resolution of minor or clerical errors 	<ul style="list-style-type: none"> Address issues that must be explored to determine whether a proposal should be placed in the competitive range Ambiguities or other concerns (e.g., perceived deficiencies, weaknesses, errors, omissions, or mistakes) Relevance of an offeror’s past performance Adverse past performance information 	<ul style="list-style-type: none"> Examples of potential discussion topics include the identification of all evaluated deficiencies, significant weaknesses, weaknesses, and any adverse past performance information to which the offeror has not yet had an opportunity to respond. Additionally, it is a best practice to identify strengths and significant strengths to ensure that the offeror does not remove when submitting the FPR. Finally, the PCO may inform the Offeror that its price is too low or too high with the basis of these conclusions.
Are Resultant Proposal Revisions Allowed?	No	No	Yes

Figure 3-3: Comparison of Types of Exchanges (After Receipt of Proposals)

Conducting Exchanges with Offerors

The PCO controls all exchanges with Offerors. Before participating in any exchanges, the PCO shall review the ground rules with the team members. During exchanges with offerors, the Government may not:

- Favor one offeror over another;
- Reveal an offeror's technical solution to another offeror;
- Reveal an offeror's price to another offeror without that offeror's permission;
- Knowingly disclose source selection information, or reveal the name of individuals providing past performance information;
- Reveal source selection information in violation of statutory and regulatory requirements.

3.2 Documentation of Initial Evaluation Results

Visit the ODASA(P) Procurement.Army.Mil Knowledge Management Portal for Army Source Selection evaluation / report templates and samples.

3.3 Award Without Discussions

Reminder: Discussions should be conducted for all acquisitions with an estimated value of \$100 million or more. ***Award without discussions on complex, large procurements is discouraged and seldom in the Government's best interest.*** (Reference DFARS 215.306 and DOD Source Selection Procedures 3.2.3)

3.4 Competitive Range Decision Document - No Army Text

3.5 Discussion Process

Competitive Range

If the competitive range is further reduced for purposes of efficiency, the basis for this reduction must be adequately documented. Considerations for further restricting competition may include expected dollar value of the award, complexity of the acquisition and solutions proposed, and extent of available resources.

Note: Predetermined cut-off ratings (e.g., setting a minimum rating) or identifying a predetermined number of offerors that will be included in the competitive range must not be established. The government may not limit a competitive range for the purposes of efficiency on the basis of technical scores alone.

The PCO, with approval of the SSA, should continually reassess the competitive range as discussions and evaluations continue to ensure neither the Government nor the offerors waste resources by keeping proposals in that are no longer contenders for award.

Discussions

The Government's objectives shall be fully documented in the prenegotiation objective memorandum (POM) prior to entering into discussions (see FAR 15.406-1, DFARS PGI 215.406-1).

Meaningful discussions do not include advising the individual offerors on how to revise their proposal nor does it include information on how their proposal compares to other offerors' proposals.

Additionally, discussions must not be misleading. An agency may not inadvertently mislead an offeror, through the framing of a discussion question, into responding in a manner that does not address the agency's concerns; or that misinforms the offeror concerning its proposal weaknesses or deficiencies; or the government's requirements.

3.6 Final Proposal Revisions - No Army Text

3.7 Documentation of Final Evaluation Results

At the request of the SSA, the SSAC and/or SSEB members may also present the evaluation results by means of one or more briefings. Figure 3-4 illustrates a sample format for the briefing. The documentation should be clear and concise and should cross-reference, rather than repeat, information in existing documents as much as possible (e.g., the SSP, evaluation team reports, etc.). In rare occasions, if the SSA identifies concerns with the evaluation findings and/or analysis, the SSA may require the SSEB and/or SSAC to conduct a re-evaluation and/or analysis to address these concerns. ***The evaluation results shall clearly be documented in the Price Negotiation Memorandum (PNM).*** (See FAR 15.406-3, DFARS PGI 215.406-3)

OFFEROR	TECHNICAL EVALUATION	PAST PERFORMANCE CONFIDENCE	SMALL BUSINESS PARTICIPATION	TOTAL EVALUATED PRICE
A	Outstanding	Substantial Confidence	Good	\$171,503,971
B	Outstanding	Limited Confidence	Good	\$134,983,305
C	Good	Limited Confidence	Outstanding	\$120,976,836
D	Outstanding	Limited Confidence	Outstanding	\$150,840,308
E	Acceptable	Substantial Confidence	Acceptable	\$115,751,933

Figure 3-4: Sample Proposal Evaluation Matrix

3.8 Conduct and Document the Comparative Analysis

When performing the comparative analysis, the SSAC will consider each offeror's total evaluated price and the discriminators in the non-cost ratings as indicated by the SSEB's evaluation findings for each offeror. Consider these differences in light of the *relative importance(or weight)assigned to each evaluation factor* .

3.9 Best-Value Decision - No Army Text

3.10 Source Selection Decision Document - No Army Text

3.11 Debriefings - See Appendix A

3.12 Integrating Proposal into the Contract

When planning the acquisition/source selection, coordinate closely with legal counsel to select the best method to incorporate beneficial aspects or above-threshold performance. The following methods may be considered:

Use of Attachment. Beneficial aspects can be captured in a separate document attached to the PWS which clearly defines the changes to requirements based on specific beneficial aspects but leaves the original PWS untouched. This is particularly true for those items cited to or emphasized in the SSDD and reflects the benefit(s) provided and supports a price premium paid by the Government.

Section C PWS/S statement of Work (S OW) , System Specifications, Section H – Special Contract Requirements, or Other. Above-threshold performance may be captured within the PWS/SOW, System Specifications, Section H - Special Contract Requirements, or otherwise captured in the contract document, depending upon what is proposed. If using this method, care must be executed not to permanently increase the Government's requirements in future RFPs unless it is an intentional decision on the part of the organization to do so.

Best Practice: Use of the foregoing methodology which points to the above-threshold performance or significant strength vice a PWS addendum may be preferred due to the possibility of inadvertent inclusion in subsequent contracts (causing requirements creep). The intent is not to increase the Government's minimum requirements, but to hold a particular Offeror to their proposal. *(The Government may later determine that the minimum requirement should include the higher performance and include it at time of re -compete)*.

Model Contract Process. The RFP should discuss the model contract process (if used) in Section L (or equivalent), to ensure that offerors know that they will be contractually-bound to their proposed above-threshold performance. Include language in the RFP describing how the Government will capture the promised above-threshold performance prior to award. Above-threshold performance and significant strengths the Government expects to capture in the contract should be addressed with the offerors during the discussions process. When used, model contracts are typically sent to offerors prior to closing discussions and submission of Final Proposal Revisions (FPRs) to include the above-threshold performance that will be captured upon contract award, thereby ensuring that all parties are aware of what is expected of the prospective awardee. Caution must be exercised that the correct proposed above-threshold performance is carefully assigned per each model contract, by offeror. Ensure final narrative is consistent with the letter to the offeror requesting the FPR.

Incorporation of Portions of Offeror’s Technical Proposal by Reference. The RFP should advise offerors that any part of their proposal can be incorporated by reference. Only incorporate those portions of an offeror’s technical proposal that provide benefit to the Government.

Awarding the Contract(s)

After the SSA has signed the source selection decision document, the PCO will execute and distribute the contract(s). Congressional notification may be required IAW FAR 5.303 and AFARS 5105.303 [Announcement of Contract Awards](#). For Section 8(A) Set-Asides, the SBA shall be notified IAW FAR 19.804. For Small Business Programs, the apparent unsuccessful offerors shall be provided the preaward notice required by FAR 15.503.

Notification to Unsuccessful Offerors

The PCO must notify unsuccessful offerors in writing after contract award or whenever their proposals are eliminated from the competition within the timeframe identified in Figure 3-5 below. This chart provides a side-by-side comparison of the differences between preaward and postaward notices. The type of information that must be included in the notice will depend upon whether it is sent before or after contract award.

	PREAWARD NOTICE FAR 15.503(a)	POSTAWARD NOTICE FAR 15.503(b)
Who Must be Notified?	Any offeror whose proposal was excluded from the competitive range or otherwise eliminated from the competition before contract award.	Any offeror whose proposal was in the competitive range but was not selected for award or who had not received a preaward notice.
When Must it be Sent?	Promptly after the offeror’s proposal was eliminated from the competition.	Within three days after the date of contract award.
What is Included in the Notice?	<p>A summary of the basis for the determination</p> <p>A statement that the Government will not consider any further proposal revisions from the offeror.</p> <p>NOTE:</p> <p>Small business offerors are entitled to additional information as well as the timelines associated with small business offerors as described at FAR <u>Part 15.503(a)(2)</u> and FAR Part 19.302(d). After contract award and upon request from an offeror who previously received a preaward notice, the PCO must provide the Offeror the information normally provided as part of a postaward notice.</p>	<p>Number of offerors solicited;</p> <p>Number of proposals received;</p> <p>Name(s) and address(s) of awardee(s)</p> <p>Items, quantities, and unit prices of each awardee. However, unit prices may not be freely releasable under Freedom of Information Act (FOIA). Therefore, PCOs should always consult legal counsel prior to disclosing unit prices.</p> <p>A summary of the reason(s) the Offeror’s proposal was not selected, unless the price information readily reveals the reason.</p> <p>Notice of right to request a debriefing.</p>

Figure 3-5: Comparison of Preaward and Postaward Notices

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CHAPTER 4 : DOCUMENTATION REQUIREMENTS

4.1 Minimum Requirements - No Army Text

4.2 Electronic Source Selection

In those instances when an electronic system for source selection documentation is used, the PCO should determine which system is appropriate for the effort. The system available to the Army is the Virtual Contracting Enterprise Acquisition Source Selection Interactive Support Tool (ASSIST). For more information, please reference the ASSIST user guide at <https://assist1.army.mil>.

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CHAPTER 5 : DEFINITIONS

Affordability Caps are the approved cost constraints for major systems acquisitions determined by the resources a DoD component can allocate, which provide a threshold for procurement and sustainment costs that cannot be exceeded. For other procurements, this is the approved funding allocated for a given acquisition.

Adverse past performance is defined as past performance information that supports a less than satisfactory rating on any evaluation. Adverse past performance that must be addressed with Offerors includes unfavorable comments received from sources such as those received from respondents from past performance questionnaires or interviews that have not been finalized within a formal rating system. A best practice can be to discuss adverse past performance which caused a rating to be lowered to Satisfactory Confidence.

Best Value is the expected outcome of an acquisition that, in the Government's estimation, provides the greatest overall benefit in response to the requirement.

Clarifications are limited exchanges between the Government and Offerors that may occur when award without discussions is contemplated.

Communications are exchanges, between the Government and Offerors, after receipt of proposals, leading to establishment of the competitive range.

Competitive Range is the range of proposals that are most highly rated, unless the range is further reduced for efficiency. Discussions will be held only with Offerors in the competitive range. See FAR 15.306(c).

Deficiency is a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level. See FAR 15.001.

Discussions are exchanges (i.e., negotiations) in a competitive environment that are undertaken with the intent of allowing the offeror to revise its proposal. Discussions take place after establishment of the competitive range. See FAR 15.306(d).

Due Diligence (Industry) – The process followed by prospective contractors to fully understand the government requirement in order to submit a complete, responsive proposal to the government which will result in a successful acquisition. Methods may include such activities as conducting site visits, attending industry days, one-on-one sessions with the acquisition teams, pre-proposal conferences and responding to draft requests for proposals.

Due Diligence (Government) – The process followed by the government acquisition team to ensure all prospective contractors are as informed of the government requirement and method of acquisition as possible in order to receive a reasonable number of competitive proposals from industry. Methods may include such activities as providing for site visits, conducting industry days, one-on-one sessions with interested vendors, pre-proposal conferences and sending draft requests for proposals to industry.

Evaluation Findings are the evaluator's written observations/judgments regarding the individual merits of the proposal against the RFP requirements.

Evaluation Notice is the PCO's written notification to the offeror for purposes of clarifications, communications, or discussions.

Excesses are elements of the proposal that have exceeded mandatory minimums (in ways that are not integral to the design) whose removal and corresponding price decrease may make an Offeror's proposal more competitive. See FAR 15.306(d)(4).

Formal Source Selection means the source selection process used where someone other than the PCO is the SSA, normally for high dollar value or complex acquisitions.

Large Business means businesses determined other than Small Business based upon industry size standards and/or North American Industry Classification System [NAICs]. Includes: Large businesses, State and Local Government and non-profit companies. May also include: public utilities, educational institutions, and foreign-owned firms.

Lowest Price Technically Acceptable is a process used in competitive negotiated contracting where the best value is expected to result from selection of the technically acceptable proposal with the lowest evaluated price. See FAR 15.101-2.

Minor or Clerical Error is a minor informality or irregularity that is merely a matter of form and not of substance or a clerical error apparent on its face in the proposal. Includes: obvious misplacement of decimal points, incorrect discounts, reversal of prices, and misdesignation of units.

Objective (or objective maximum) as used in this document) is the value of an attribute that is applicable when a higher level of performance delivers significant increased operational effect, or decreased operational risk, if it can be delivered

below the affordability cap. The objective value is the desired operational goal that is achievable but may be at a higher risk in cost, schedule, and technology. (For use in VATEP)

Performance Confidence Assessment is an evaluation of the likelihood (or Government's confidence) that the offeror will successfully perform the RFP's requirements; the evaluation is based past performance information.

Probable Cost is the government's best estimate of the costs that a contractor will incur in performing a cost-reimbursement contract (FAR 15.404-1(d) (2)(i)). The probable cost must be ascertained by making a cost realism analysis during the evaluation of each proposal and must be used in making the source selection decision for best value.

Program Manager or Requiring Activity is the entity responsible for providing contract requirements documents within the RFP that communicate those requirements to the offeror.

Rating is the adjective/color descriptor assigned by the evaluators to the non-Cost/Price Factors and corresponding Subfactors. It represents their conclusions as to the quality of the proposal, supported by narrative write-ups identifying the associated findings (strengths, weaknesses, deficiencies, risks, and uncertainties).

Recency, as it pertains to past performance information, is a measure of the time that has elapsed since the past performance reference occurred. Recency is generally expressed as a time period during which past performance references are considered relevant.

Relevancy, as it pertains to past performance information, is a measure of the extent of similarity between the service/support effort, complexity, dollar value, contract type, and subcontract/teaming or other comparable attributes of past performance examples and the source RFP requirements; and a measure of the likelihood that the past performance is an indicator of future performance.

Requirements Documents are all aspects of the RFP that convey the needs of the Government to offerors, including the Statement of Objectives, SOW, PWS, technical requirement documents, and system requirement documents.

Risk, as it pertains to source selection, is the potential for unsuccessful contract performance. The consideration of risk assesses the degree to which an offeror's proposed approach to achieving the technical factor or subfactor may involve risk of disruption of schedule, increased cost or degradation of performance, the need for increased Government oversight, and the likelihood of unsuccessful contract performance. (For firm-fixed-price contracts, the reference to increased cost may be removed from the risk definition.)

Sample Task is a hypothetical task that is given to Offerors during source selection to evaluate their understanding of the work and their ability to perform the work. It must be a reasonable representative of the type of work that will be required. Some rates used to price the task order must be binding on the contractor for the sample to be valid. (Incorporation of binding rates also applies to any live/real task order.)

Significant Strength is an aspect of an Offeror's proposal that has appreciable merit or appreciably exceeds specified performance or capability requirements in a way that will be appreciably advantageous to the Government during contract performance.

Significant Weakness in the proposal is a flaw that appreciably increases the risk of unsuccessful contract performance. See FAR 15.001.

Source Selection is the process used in competitive, negotiated contracting to select the proposal that offers the best value to the Government.

Source Selection Advisory Council is a group of senior Government personnel, appointed by the SSA, that provides counsel during the source selection process, prepares the comparative analysis of the SSEB's final evaluation results, and makes an award recommendation to the SSA.

Source Selection Authority is the official designated to make the source selection decision.

Source Selection Decision Document is the document that reflects the SSA's independent, integrated, comparative assessment and decision.

Source Selection Evaluation Board is a group of individuals representing the various functional disciplines relevant to the acquisition, and is responsible for evaluating proposals against the solicitation criteria.

Source Selection Information is information prepared for use by an agency for the purpose of evaluating a bid or proposal to enter into an agency procurement contract, if that information has not been previously made available to the public or disclosed publicly. See FAR 2.101 for a listing of source selection information.

Source Selection Plan is a plan that describes how the source selection will be organized, how proposals will be evaluated and analyzed, and how source(s) will be selected.

Source Selection Procedures are designed to: (1) maximize competition; (2) minimize the complexity of the solicitation, evaluation and selection process; (3) ensure impartial and comprehensive evaluation of proposals; and (4) ensure

selection of the source whose proposal is the most advantageous and realistic and whose performance is expected best meet the government's stated requirements.

Source Selection Team is a team that is tailored to the unique acquisition, tasked with carrying out a source selection. Composition of the team generally consists of the SSA, PCO (if different from the SSA), SSAC, SSEB, Advisors, Cost/Price Experts, Legal Counsel, Small Business Specialists, and other subject-matter experts.

Standard of Proof is the evidence or standard by which the Government (evaluator) determines whether an Offeror has complied with the Government's stated requirement.

Strength is an aspect of an Offeror's proposal that has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance.

Subjective Tradeoff is a source selection process used when it may be in the best interest of the Government to consider award to other than the lowest priced Offeror or other than the highest technically rated Offeror but it is not possible to place a quantifiable value on proposed performance or capabilities above threshold (minimum) requirements (see DOD Source Selection Procedures paragraph 1.3.1.3).

Terms and Conditions Concerns are issues related to any of the contract provisions in the RFP.

Threshold (or Threshold (minimum) as used in this document) is the minimum acceptable value of an attribute that is considered achievable within the available cost, schedule, and technology at low-to-moderate risk. Performance below the threshold value is not operationally effective or suitable or may not provide an improvement over current capabilities. (See also "mandatory minimums" in FAR 15.306(d)(4).)

Tradeoff Process is the competitive negotiation process where the government evaluates both cost/price and non-cost/price factors and awards the contract to the offeror proposing the combination of factors which offer the best value to the government. The process is appropriate when it is in the government's best interest to consider award to other than the lowest priced offeror or the highest technically rated offeror.

Uncertainty is any aspect of a non-cost/price factor proposal for which the intent of the offer is unclear (e.g. more than one way to interpret the offer or inconsistencies in the proposal indicating that there may have been an error, omission, or mistake).

Value Adjusted Total Evaluated Price is a tradeoff source selection process where the Offeror's total proposed price may be adjusted based on the "value" placed on better performance as identified in the RFP. The SSA must then determine if a higher rated technical offer is "worth" the additional cost to the Government.

Weakness is a flaw in the proposal that increases the risk of unsuccessful contract performance. See FAR 15.001

APPENDIX A Table Of Contents

A-1 Debriefing Guide

A-1 Purpose of Debriefing

Constructive Communication with Industry

Transparency, to the extent allowable by applicable regulations and laws, **throughout the process** can help to build trust and confidence on the part of offerors regarding the treatment of their proposal and the source selection decision outcome.

Unsuccessful offerors are sometimes able to accept negative findings in a debriefing if they perceive that the Government acted with fairness, consistency, objectivity, and in accordance with the evaluation criteria described in the RFP.

A-2 Requirements

Figure A-1 below provides a comprehensive side-by-side comparison of the requirements for preaward and postaward debriefings.

	PREAWARD DEBRIEFING FAR 15.505	POST AWARD DEBRIEFING FAR 15.506
Who is Entitled to a Debriefing?	Offerors excluded from the competitive range or otherwise excluded from the competition before award.	Any unsuccessful Offeror who has not had a preaward debriefing. <i>A successful offeror may also be provided a debriefing.</i>

<p>When Must the Government Conduct a Debriefing?</p>	<p>As soon as practicable after receipt of a timely, written request. However, the PCO may refuse the request for a preaward debriefing if it is not in the best interest of the Government to conduct a preaward debriefing.(1) (2)</p>	<p>Within five days, to the maximum extent practicable, after receipt of a timely, written request for a debriefing. (3)</p>
<p>What is a Timely Request?</p>	<p>A request received by the contracting activity within 3 calendar days after the offeror received notice of exclusion from the competition. (4)</p>	<p>A request received by the contracting activity within 3 calendar days after the offeror received notice of contract award. (4)</p>
<p>What Can Not Be Disclosed?</p>	<p>Number of offerors Identity of other offerors Content of other offerors' proposals Ranking of other offerors Evaluation of other offerors Point-by-point comparisons of a debriefed offeror's proposal with other proposals Information prohibited from disclosure by FAR 24.202 or information exempt from release under the FOIA (5)</p>	<p>Point-by-point comparisons of a debriefed offeror's proposal with other proposals. (The ratings of a debriefed offeror and the awardee may be disclosed to the subfactor level without violating this principle.) Information prohibited from disclosure by FAR 24.202, or information exempt from release under the FOIA. (5)</p>
<p>Legal counsel must be consulted if there is <i>any</i> question regarding the releaseability of information</p>		
<p>What Should Be Discussed?</p>	<p>The agency's evaluation of significant elements in the offeror's proposal (6); A summary of the rationale for eliminating the offeror from the competition; Reasonable responses to relevant questions about whether source selection procedures contained in the RFP, applicable regulations, and other applicable authorities were followed in the process of eliminating the Offeror from the competition.</p>	<p>The Government's evaluation of the significant weaknesses, weaknesses, or deficiencies in the offeror's proposal, if applicable; The overall evaluated cost/price (include unit prices only if releasable under FOIA, and DO NOT disclose the IGCE); technical rating, if applicable, of the successful offeror and the debriefed offeror; and past performance information on the debriefed offeror; The overall ranking of all offerors, when any ranking was developed by the agency during the source selection; A summary of the rationale for award; For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror; and Reasonable responses to relevant questions about whether source selection procedures contained in the RFP, applicable regulations, and other applicable authorities were followed. Other information, as appropriate.</p>

*Figure A-1: Comparison of Preaward and Postaward Debriefings***Notes to Figure A-1:**

(1) The offeror may request the debriefing be delayed until after contract award. When delayed, the debriefing shall include all the information provided in a postaward debriefing.

(2) In the event either the Government or offeror delays the debriefing, the PCO must provide the debriefing within the timeframe established for postaward debriefings.

(3) If an offeror submits an untimely request for debriefing, the PCO may nonetheless conduct a debriefing if feasible. In such case, inform the offeror the request is untimely. **NOTE:** If new information is provided during an untimely debriefing, it may form the basis of a timely protest. Therefore, obtain legal advice prior to providing an untimely debriefing.

(4) Do not count the day the offeror received the notice; start with the next day. Consider sending the notice by mail with return receipt requested or by electronic means (facsimile transmission or e-mail) with immediate acknowledgment requested so that you can easily establish the date the offeror received it.

(5) Includes such things as trade secrets; privileged or confidential information, e.g., manufacturing processes and techniques, commercial and financial information, and cost data; and the names of individuals providing past performance information. It does not include information otherwise available without restriction to the Government or public.

(6) If the element was significant enough to eliminate the offeror from the competitive range, it is significant for debriefing purposes. Include both positive and negative aspects of the offeror's proposal to help improve future proposals.

Other Information to Ensure a Meaningful Debriefing

In a postaward debriefing, disclose the evaluation ratings of the debriefed offeror and awardee to the subfactor level of evaluation; and all significant weaknesses, strengths, and deficiencies (if any) of the debriefed offeror's proposal.

Disclose the debriefed offeror's total evaluated prices and the awardee's total evaluated cost/price (include unit prices only if releasable under FOIA, but DO NOT disclose the IGCE).

Disclose a summary of the rationale for the contract award decision. The rationale is contained in the SSA's source selection decision document. Consider furnishing the debriefed offerors with a **redacted** copy of this document. Evaluation information concerning the other unsuccessful offerors and information not releasable under FOIA must be redacted prior to release (ensure no information listed in FAR 15.506(e) is released).

Clearly indicate that the debriefing has been concluded. Formal conclusion of the debriefing begins the protest window.

A-3 Notification of Debriefing

Regardless of the method of debriefing, the PCO should document all aspects of the process for arranging the debriefing date to include written acknowledgement from the offeror.

A-4 Debriefing Location

The PCO should always consider the needs of the offeror as well as the ability of the Government to accommodate when selecting the debriefing location. Just as important is the inclusion of the right personnel in the debriefing process. Therefore, all reasonable efforts should be made to ensure key individuals from distant locations can participate.

For face-to-face debriefings, the PCO shall ensure that all access and security requirements for offerors and Government personnel attendance are met. This may include requirements to access the installation or debriefing facility.

A-5 Debriefing Attendees

Government Personnel. As chair of the debriefing, the PCO should coordinate attendance of the right Government participants and ensure Legal Counsel attends, especially when the offeror's Legal Counsel is going to attend. (*Reference DOD Source Selection Procedures Appendix A.5.1*)

Debriefed Offeror Personnel. Subcontractors may attend the prime contractor's debriefing, with the invitation and consent of the prime contractor. (*Reference DOD Source Selection Procedures Appendix A.5.2*)

A-6 Preparing for the Debriefing

Because debriefings are time-sensitive, the prioritization of (and preparation for) this event(s) is critical. The extent of preparation may vary considerably with the complexity of each acquisition. This documentation (in addition to the outline, if used) will establish a "framework" to ensure the debriefing remains focused and productive.

Establish and Prepare Debriefing Documentation

Briefing charts alone (with information taken directly from final briefing slides presented to the SSA) may be sufficient.

A written script (which may later be provided to the offeror) may be prudent in addition to briefing charts.

Review and be familiar with the final evaluation report for the debriefed offeror.

Practice the Debriefing

Rehearse the order and execution of the debriefing.

Ensure the Government participants understand their roles and when to speak.

Set rules for taking new questions and caucusing.

A-7 Outline for the Debriefing – No Army Text

A-8 Conducting the Debriefing

Handling Questions

You may request that questions from the offeror's personnel be funneled through their main spokesperson (this facilitates the orderly conduct of the debriefing).

As a general rule, do not answer questions on the fly.

Hold a Government caucus to formulate a response before providing an answer (*maintain source selection materials in caucus room for reference if needed*).

Government participants should only speak when requested by the PCO. Discussion should be tightly controlled.

At the end of the debriefing, advise the offeror that the debriefing is concluded.

At the discretion of the PCO, you may answer questions submitted by the offeror after the debriefing. ***You should advise the offeror that the information is not considered part of the official debriefing (thereby not impacting the protest time period).***

The Post Debriefing Memorandum

The PCO must include a summary of each debriefing as a record in the contract file. This post-debriefing memorandum should include, at a minimum:

A list of all debriefing attendees;

A summary of the information disclosed during the debriefing. The most efficient means for doing this is to attach the debriefing slides to the memorandum;

The offeror's request for a debriefing, if any;

The substance of all questions and answers discussed at, or provided subsequent to, the debriefing. This includes previously submitted questions, any hand-outs, and a list of written questions/answers;

Any other relevant documents.

A-9 Sample Offeror Questions – No Army Text

APPENDIX B Table Of Contents

Tradeoff Source Selection Process:

Subjective Tradeoff and Value Adjusted Total Evaluated Price Tradeoff

B-1 Subjective Tradeoff

Where the tradeoff source selection process is used to obtain best value, ***the subjective tradeoff process is appropriate for most Army source selections.*** The subjective tradeoff process provides the following benefits in source selection:

The ability for offerors to propose various technical approaches that may be of benefit to the Government. The competitive environment should encourage the freedom to do so depending upon what the solicitation places the most value/importance upon;

The ability to have meaningful comparisons and establish discriminators among competing proposals;

The ability to place a greater value on past performance by enabling discernment of an offeror's performance record;

The ability of the SSA to give consideration to the benefit/value of non-cost/price factor differences between offerors and to determine if those differences justify paying the cost/price differential between them.

When using this process, clearly:

State the relative importance of the factors and subfactors;

Describe in Section L approaches or capabilities that the Government places a higher value on for exceeding the threshold (minimum) requirements if applicable, and;

Describe in Section M how the Government will assign findings (strengths or significant strengths) correlated to the expected positive impact of, or benefit received, where the offeror exceeds threshold requirements when evaluating these areas.

Use of Entry-Gate Criteria – As part of the subjective tradeoff source selection process, the DOD Source Selection Procedures allows for the use of entry-gate criteria. This is considered a combination approach utilizing concepts from both LPTA and Subjective Tradeoff. When determining your evaluation criteria, the PM and the PCO should closely examine the key requirements and carefully consider whether some objective elements (i.e. entry-gate criteria) could be evaluated using an acceptable/unacceptable or pass/fail rating methodology. During the evaluation of proposals, offerors must be determined to be acceptable or pass the entry-gate criteria in order to advance in the subjective tradeoff evaluation. When the requirement

can be clearly stated with a corresponding standard of proof, using this combination approach with entry-gate criteria can simplify and streamline the evaluation process. See also Appendix C for more information on acceptable/ unacceptable criteria.

B-2 Value Adjusted Total Evaluated Price Tradeoff

VATEP may be appropriate where the PM is able to establish an affordability cap (limits on pursuing any above-threshold requirements), determine a relative order of importance for above-minimum performance or criteria, and assign a monetary value. ***Use of VATEP may be most suitable for procuring developmental items, where the Government can determine the value (or worth) of “better performance” and quantify it in the RFP.***

VATEP Example 1

Scenario: This effort is for the purchase of an aircraft with multiple minimum performance specifications (threshold), some of which also have desired performance specifications (objective). The PM / RA has identified the 3 most desired objectives for which a Value Adjusted Total Evaluated Price will be determined.

SECTION M LANGUAGE : At the end of the paragraph, “Basis of Award”, insert the following language: This RFP employs the use of Value Adjusted Total Evaluated Price (VATEP) techniques which identifies, in advance, the value placed on above-threshold performance or capabilities in the Air Movement Mission-Range and Payload, Self-Deployment, and/or Cruise Airspeed requirements. The specific VATEP procedures and values for this effort are set forth below: If an offeror’s proposal exceeds the mandatory minimum performance specifications for the Air Movement Mission-Range and Payload, Self-Deployment Mission, and/or Cruise Airspeed requirements set forth in the Air Vehicle technical subfactor, the following VATEP procedures will be applied: An offeror can earn VATEP evaluation credit for meeting performance between the threshold and objective for the Air Movement Mission-Range and Payload and/or Cruise Airspeed requirements. An offeror can also earn VATEP evaluation credit for meeting the objective for the Self-Deployment Mission. The VATEP eligible objectives shall be embodied in the FUA Aircraft and also priced and delivered in Contract Line Item Number (CLIN) X001AA. The offeror’s total evaluated price for CLIN X001AA will be adjusted, for evaluation purposes only, in accordance with the chart below where above-threshold performance has been achieved for any of the three objectives identified. The VATEP objectives must be available on the first aircraft in order to be eligible for VATEP evaluation credit. Risk will not be assessed in VATEP since risk was already assessed in the Air Vehicle subfactor.

VATEP Objectives	Specification Paragraph	Maximum VATEP % Reduction in CLIN X001AA Proposed Price	Calculation of VATEP %	Identify where in Offeror’s proposal the VATEP objective is met or partially met
Air Movement Mission-Range and Payload	6.3.2	3%	(Offerors proposed payload less the threshold of 2100)/600*3% [Not-to-Exceed 3%] NOTE: 2100 is the threshold and 600 is the delta between the threshold and objective	
Self-Deployment	6.3.1	2%	Objective is binary. An Offerors proposal will either meet or fail to meet the objective.	

Cruise Airspeed	6.1.6	1%	(Offerors proposed cruise airspeed less the threshold of 250)/150*1% [Not-to-Exceed 1%] NOTE : 250 is the threshold and 150 is the delta between the threshold and objective
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The SSA will consider the VATEP of the cost/price factor, along with the other evaluation factors, in making the source selection decision. *VATEP is a technique used for evaluation purposes only. The value adjusted total evaluated price will not change the proposed unit prices set forth in Section B of the proposal, nor will it change the estimated contract value for award purposes.*

SECTION L LANGUAGE : The offeror shall complete RFP Attachment L-5 (VATEP Calculations) to facilitate the Government’s review process.

(NOTE: RFP Attachment L-5 contains the chart identified in Section M above.)

VATEP Example 2

Example: The Army is buying a large equipment trailer (LET) using VATEP, and one of the requirements is maximum payload. The threshold is 80,000 lbs, and the objective is 85,000. As stated in the RFP, During Step 2 of the VATEP process the SST will adjust each offeror’s total proposed price (TPP) to derive the total evaluated price (TEP) by \$1,000 for each 50 lbs. of increased payload over the threshold, for a maximum adjustment to the TEP of \$100,000. This adjustment is for evaluation purposes only, and will not change the proposed pricing, which will become the awarded price. If an offeror proposes the threshold for payload, then they will receive no adjustment.

In this example, four proposals are received:

Offeror A: TPP=\$1,050,000; at least an “acceptable” rating for all minimum requirements, proposes a maximum payload of 83,500 lbs, an increase of 3,500 lbs. over the threshold.

Offeror B: TPP=\$1,000,000; at least an “acceptable” rating for all minimum requirements, proposes the threshold maximum payload of 80,000 lbs.

Offeror C: TPP=\$1,150,000; at least an “acceptable” rating for all minimum requirements, proposes a maximum payload at the objective level of 85,000 lbs, an increase of 5,000 lbs over the threshold

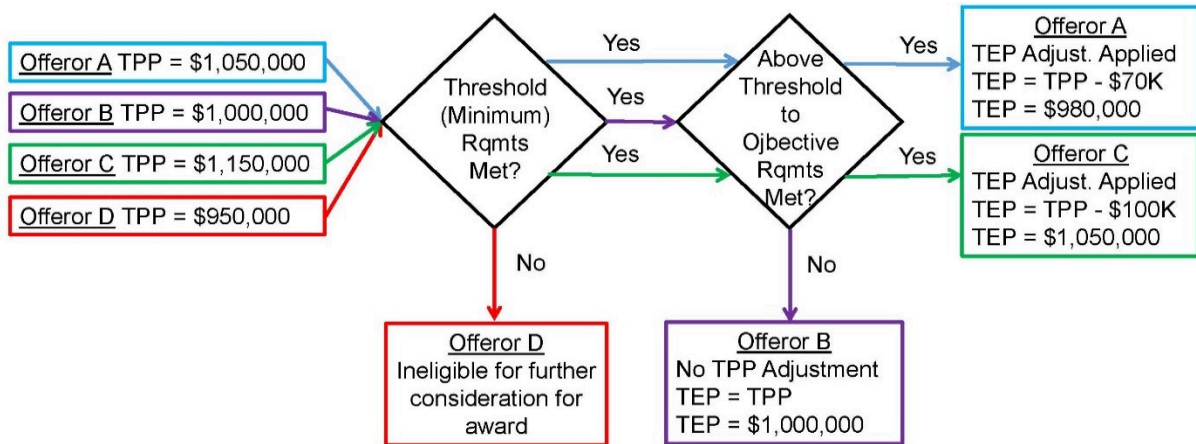
Offeror D: TPP=\$950,000; “unacceptable” for two minimum requirements, proposes a maximum payload at the objective level of 85,000 lbs, an increase of 5,000 lbs. over the threshold. *Offeror D is eliminated in Step 1.*

At the conclusion of Step 1, offeror B has the lowest TPP, with offeror A as the second-lowest cost/price and Offeror C as the highest price. However, offerors A and C have their TPPs adjusted since they have proposed maximum payloads above the threshold, while offeror B has no adjustment since they have proposed only the threshold maximum payload. The TEP adjustments are as follows:

Offeror A has proposed an increase of 3,500 lbs, which leads to a decrease of their TPP by \$70,000, for a TEP of \$980,000.

Offeror B has proposed the threshold, and receives no adjustment to their TPP. Therefore, their TEP is \$1,000,000.

Offeror C has a proposed increase of 5,000 lbs, which leads to a decrease of their TPP by the maximum amount of \$100,000, for a TEP of \$1,050,000.



Requirement: The US Government (USG) is soliciting for a large equipment trailer (LET). The LET has a rated payload of a minimum of 80,000 lbs (40 tons), with an objective payload of 85,000 lbs (42.5 tons). The LET is to be used to transport a variety of equipment. The LET will be employed for use on primary and secondary roads. The payload objective will be used to determine a Value Adjusted Total Evaluated Price (VATEP).

SECTION M LANGUAGE : At the end of the “Basis of Award” paragraph, insert the following language:

This RFP employs the use of the Value Adjusted Total Evaluated Price (VATEP) technique, which identifies in advance the value placed on above-threshold performance for the payload requirement. The specific VATEP procedures and value for this effort are set forth below. The Offeror’s total proposed price will be adjusted to arrive at a total evaluated price, for evaluation purposes only, in accordance with the chart below where above-threshold performance has been achieved for the payload requirement. The VATEP objective must be available on the first LET in order to be eligible for VATEP evaluation credit. Risk will not be assessed in VATEP. For each 50 lbs of increased payload, the total evaluated price (TEP) will be reduced by \$1,000, for a maximum adjustment to TEP of \$100,000. No credit will be provided above the maximum for performance over the objective.

VATEP Objectives	ATPD Paragraph	Maximum VATEP Reduction to Total Evaluated Price	Calculation of VATEP %	Identify where in Offeror’s proposal the VATEP objective is met or partially met
Payload	4.3.2	\$100,000	(Offeror’s proposed payload less the threshold of 8000)/50* \$1,000 [Not-to-Exceed \$100,000 total reduction] NOTE: 8000 is the threshold and 5,000 is the delta between the threshold and objective	

The SSA will consider the VATEP of the cost/price factor, along with the other evaluation factors, in making the source selection decision. The VATEP adjustment is for evaluation purposes only, and will not change the proposed pricing, which will become the awarded price. If an Offeror proposes the threshold for payload, then they will receive no adjustment.

SECTION L LANGUAGE : The offeror shall complete RFP Attachment L-X (VATEP Calculations) to facilitate the Government review process.

The offeror's LET shall meet or exceed the threshold identified in the table below. LETs that fail to meet the threshold will not be considered. If an offeror's proposed payload exceeds the threshold performance specification set forth in the technical subfactor, the following VATEP procedures will be applied: An offeror can earn VATEP evaluation credit for meeting performance between the threshold and objective, or for meeting the objective requirement. This credit will be assessed as a reduction in the total evaluated price. If performance between threshold and objective is being proposed, the exact performance value shall be listed in Attachment L-X. An LET that meets the proposed above-threshold payload performance shall also be priced and delivered in CLIN X001AA.

APPENDIX C Table Of Contents Lowest Price d Technically Acceptable Source Selection Process

C-1 Purpose

The purpose of this Appendix is to assist acquisition professionals in making sound decisions for determining whether to use a Tradeoff or LPTA source selection process to obtain best value. LPTA is an available source selection approach. However, a lack of understanding of when it is an appropriate choice may result in misapplication of this process. This Appendix includes "side-by-side" comparisons of LPTA vs. Tradeoff characteristics, methodologies, common concerns associated with each, tips and best practices.

C-2 References

1. Federal Acquisition Regulation Part 15 <https://www.acquisition.gov/browsefar>
2. Defense Federal Acquisition Regulation Supplement Part 215 <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>
3. Army Federal Acquisition Regulation Supplement Part 5115 <https://spcs3.kc.army.mil/asaalt/procurement/AFARS/Home.aspx>
4. Department of Defense Source Selection Procedures <http://www.acq.osd.mil/dpap/policy/policyvault/USA007183-10-DPAP.pdf>
5. Better Buying Power <http://bbp.dau.mil/>
6. Under Secretary of Defense (Acquisition, Technology, And Logistics) (USD(ATL)) memorandum, subject: Appropriate Use of Lowest Price Technically Acceptable Source Selection Process and Associated Contract Type (March 04, 2015) http://bbp.dau.mil/docs/Appropriate_Use_of_Lowest_Priced_Technically_Acceptable_Source_Selec_Process_Assoc_Con_Type.pdf
7. ASA (ALT) memorandum, subject: Use of Lowest Price Technically Acceptable Source Selection Process (April 20, 2015), issued as Policy Alert #15-73: Use of Lowest Price Technically Acceptable Source Selection Process (April 21, 2015) <https://spcs3.kc.army.mil/asaalt/procurement/PARC/PARC.aspx>
8. Government Accountability Office Cases - Various

C-3 Purpose

Policy Perspective on Use of LPTA. The DOD Source Selection Procedures includes a separate Appendix C devoted to the LPTA Source Selection Process (reference 4). The use of LPTA has increased but not necessarily successfully in all cases, causing concern by both the Government and Industry Partners. Some specific concerns include:

Government officials are not able to adequately define the requirement, and therefore not able to adequately define technical acceptability.

Awarded prices are unrealistically low.

Incumbent contractors underbid at unreasonable or unrealistic prices.

Winning contractors cannot attract qualified employees.

Contractors are unable to perform at acceptable quality levels.

Endangering the security of government resources, to include information systems and networks, and personnel.

To provide greater fidelity on the appropriate use of LPTA, Better Buying Power (BBP) 2.0 (reference 5) set basic guidance for use of LPTA. Subsequent memorandum issued by the Under Secretary of Defense (Acquisition, Technology

and Logistics) (reference 6) and reinforced by the Assistant Secretary of the Army (Acquisition, Logistics and Technology) (reference 7), stress that:

“ LPTA has a clear, but limited place in the source selection “best value” continuum. Used in appropriate circumstances and combined with effective competition and proper contract type, LPTA can drive down costs and provide the best value solution. LPTA offers a streamlined and simplified source selection approach to rapidly procure the commercial and non-complex services we need to support the Warfighter. If not applied appropriately, however, the Department can miss an opportunity to secure an innovative, cost-effective solution to meet Warfighter needs to help maintain our technological advantage. ”

C-4 What is Risk?

No matter whether using Tradeoff or LPTA, the focus should always be on identifying the key discriminators based upon market research and the assessment of risk. Risk, as it pertains to source selection, is the potential for unsuccessful contract performance. Increased risk comes with numerous possible complicating factors including:

Disruption of Schedule	Funding/Budget Availability
Increased Cost or Degradation of Performance	Contract Type – Pricing Arrangement
Need for Increased Government Oversight	Dependencies on Other Projects/Systems
The Likelihood of Unsuccessful Contract Performance	Possible Effect on Other Simultaneous Projects
Technical Feasibility	Operational Risk

While it is impossible to eliminate all risk, the objective is to reduce or mitigate risks by selecting the best value offeror through a sound source selection evaluation process.

The Government’s risk is increased where the criteria (standards) are set too low. The source selection team must work together to ensure the PWS/SOW/Specification is complete and reflects the Government’s needs at the ***right*** quality level.

Identifying key discriminators that are linked to the critical requirements where key risks lie is one of the most important steps in the process of determining the right process to achieve best value.

<p>Key Risk Areas = Discriminators = Possible Evaluation Criteria Crystal Clear, Non-Debatable Evaluation Criteria + Evaluation on Basis of Technical Acceptability + <u>Objective Standard of Proof for Each Criteria</u> = Candidate for LPTA Source Selection Process</p>

If the evaluation criteria cannot be objectively defined strictly on the basis of acceptable/unacceptable, and a clear ***“standard of proof”*** be determined for each, the procurement is not a candidate for the LPTA process.

NOTE: If some, but not all, evaluation criteria fit the LPTA requirements a ***combination approach*** may be a consideration.

Caution – If the customer/requiring activity is concerned about improving performance, LPTA is **not** an appropriate source selection approach.

C-5 Quick Comparison of Best Value Basics

The FAR on Trade off vs LPTA Source Selection Processes

FAR 15.101-1 Tradeoff Process	FAR 15.101-2 LPTA Process
Permits tradeoffs among cost or price and non-cost factors and allows the Government to accept other than the lowest price proposal.	Does not permit tradeoff among cost or price and non-cost factors.
Used in competitive negotiated contracting.	Used in competitive negotiated contracting.
Select the most <u>advantageous</u> offer.	Select the lowest price proposal that meets/exceeds minimum requirements.

Evaluate and compare factors in addition to cost or price.	
Proposals may be ranked.	No ranking of proposals.
Exchanges may occur.	Exchanges may occur.

IF	THEN	IF	THEN
<ul style="list-style-type: none"> - Generally considered complex items or services - Less definitive - Developmental or developmental work is required - Non-price factors play a dominant role in the source selection decision 	Use the Tradeoff Process	<ul style="list-style-type: none"> - Commercial/non-complex items or services - Clear and well-defined requirements - Stable requirements - Items or services are readily and consistently available in the marketplace - Risk of unsuccessful performance is minimal - There is neither value, need or willingness to pay for higher performance - Cost/price plays a dominant role in the source selection decision 	Consider using the LPTA Process

C-6 Comparing Key Characteristics

Tradeoff vs LPTA Methods of Source Selection	
TRADE OFF	LPTA
SUMMARY OVERVIEW	SUMMARY OVERVIEW
<p>A Tradeoff process is appropriate when it may be in the best interest of the Government to:</p> <ul style="list-style-type: none"> a) consider award to other than the lowest-priced Offeror or: b) other than the highest technically rated Offeror. <p>Therefore, if the ability to distinguish between the quality of non-cost/price factors and cost/price factors within Offerors' proposals and give credit (assign strengths) for aspects which provide a benefit to the Government and for which it might be willing to pay more for (premium), then the tradeoff process is the best approach.</p> <ul style="list-style-type: none"> Less definitive More complex and time consuming development work Greater performance risk/integration risk Technical and past performance considerations more important than price Price based on performance-based approach Past performance is critical in reducing risk 	<p>An LPTA process is appropriate when best value is expected to result from selection of the technically acceptable proposal with the lowest price. Award is made to the responsible contractor who is technically acceptable and has the lowest evaluated price.</p> <p>Government design or stable requirements, clearly definable</p> <ul style="list-style-type: none"> Risk of unsuccessful performance is minimal No mission-related reason to pay a premium for quality or performance exceeding the acceptable level Only use LPTA when able to clearly define and strictly evaluate Offerors' proposals based on technical acceptability Technical evaluation lends itself to acceptable/unacceptable basis When requirement is easy to price When past performance is not critical to reducing risk When a "standard of proof" is identifiable for each evaluation criteria

Tradeoff vs LPTA Methods of Source Selection

TRADEOFF	LPTA
Encourages Innovation	Innovation Not Needed, Encouraged, nor Rewarded
Proposals can offer various technical approaches that may be of benefit to the Government and the competitive environment should encourage this depending upon what the solicitation places the most value/importance upon.	LPTA inherently places the most value on the technical acceptability to provide known, stable requirements for the lowest price and the Government will not benefit from/is not willing to pay for above threshold performance.
Maximum Flexibility	Minimum Flexibility
<p>The tradeoff process provides the most discretion/flexibility when it comes to the award decision.</p> <p>The Source Selection Evaluation Board (SSEB) can identify strengths within proposals that may benefit the Government and increase the value of the proposal.</p> <p>The Source Selection Authority can give consideration to the benefit/value of non-cost/price factor differences between Offerors to determine if those differences justify paying the cost/price differential between them.</p>	<p>Tradeoffs not permitted – intended to be a simple selection process based upon technical acceptability/lowest price. Use a Checklist or Form to document the Technical Evaluation (1) to ensure the requirements/criteria/standards are suitable for this process; and (2) enable the Offeror to provide the standard of proof and determine whether the Offeror should be rated as acceptable or unacceptable for that item.</p> <ul style="list-style-type: none"> - You must be able to evaluate everything included in your “checklist” using an <u>objective</u> standard of proof. - By associating minimum standards with relative risks for execution of each task, risk of unsuccessful performance can be mitigated or decreased. -The Offeror is required to provide clear proof that they meet the requirement (and the Government determines what the standard of proof is, and announces it in the RFP). No additional “credit” can be given for exceeding established standards.

Tradeoff vs LPTA Methods of Source Selection	
TRADEOFF	LPTA
Competitive Range and Discussions	Competitive Range and Discussions
<p>52.215-1, Instructions to Offerors – Competitive Acquisition enables the Government to provide notice to prospective Offerors of the intent to make award without discussions as well as limit the number of proposals in the competitive range to the number at which an efficient competition can be conducted.</p> <p>Contracting officer can provide the opportunity for offerors to eliminate weaknesses and deficiencies through the discussion process.</p>	<p>If few or no acceptable offers are received or proposals indicate that the requirements are misunderstood, the contracting officer may set a competitive range and conduct discussions with technically unacceptable Offerors and provide them the opportunity to eliminate deficiencies. A proposal rated technically acceptable cannot be further improved through the discussion process. However, all Offerors in the competitive range must be afforded the opportunity to submit a revised proposal after discussions have concluded. See <i>Commercial Design Group, Inc.</i>, B-400923.4, August 6, 2009, CPD ¶ 157.</p>
Enables Meaningful Comparisons	No Comparisons Permitted
Tradeoff allows for meaningful comparisons and discrimination between and among competing proposals.	If some, but not all, evaluation criteria fit the LPTA requirements, a combination approach may be a consideration. If a combination approach is used, comparison is allowable only for those factors based on tradeoff.

Evaluation is More Complex But Can Be Simplified Using a Hybrid Approach When Appropriate	Evaluation is Straightforward
<p>By using a combination approach, the Government can simplify some aspects of the evaluation where criteria are clear, can be evaluated on an acceptable/unacceptable basis, and a clear standard of proof can be linked to each one. Examples of may include professional qualifications, special certifications, licensing.</p>	<p>Well-written evaluation criteria and “standard of proof” that the Offeror must provide to satisfy each, should enable the evaluation to be conducted in an efficient and straightforward manner. If not all evaluation criteria are clear and objective with an objective standard of proof for evaluation, a combination approach may be appropriate.</p>

Tradeoff vs LPTA Methods of Source Selection	
TRADEOFF	LPTA
Performance Risk and Past Performance Assessment	Past Performance Rated Acceptable or Unacceptable
<p>In the case of an offeror without a record of recent/ relevant past performance, or for whom information on past performance is not available, or so sparse that no meaningful past performance rating can be assigned, you must evaluate the offeror’s lack of past performance as “Neutral Confidence”, having no favorable or unfavorable impact on the evaluation.</p>	<p>Past performance shall be evaluated unless waived. However, a comparative assessment is not allowed. When using LPTA, unknown past performance shall be considered acceptable. - You may utilize a combination approach where past performance is evaluated as part of the tradeoff and technical approach is assessed on acceptable/unacceptable basis.</p>
Planning Considerations	Planning Considerations
<p>The tradeoff methodology generally involves in-depth planning and more time and resources. Tradeoffs must be clearly documented and supported.</p>	<p>The LPTA process is not necessarily faster. Requires significant up-front time investment to clearly identify the critical technical requirements (standards) for evaluation and the standard of proof (evidence of the offeror’s compliance with the requirement) to determine whether each one is met (technical acceptability). <i>The time investment is key to establishing whether the requirement is suitable for LPTA, and if so, setting up the procurement for success.</i></p>

C-7 Rating Methodologies

Rating Methodologies. Tradeoff and LPTA each have a unique rating methodology as summarized below.

COMPARING HOW OFFERORS ARE RATED FOR EACH APPROACH	
TRADE OFF	LPTA
Technical Performance	Technical Performance
<p>Subjective evaluation in accordance with DoD Source Selection Procedures and the Army Source Selection Supplement Allows the Government to: a) consider award to other than the lowest-priced Offeror, or; b) other than the highest technically rated Offeror</p>	<p>Objective evaluation of minimum requirements in accordance with DoD Source Selection Procedures and the Army Source Selection Supplement Evaluated as acceptable or unacceptable</p>
Past Performance	Past Performance

Confidence Assessment Comparative analysis permitted	Acceptable or Unacceptable No comparative analysis permitted
Small Business Participation	Small Business Participation
Factor or Subfactor	Exempt from evaluation (DFARS 215.304(c)(i)). However, if desired as an evaluation factor, it should be considered one of the technical factors/subfactors and evaluated accordingly.
Price	Price
Not rated adjectively Evaluated in accordance with the Source Selection Plan and Sections L and M of the RFP	Not rated adjectively Of the acceptable proposals, lowest evaluated price wins
Tradeoffs	Tradeoffs
In accordance with the Source Selection Plan and Sections L and M of the RFP	Tradeoff not permitted No additional credit for exceeding standards

C-8 Common Concerns For Each Methodology

It is important to understand and consider the benefits and possible down-sides of each approach in order to ensure you select the one that will help you achieve best value for the customer/program. Below are some of the common concerns.

COMPARING COMMON CONCERNS	
TRADEOFF	LPTA
Will the Government Get What It Is Paying More For?	Will the Government Get What It Needs At the Price Proposed?
The Government shall incorporate evaluated strengths as a contractually binding requirement to the greatest extent possible (particularly when offeror was selected under VATEP). Post-award management must follow through to ensure receipt of the anticipated benefits.	The Government sometimes has difficulty identifying with enough clarity and specificity what its requirements are (even when we think we've done a good job). If this occurs, the contract may require modifications to ensure the Government's needs are met, which may increase the price over time. Thorough, upfront analysis is essential. Careful post-award management is equally as important. Apply lessons learned to appropriately determine the source selection methodology for follow-on contracts.
Ensure the Tradeoff Decision Is Sound	Low Acceptability Standards/Evaluation Criteria Increase Performance Risk
Does the order of importance of factors and subfactors reflect the goals of the program, and what is most important to the customer and the end user/warfighter? Was the order of importance adequately described in the RFP? Did the evaluation follow the Source Selection Plan and RFP?	Acceptability standards that are set too low can result in low prices that are also too low, resulting in award to the wrong Offeror at increased performance risk. LPTA should not mean buying cheaper goods or services. Minimum requirements does not mean "bare bones". No additional credit for exceeding standards

C-9 Tips And Best Practices For Using LPTA

Below are some general tips and agreed-upon best practices to guide application of LPTA techniques.

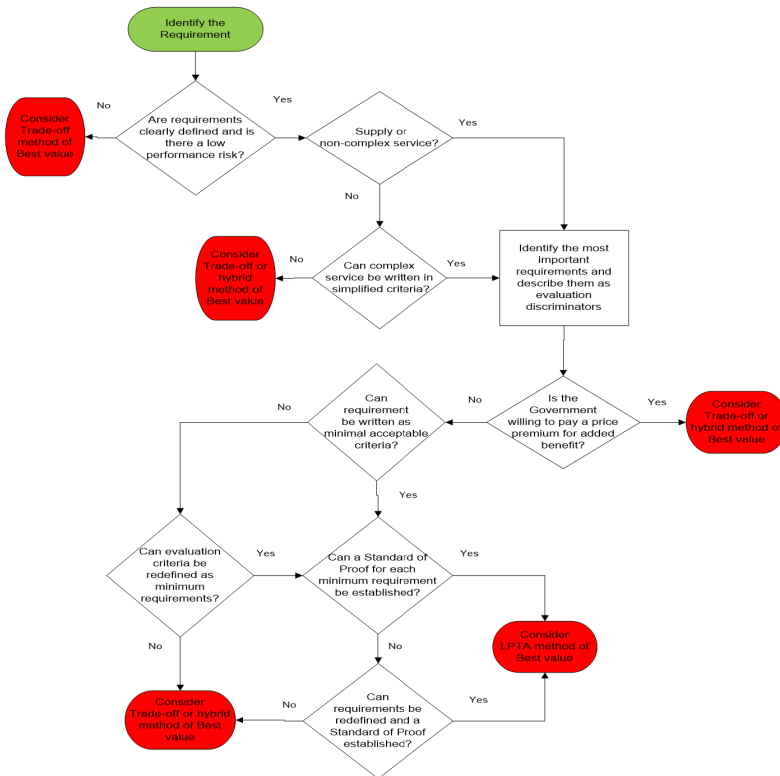
Tips and Best Practices for Using LPTA
Establishing Technical Factors For Evaluation
When establishing technical factors for evaluation, each must link to specific critical technical requirements in the PWS. Using a Technical Information Questionnaire (TIQ), which includes the requirement (and PWS/SOW reference), the criteria, and the “standard of proof” will make the job of the evaluator far easier. Also, providing a technical information questionnaire to the Offeror to complete which includes the requirement (and PWS/SOW reference), the criteria, and the “standard of proof” required, will ensure consistency throughout the process. <i>See Attachment C-1, Technical Information Questionnaire.</i>
“Buy-In” and Performance Risk Can be Mitigated
<i>In LPTA –a very low price is often the result of acceptability standards (criteria) that are set too low or are ill-defined. Rigorous Definition and Evaluation of “Technical Acceptability ” is key to success.</i> By associating minimum standards with relative risks for execution of each task, the overall performance risk can be mitigated or decreased.
Source Selection Evaluation Training
Train the SSEB on the specific process of evaluating the proposal against the <i>standard of proof</i> relative to each evaluation criteria and documentation.
Brand Name or Equal RFPs
Ensure the salient characteristics are included in the solicitation. If a firm is offering an equal product, the proposal must demonstrate that the product conforms to the salient characteristics listed in the solicitation. If the firm fails to comply, its product is properly rejected as technically unacceptable. <i>Nas /Corp-Telmah Inc., B-405893, Jan.10, 2012, 2012 CPD ¶ 88 at 2.</i>

C-10 LPTA Requirement and Standard of Proof Samples

LPTA REQUIREMENT/STANDARD OF PROOF SAMPLES		
<u>SUPPLIES</u>	<u>PROFESSIONAL SERVICES</u> Corporate	<u>SIMPLE SERVICES</u>
<p>Criteria: All illumination must be provided by LED lights drawing a maximum of 5 amps (C.13.1)</p> <p>Question on Technical Information Questionnaire (TIQ): Are all the lights of the Light Emitting Diode (LED) type and a maximum combined draw of 5 amps?</p> <p>Standard of Proof: Manufacturer’s spec sheets showing LED characteristics.</p>	<p>Criteria: Five program analysts with a Bachelor’s Degree in a business discipline with a minimum of 10 years of program analyst experience or a post-graduate degree in a business discipline (Master’s or Doctorate) with a minimum of 5 years of program analyst experience.</p> <p>Question on Technical Information Questionnaire (TIQ): Do all of the program analyst executives possess either a Bachelor’s Degree in a business discipline with a minimum of 10 years of program analyst experience or a post-graduate degree in a business discipline (Master’s or Doctorate) with a minimum of 5 years of program analyst experience?</p> <p>Standard of proof: Resume showing degree and years of experience as specified.</p>	<p>Criteria: Contractor shall possess storage facility to store all equipment listed in attachment X within 15 miles of Arsenal (15 radial miles from geographic center of Arsenal).</p> <p>Question on Technical Information Questionnaire (TIQ): Does the Offeror possess storage facility that meets 15 mile requirement listed in Section C.4.4?</p> <p>Standard of proof: Provide evidence of ownership or lease of facility that meets requirements listed in Section C.4.4.</p>

LPTA REQUIREMENT/STANDARD OF PROOF SAMPLES		
SUPPLIES	PROFESSIONAL SERVICES Corporate	SIMPLE SERVICES
<p>Criteria: The vehicle must be transportable by C-17, C-5, and military sea and rail IAW ATPD XXXX Section 3.1.X and 3.1.X</p> <p>Question on Technical Information Questionnaire (TIQ): Does the width of the vehicle exceed 96”?</p> <p>Standard of Proof: CAD drawing with all outside dimensions noted.</p>	<p>Criteria: Five Communications Personnel with minimum of 4 years of experience with military tactical or satellite communications system.</p> <p>Question on Technical Information Questionnaire (TIQ): Do all of the candidates have a minimum of 4 years of experience with military tactical or satellite communications system?</p> <p>Standard of Proof: Resumes showing years of experience as specified.</p>	<p>Criteria: Offerors must possess the equipment required to refinish a 3,500 sq. ft. wood floor.</p> <p>Question on Technical Information Questionnaire (TIQ): Does the Offeror own or lease equipment that will be used to refinish a 3,500 sq. ft. wood floor IAW C.4.5?</p> <p>Standard of Proof: Specify list of equipment and certificates of ownership for equipment or lease agreements.</p>
<p>Requirement: Engine must be able to be operated with JP-8 (C.1.3)</p> <p>Question on TIQ: Does the vehicle run on JP-8 IAW ATPD- XXXX Section 3.3.5.1?</p> <p>Standard of Proof: Manufacturer’s spec sheet for engine.</p>		

C-11 Flow Chart For Selection of Best Value Methodology



C-12 LPTA – Sample Evaluator Write-Up

Describe the Evaluation Process in the Source Selection Plan – Then Fully Document the Evaluation In Accordance With the SSP

Use a checklist or evaluation form such as the one below:

FACTOR 3: Usability	SUBFACTOR 3.2: Setup and Breakdown	OFFEROR:	
		RFP No:	
Instruction to Offeror		Evaluation Criteria	
The Offeror shall setup its radar system for test to the point of data recording. After completion of the test, the Offeror shall breakdown its system and return the system to its pre-setup state.		The Government will evaluate the Offeror's radar system setup and breakdown. To receive an acceptable rating, the Offeror must demonstrate all of the below items: a. The system must be transportable by a two person carry. b. The system must be setup, broken down and operated by one person. c. The Offeror must set up its radar system within a time not to exceed one hour using one person, and break down its radar system within a time not to exceed one hour using one person. d. Cable connectors connect and disconnect using no more than one turn, or other quick-disconnect system. e. When the radar system antenna is mounted on the tripod, the range of motion must be +90 degrees to -10 degrees in elevation (horizontal is 0 degrees) and 360 degrees azimuth, without antenna removal.	
<i>Acceptable</i>	<ul style="list-style-type: none"> * The system is transportable by a two person carry; and is setup, broken down and operated by one person. * The Offeror sets up its radar system within a time not to exceed one (1) hour using one person, and breaks down its radar system within a time not to exceed one (1) hour using one person. * Cable connectors are quick to connect and disconnect using no more than one turn, or other quick-disconnect system. * When the radar system antenna is mounted on the tripod, the range of motion is +90 degrees to -10 degrees in elevation (horizontal is 0 degrees) and 360 degrees azimuth, without antenna removal. 		
<i>Unacceptable</i>	Not clearly meeting the requirements required to be acceptable.		
	Acceptable	Unacceptable	
SETUP/ BREAKDOWN			
NARRATIVE:			
TEAM MEMBER:			DATE:

Evaluation Criteria: The Government will evaluate the offeror's radar system setup and breakdown. To receive an acceptable rating, the offeror must demonstrate all of the below items:

- a. The system must be transportable by a two person carry.
- b. The system must be setup, broken down and operated by one person.
- c. The Offeror must set up its radar system within a time not to exceed one hour using one person, and break down its radar system within a time not to exceed one hour using one person.
- d. Cable connectors connect and disconnect using no more than one turn, or other quick-disconnect system.
- e. When the radar system antenna is mounted on the tripod, the range of motion must be +90 degrees to -10 degrees in elevation (horizontal is 0 degrees) and 360 degrees azimuth, without antenna removal

Evaluation narrative write-up below provides an example of both ‘Acceptable’ and ‘Unacceptable’ proposal responses:

Acceptable: The offeror proposed a system that can be transported by two people (page 12); can be setup, broken down, and operated by one person (page 13) ; and can be assembled and disassembled in less than one hour (45 minutes) (page 14). The offeror’s approach uses cable connectors that connect and disconnect using only one turn and the range of motion of the radar system antenna is +90 degrees to -10 degrees in elevation and 360 degrees azimuth (page 22).

Unacceptable: The offeror proposed a system that can be transported by two people (page 12); can be setup, broken down, and operated by one person (page 13); **however, the system cannot be assembled and disassembled in less than one hour (90 minutes, as stated in the offeror’s proposal in Volume 1, page 16). Based on the evaluation criteria, this is unacceptable and results in the entire factor being unacceptable.** The offeror’s approach uses cable connectors that connect and disconnect using only one turn and the range of motion of the radar system antenna is +90 degrees to -10 degrees in elevation and 360 degrees azimuth (page 22).

ATTACHMENT C-1 TECHNICAL INFORMATION QUESTIONNAIRE/EVALUATION MATRIX					
OFFEROR NAME: _____					
RFP NUMBER: _____					
Factors	RFP Requirement Reference	Proposal Reference	Standard of Proof	Acceptable/ Unacceptable	Evaluators Comments
1.0 TECHNICAL EXECUTION					
1.1. Key Personnel Professional Qualifications					
1.2 Technical Certifications					
1.3 Onsite Courseware Acceptance					
1.4 Onsite Training Course					
1.5 Electronic Classroom Upgrade					
2.0 PROGRAM MANAGEMENT					
2.1 Integrated Master Schedule (IMS)					
2.2 Computer-Based Training Development Schedule/Plan					

2.3 Electronic Classroom Upgrade Schedule / Plan					
3.0 ON-SITE PERSONNEL AND CERTIFICATIONS					
3.1 Manning Chart Provided					
3.2 Labor categories to perform courseware and electronic classroom requirements. Minimum labor categories include Instructional Systems Specialists, Graphic Artists, Programmers, Computer Specialists and/or Engineers and Subject Matter Experts..					
4.0 SECURITY					
4.1 Classified Information Security Requirements					
5.0 PAST PERFORMANCE					

APPENDIX D Table Of Contents

Oral Presentations and Proposals

D-1 Introduction

Oral presentations provide offerors an opportunity to substitute or augment written information. You can conduct oral presentations in person or via video teleconference. Pre-recorded videotaped presentations do not constitute an oral presentation since it does not represent a real-time exchange of information. However, they may be included in offeror submissions, when appropriate.

Oral presentations may be beneficial in a variety of acquisitions. They are most useful when the requirements are clear and complete and are stated in performance or functional terms. Oral presentations are ideal for gathering information related to how qualified the offeror is to perform the work, how well the offeror understands the work, and how the offeror will approach the work.

D-2 Scope of the Oral Presentation

Before you can decide if oral presentations are appropriate for a given acquisition, you must select the evaluation factors and subfactors. Then decide whether the information you need to evaluate these criteria can be better presented orally or in writing or through a combination of both means.

You cannot incorporate oral statements in the contract by reference, so any information you want to be made part of the contract needs to be submitted in writing. At a minimum, the offeror must submit certifications, representations, and a signed offer sheet (including any exceptions to the Government's terms and conditions) in writing. Additionally, as a rule of thumb, the offeror must submit other hard data ("facts"), such as pricing or costing data and contractual commitments, as part of the written proposal.

Oral presentations can convey information in such diverse areas as responses to sample tasks, understanding the requirements, experience, and relevancy of past performance.

In deciding what information to have the offerors provide through oral presentations, you should consider the following:

- The Government's ability to adequately evaluate the information.
- The need to incorporate any information into the resultant contract.
- The impact on the efficiency of the acquisition.
- The impact (including cost) on small businesses.

Require offerors to submit their briefing materials in advance of the presentations. This will allow Government attendees an opportunity to review the materials and prepare any associated questions.

D-3 Request for Proposal Information

If oral presentations are appropriate, you must notify offerors in the RFP that the Government will use oral presentations to evaluate and select the contractor. The proposal preparation instructions must contain explicit instructions and guidance regarding the extent and nature of the process that will be used. Discourage elaborate presentations since they may detract from the information being presented. At a minimum, include the following information in the RFP:

The types of information the offeror must address during the oral presentations and how they relate to the evaluation criteria,

The required format and content of the presentation charts and any supporting documentation,

Any restrictions on the number of charts or the number of bullets per chart and how you will handle material that does not comply with these restrictions,

The required submission date for the presentation charts and/or materials,

The approximate timeframe when the oral presentations will be conducted and how you will determine the order of the offerors' presentations,

Whether any rescheduling will be permitted if an offeror requests a change after the schedule has been established,

The total amount of time each offeror will have to conduct their oral presentation,

Who must make the presentation and a requirement that the offeror provide a list of names and position titles of the presenters,

Whether the presentation will be video or audio taped,

The location of the presentation site and a description of the site and resources available to the offeror,

Any rules and/or prohibitions regarding equipment and media,

How you will treat documents or information referenced in the presentation material but never presented orally,

Any limitations on Government-Offeror interactions during and after the presentation,

Whether the presentation will constitute discussions (see Figure 3-3),

Whether you will use the information in the oral presentation solely for source selection purposes or whether such information will become part of the contract (which will require a subsequent written submission of that information), and

Whether the offeror should include any cost/price data in the presentation.

D-4 Timing and Sequencing

You can conduct oral presentations either before or after establishing the competitive range. Where oral presentations are the only means of proposal submission, they must be presented by all offerors. If you conduct the oral presentations prior to establishing the competitive range, you must be careful they do not result in discussions.

Since preparing and presenting an oral presentation involves time and expense, you do not want to require offerors who are not likely to be serious candidates for award to have to conduct oral presentations. This can be an important consideration

with small businesses. When this is a concern, establish the competitive range prior to oral presentations and clearly articulate in the RFP the methodology for doing so.

The PCO will often draw lots to determine the sequence of the offerors' presentations. The time between the first and the last presentation should be as short as possible to minimize any advantage to the offerors that present later.

D-5 Time Limits

Establish a total time limit for each offeror's presentation. It is not advisable to limit the time for individual topics or sections within the presentation; this detail is the presenter's responsibility. If you are planning a question and answer session, exclude it from the allotted time and set a separate time limit for it.

There is no ideal amount of time to be allotted. Make this decision using prudent business judgment based upon the complexity of the acquisition and your own (or others') experience and lessons learned.

D-6 Facility

Usually you will want to conduct the presentations at a facility you can control. This helps guard against surprises and ensures a more level playing field. However, nothing precludes you from conducting an oral presentation at an offeror's facility. This may be more efficient if site visits or other demonstrations are part of the source selection process.

If you are using a Government-controlled facility, make it available for inspection and, if warranted, a practice session. Allowing offerors to get acquainted with the facility will help ensure that it does not detract from the presentation content.

D-7 Recording the Presentations

Recording the presentation by some appropriate means is not only required, it makes good business sense.

Having an exact record of the presentation could prove useful both during the evaluation process and in the event of a protest or litigation. You can record the oral presentations using a variety of media; e.g., videotapes, audio tapes, written transcripts, or a copy of the offeror's briefing slides or presentation notes. The SSA is responsible for determining the method and level of detail of the record.

If you use videotaping, allow for the natural behavior of the presenters. If slides or view graphs are used, the camera should view both the podium and screen at the same time. Place the microphones so that all communications can be recorded clearly and at adequate volume. Every effort should be made to avoid letting the recording become the focus of the presentation.

The recording, which is considered source selection information, will become part of the official record. Provide a copy to the offeror and seal and securely store the master copy of the recording to ensure there are no allegations of tampering in the event of a protest or court action.

D-8 Government Attendance

The PCO should chair every presentation. All of the Government personnel involved in evaluating the presentations should attend every presentation.

D-9 Presenters

The offeror's key personnel who will perform or personally direct the work being described should conduct their relevant portions of the presentations. Key personnel include project managers, task leaders, and other in-house staff of the offeror's, or their prospective key subcontractors' organizations. This will avoid the oral presentation becoming the domain of a professional presenter, which would increase costs, detract from the advantages of oral presentations, and adversely affect small businesses.

D-10 Reviewing the Ground Rules

Prior to each presentation, the PCO shall review the ground rules with the attendees. This includes discussing any restrictions on Government-Offeror information exchanges, information disclosure rules, documentation requirements, and housekeeping items. These ground rules should also be included in the RFP.

If you are using a quiz as part of your evaluation, the PCO needs to discuss the related ground rules. For example, can the offeror caucus or contact outside sources by cell phone before answering?

Avoid too much control and regulation since it will inhibit the exchange of information. However, if you intend to avoid discussions, the PCO should control all exchanges during the presentation. If conducting oral presentations after opening discussions, you must comply with FAR 15.306 and 15.307.

D-11 Evaluation of Presentations

Evaluations should be performed immediately after each presentation. Using preprinted evaluation forms will help the evaluators collect their thoughts and impressions. Remember, even if you use preprinted forms, evaluators have to provide the rationale for their conclusions.

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Small Business Participation Proposal

Small Business Participation Proposal (Sample Format)

The Small Business Participation proposal format is designed to streamline and bring uniformity to responses and evaluations for Small Business Participation (FAR 15.304). The format provides clarity in that it is distinctly different than the Small Business Subcontracting Plan required for large businesses only (FAR 52.219-9). A copy of the format can be provided in your instructions to offerors or as an attachment to the RFP.

Small Business Participation Proposal (Format)

All offerors (**both large and small businesses**) are required to complete a Small Business Participation Proposal. Offerors should propose the level of participation of small businesses (as a small business prime, joint venture, teaming arrangement, and/or small business subcontractors) in the performance of the acquisition relative to the objectives/goals set forth in the evaluation of this area.

(a) Check the applicable size and categories for the **PRIME** Offeror only -- Check all applicable boxes:

Large Prime

or

Small Business Prime; also categorized as a

Small Disadvantaged Business (SDB)

Woman-Owned Small Business (WOSB)

Historically Underutilized Zone (HUB Zone) Small Business

Veteran Owned Small Business (VOSB)

Service Disabled Veteran Owned Small Business (SDVOSB)

(b) Submit the total combined dollar value and percentage of work to be performed by both large and small businesses (include the percentage of work to be performed both by Prime, joint venture, teaming arrangement, and subcontractors):

Example: If the Prime proposes a price of \$1,000,000 (including all options), and small business(es) will provide \$250,000 in services/supplies as a prime, joint venture, teaming arrangement, or subcontractor, the % planned for small businesses is 25%; and 75% for large business, equaling 100%.

Total Percentage planned for Large Business(es) 75 % = \$ 750,000

Total Percentage planned for Small Business(es) 25 % = \$ 250,000

100% = \$1,000,000

(c) Please indicate the total percentage and dollar value of participation to be performed by each type of subcategory small business. The percentage of work performed by Small Businesses that qualify in multiple small business categories may be counted in each category:

Example: Victory Prop Mgt (WOSB and SDVOSB) performing 2%; and Williams Group (SDB, HubZ and WOSB) performing 3%. Results equate to: SB 5%; SDB 3%; HubZone 3%; WOSB 5%; SDVOSB 2%; VOSB 2%;. SDVOSBs are also VOSBs automatically; however VOSBs are not automatically SDVOSBs.

Small Disadvantaged Business	_____ %	\$ _____
HUB Zone Small Business	_____ %	\$ _____
Woman Owned Small Business	_____ %	\$ _____
Service Disabled Veteran Owned SB	_____ %	\$ _____
Veteran Owned Small Business	_____ %	\$ _____

(d) Identify the Prime Offeror and type of service/supply that the Prime Offeror will provide. Then list each of the intended subcontractors and principal supplies/services to be provided by that subcontractor. Provide the Commercial and Government Entity (CAGE) code for the Prime and each intended subcontractor. Also, provide the anticipated NAICS codes(s) that the Prime Offeror believes best describes the product or services being acquired by its subcontracts with each intended subcontractor. Small business Primes and small business subcontractors that qualify as small businesses in multiple small business categories should be listed in each applicable small business category.

Example: If a Small Business qualifies as a WOSB and a SDVOSB, you can add them to each category below in which they qualify.

	Name of Company (Include CAGE Code)	Anticipated NAICS Code for Each Subcontractor (1)	Type of Service/Service
Prime Offeror:	_____	_____	_____
Large Business:	_____	_____	_____
Small Business:	_____	_____	_____
SDB:	_____ _____	_____ _____	_____ _____
WOSB:	_____ _____	_____ _____	_____ _____
HUBZone Small:	_____ _____	_____ _____	_____ _____
VOSB:	_____ _____	_____ _____	_____ _____
SDVOSB:	_____ _____	_____ _____	_____ _____

Notes:

(1) Pursuant to Sections 8(d) of the Small Business Act, a business is considered small for Government procurements if it does not exceed the size standard for the NAICS code that the prime contractor believes best describes the product or services being acquired. In other words, the size of the prime’s suppliers is determined by the applicable NAICS code of their joint venture, teaming partner, or subcontract, which may or may not be the same NAICS code as the one for your prime contract with the Government.

(e) Describe the extent of commitment to use small businesses (e.g., what types of commitments, if any, are in place for this specific acquisition either – small business prime, written contract, verbal, enforceable, non-enforceable, joint venturing, mentor-protégé, etc.) Provide documentation regarding commitments to small business for this effort. Copies of such agreements should be provided as part of your small business participation plan and will not count against the page limitation for this volume.

APPENDIX F Table Of Contents

On–Line Reverse Auctions

F-1 Definition

An on-line Reverse Auction (RA) is an internet-based (electronic commerce) acquisition tool that allows the government to procure goods and services from suppliers in a competitive environment in which sellers, anonymously, bid prices down until the auction is complete.

A reverse auction is simply the opposite of a traditional auction. In a traditional auction, the seller offers an item for sale and multiple potential buyers submit sequentially higher bids for the item. Conversely, in a reverse auction, there are multiple sellers of items that compete for the business of a single buyer. During this competition the sellers ultimately drive the price of the item down.

ON-LINE REVERSE AUCTION TOOLS ARE BEST USED FOR:

Healthy price competition
 A well-defined requirement
 Bulk commodity type procurements (i.e. IT equipment, spare parts)
 Procurements in which there is a well-defined supplier base
 Procurements where the award evaluation criteria is not subject to interpretation (i.e. lowest price versus multiple criteria for tradeoffs and subjective judgments)

F-2 Applicability to Best Value Acquisitions

On-line RAs are legal as long as the identity of the bidders is not disclosed. On-line RA tools may be used as a pricing tool for LPTAs or tradeoff acquisitions. For example, an RA tool can be used as a pricing tool for a tradeoff acquisition after the completion of technical discussion. You may conduct a reverse auction to establish the offerors' final prices, provide these prices, along with the rest of the evaluation results, to the SSA for his/her use in selecting the proposal that represents the best value.

Potential benefits are: reduced acquisition cycle time and increased competition that in due course drive prices down as the offerors have visibility of the other prices being proposed. Additionally, the on-line RA process is inclusive, transparent, and immediately advantageous to both government and industry.

FAR Subpart 4.5 supports the use of electronic commerce whenever practical or cost-effective. On-line RAs should be utilized when it is anticipated that this method will deliver more value than the use of other available procurement methods. Additionally, RAs are more advantageous to the Government in reducing acquisition cycle time when the requirements are best suited for an RA environment.

F-3 Process

On-line RAs are conducted using a variety of procedures and automated tools. An agency may contract with an on-line auction service to conduct the reverse auction or it may conduct the reverse auction itself using commercially-available software.

In either case, the reverse auction must be conducted on a secure web-site and you must clearly state in the RFP the ground rules for the auction, particularly when the bidding will start and stop.

APPENDIX G Table Of Contents**Templates / Samples**

Source Selection templates and samples are located on the ODASA(P)
 Procurement.Army.Mil Knowledge Management Portal, in the
 Source Selection Community of Practice:
<https://spcs3.kc.army.mil/asaalt/procurement/SitePages/SourceSelection.aspx>

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MANAGEMENT CONTROL EVALUATION CHECKLISTS

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Requirements.

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MANAGEMENT CONTROL EVALUATION CHECKLISTS

October 1, 2014

Part 1 - General

BB-100 Function.

The function covered by these management control evaluation checklists is contracting.

BB-101 Purpose.

This AFARS appendix establishes key internal controls for management of contracting functions and the method for evaluating the effectiveness of these controls. Key internal controls are those controls that must be implemented and sustained in daily operations to ensure organizational effectiveness and compliance with legal requirements. The use of internal controls is an integral component of an organization's management that provides reasonable assurance for the effectiveness and efficiency of operations, reliability of financial reporting, and compliance with laws and regulations.

The purpose of this checklist is to assist Army contracting managers at all levels in evaluating the effectiveness of key internal controls for contracting functions performed throughout the Army contracting enterprise worldwide.

BB-102 Instructions.

The evaluation of key internal controls should result in a specific determination of their effectiveness. Contracting managers shall use the checklist questions in appendix BB to test key controls of contracting functions through a combination of document analysis, direct observation, and random sampling. The annual statement of assurance and supporting documents shall include a corrective action plan for deficient answers to checklist questions. The contracting checklist in this appendix is not all-inclusive and each contracting activity should supplement the checklist with area-specific questions (e.g., major systems, etc.). Formal evaluations of key management controls must be conducted at least once every five years (Army Regulation 11-2).

BB-103 Additional Instructions for Contingency Contracting Functions Outside the Contiguous United States.

Questions in this checklist should be used by office chiefs/directors who are deployed into a theater of operations and are supporting contingency missions. The term "contingency contracting" means contracting support provided in response to a declared contingency operation in accordance with 10 USC 101(a)(13) (see also FAR subpart 2.1, Definitions). The support may be provided in a mature or immature operational environment, and may be long term or short term. Office chiefs/directors shall use these questions to test internal controls for contingency contracting functions. Each office chief/director shall complete and submit to his/her respective senior contracting official (SCO) at the midpoint during the office chief/director's tour. The SCO will provide feedback to the office chief/director relating to the effectiveness of key internal controls. Prior to redeployment, the office chief/director shall complete and submit a final checklist to the SCO. The final checklist will be retained in the continuity book to serve as a baseline for the next office chief/director. In addition, information obtained using the checklist will be addressed in the SCO's annual statement of assurance as prescribed by Army Regulation 11-2.

Part 2 - Contracting Test Questions

BB-200 Event Cycle 1: Management of Contracting Functions.

Step 1: Contracting Activity Procedures and Functions.

- a. Are mission and vision statements clear and accurate?
- b. Is the contracting office located at a level in the organization where undue influence will not be placed on contracting personnel (AFARS 5101.693(2)(iv))?
- c. Are there current published standard operating procedures that govern operational contracting?
- d. Are goals and metrics in place and routinely used to assess improvements in contracting functions?
- e. Is the contracting office currently in compliance with the paperless contracting mandate for electronic transaction of requirements handoff, solicitations, proposal receipt, evaluation, awards/modifications, and payment?
- f. Are procurement instrument identification number registers maintained and numbered in accordance with DFARS 204.7003?

g. Are contracting officers distributing contracts to the applicable parties (e.g., contractor, requiring activity, transportation office, administration office, finance office, and payment office)?

h. Does the contracting function receive notification of contracting (e.g., policy) changes, and, if so, implement the changes? Does the organization have a system in place for the distribution of policy alerts?

i. Do contracting officers have the applicable contract action thresholds before leaving to conduct contingency contracting operations?

j. Do contracting officers have the appropriate warrant to accomplish the contingency contracting mission?

Step 2: Requiring Activity Coordination.

a. Does the contracting office establish and maintain open communications with the requiring activities, and stress the importance of developing collaborative working relationships with customers and contractors to ensure goals and objectives of the mission are met to the maximum extent practicable?

b. Does the customer have an acquisition review board in place and if so, does the contracting officer participate in an advisory role?

c. Are requiring activities advised of the lead times necessary to initiate and complete the contractual obligation of funds or contract action?

d. Is economic purchase quantity data obtained and shared (when appropriate) with the cognizant inventory manager or with requiring activities (FAR 7.204)?

e. Is teaming a routine practice in preparing requirements packages and program strategies?

f. Are integrated product teams utilized to facilitate the decision making process whenever practical?

g. Is a process in place to promote advanced acquisition planning? Does the mechanism involve all key stakeholders, to include installation leadership, requiring activity personnel, resource managers, and contracting personnel?

h. Are requiring activities obtaining proper approvals (e.g., services contract approvals, contract or acquisition review board approvals, etc.) prior to sending the purchase request to the contracting office?

Step 3: Office Automation.

a. Is there a single point of contact and alternate in the office for managing electronic business initiatives?

b. Are procedures established regarding documentation and reporting problems with electronic business initiatives?

c. Are processes for electronic versus paper storage of contract file documentation used consistently throughout the office?

d. Are there office automation issues, which require command assistance or support?

Step 4: Staffing, Facilities, and Training.

a. Is staffing in the contracting office adequate to support the mission without excessive use of overtime or the addition of temporary employees?

b. Does the organization have a process in place for the recruitment and retention of employees with adequate skill levels?

c. Is the contracting office working environment (i.e., office space, heating, cooling, lighting, noise levels, etc.) in accordance with space management regulations?

d. Is the number and condition of office equipment (i.e., copiers, fax machines, computers, and class "A" telephone lines) adequate?

e. Are individual development plans, job descriptions, and standards current and appropriate for the mission?

f. Is training (i.e., both formal classroom training and informal on-the-job training) timely, adequate, and appropriate for the specific level of certification?

g. If in an environment where there is frequent rotation of both civilian and military personnel, are processes in place to promote continuity of contract knowledge when contract specialists or contracting officers change?

Step 5: Contracting Reports and Reviews.

a. Is there a process in place for conducting self-assessments to include procurement reviews, contract management reviews, and management control reviews?

b. Are contract action reports (CARs) being prepared in a timely manner, verified, and submitted for each applicable contractual action via Federal Procurement Data System-Next Generation (FAR 4.6)?

c. Are DD Forms 1547, Record of Weighted Guidelines Application, prepared in a timely manner, verified, and submitted as required (DFARS 215.404-70, DFARS 215-404-71, DFARS PGI 215.404-70, DFARS PGI 215.404-71 and DFARS PGI 215.406-3(a)(10)(B))?

d. Are status reports on specified contract audit reports, required by DoD Directive 7640.2, prepared in a timely manner, verified, and submitted?

- e. Are recurring reports sent to higher headquarters in a timely manner?
- f. Does the organization maintain a list of reports that designates points of contact and internal due dates?

Step 6: Soci o- Economic Goals.

- a. Does the contract file reflect the timely receipt, evaluation, and approval of required subcontracting plans (AFARS 5119.705-4 and AFARS Appendix DD)?
- b. If required, was a DD Form 2579 Small Business Coordination Record completed and incorporated into the contract file (DFARS 219.201(d)(10)(B))?
- c. Are the benefits of bundling contracts quantified and substantiated through market research (FAR 7.107, FAR 10.001, FAR 19.202-1(e)(1)(iii), and DFARS 207.170)?
- d. Are notifications of the intent to bundle published on the Government point of entry 30 days prior to the release of a solicitation or 30 days prior to placing an order without a solicitation (DFARS 205.205-70)?
- e. Are contracting officers making a reasonable effort to promote socio-economic goals by adding a socio-economic factor to the source selection process, as applicable?
- f. Are contracting officers following the guidance for promoting socio-economic goals, as provided by the SCO?

Step 7: Standards of Conduct.

- a. Is the required ethics training presented at least annually?
- b. Are designated employees completing annual OGE Form 450s?
- c. Are contractors made aware of their responsibility to maintain a suitable system of internal controls to avoid improper business practices (FAR 3.1002(b))?
- d. For potential or real organizational conflicts of interest, is there a written analysis, recommended course of action, or mitigation plan (FAR 9.5, FAR 37.102(g), 37.110, 37.2 and AFARS 5109.503)? Has legal counsel conducted a review of the organizational conflict of interest determination?

BB-201 Event Cycle 2: Presolicitation.

Step 1: Acquisition Planning and Strategy.

- a. Are acquisition plans developed when required (FAR 7.104 and DFARS 207.103)?
- b. Are acquisition plans approved by the appropriate official and do acquisition plans address the required areas (FAR 7.105, DFARS 207.1, DFARS PGI 207.106, and AFARS 5107.103-90)?
- c. Are evaluation factors established in accordance with regulations (FAR 12.602, FAR 13.106-1, FAR 14.503-1, FAR 15.304, 16.505(b)(1)(i)(E), 16.505(b)(1)(v)(A)(1), DFARS 215.304, DFARS 215.370, DFARS 215.370-2, DFARS 215.404-71-5, DFARS 216.505-70, and AFARS 5115.304)?
- d. Are acquisition strategies for services requirements approved by the appropriate official and do they address all required areas (AFARS 5137.590-3)?

Step 2: Purchase Request and Review.

- a. Are purchase requests adequately funded, signed, dated, approved by appropriate persons, and do they include adequate supporting documents?
- b. Do requirements documents (e.g., performance work statement, statement of work, specifications) comply with regulations for describing agency needs (FAR 11.002, FAR subpart 11.1, FAR 37.602 and DFARS 211.1)?
- c. Is market research adequate to support the selected acquisition approach (FAR 10.001, FAR 10.002 and DFARS 210.001)? When contracting for services see DFARS PGI 210.070.
- d. Has market research been conducted to determine if commercial items or non-developmental items are available to meet the Government's needs or could be modified to meet the Government's needs (FAR 10.002(b))?
- e. Does the independent Government cost estimate, if required, contain enough detail to verify the validity of the offeror's proposal, provide sufficient narrative and analytical detail to support preparation, include the preparer's signature (FAR 15.404.1(b)(2)(v), FAR 36.203, and AFARS 5107.9002)?
- f. Do blue prints and drawings, if required, appear reasonably accurate and complete, and can they be provided electronically?
- g. For Army-funded actions, has a service contract approval been submitted with General Officer/Senior Executive Service level approval certifying that the requirement contains no unauthorized personal services or inherently governmental functions (FAR 7.5, DFARS 207.5, and AFARS 5107.503)?
- h. If a contract, task or delivery order against a non-DoD contract is requested, does the requirements package include a certification for proper use of a non-DoD contract in accordance with DFARS 217.78 and AFARS 5117.7802?

i. Are purchase requests for unauthorized commitments processed according to ratification procedures (FAR 1.602-3 and AFARS 5101.602-3-90)?

j. Are there procedures in place for monitoring the age of purchase requests?

k. If a performance based procurement, does the requirement incorporate a surveillance plan with measurable performance standards (FAR 37.603, FAR 37.604 and FAR 46.4)?

l. Are determinations executed to support the selected contract type (FAR 12.207, FAR 16.601, FAR 16.301-3, DFARS 212.207, and DFARS 216.601)?

m. Are salient characteristics provided when a “brand name or equal” requirement is requested (FAR 11.104)?

Step 3: Competition Considerations.

a. If competition is restricted, was a justification and approval (J&A) properly prepared, executed and approved by the designated authority (FAR 6.302, FAR 6.303, FAR 6.304, FAR 13.106-1(b), FAR 13.501, DFARS 206.303, DFARS 206.304 and AFARS 5106.303)?

b. Are orders under multiple delivery order/task order contracts that exceed \$3,000 issued in a manner that provides all awardees a fair opportunity to be considered? Are orders that exceed the simplified acquisition threshold placed on a competitive basis? If not, is a limited sources justification or justification for an exception to fair opportunity prepared and approved in accordance with FAR 8.405-6, and FAR 16.505(b)(2)?

c. Are J&As executed and approved for brand name procurements (FAR 5.102(a)((6), FAR 8.405-6, FAR 11.104, and FAR 11.105)?

d. Are J&As assigned a control number and maintained in a J&A log?

Step 4: Solicitation Preparation.

a. Do solicitations:

b. Conform to the uniform contract format (FAR 14.201-1 or FAR 15.204-1) or the commercial items contract format (FAR 12.303), as applicable?

c. Contain clauses that conform to the FAR or DFARS or have deviation approval (DFARS 201.402(2))?

d. Reflect consistency between the performance work statement, statement of objectives, statement of work, source selection plan, instructions to offerors and evaluation criteria (AFARS appendix AA, Army Source Selection Supplement, dated 21 December 2012)?

e. Clearly state in the instructions to offerors when it is the intent of the Government to award without discussions (FAR 15.306(a)(3) and AFARS appendix AA, Army Source Selection Supplement, dated 21 December 2012)?

f. Include evaluation criteria prescribed by Federal regulation, DoD, and Army guidance (DoD Source Selection Procedures, dated 4 Mar 2011, and Army Source Selection Supplement, dated 21 Dec 2012)?

g. Contain FAR clause 52.219-14 - Limitations on Subcontracting, as prescribed by FAR 19.508(e) and FAR 19.811-3(e)?

h. Contain FAR clause 52.219-9 - Small Business Subcontracting Plan, as prescribed by FAR 19.704 and FAR 19.708(b)?

i. With a long period of performance or a multiple-award indefinite-delivery indefinite-quantity contract, have decision points (i.e., on and off ramps) been incorporated to ensure that the Government has a qualified pool of contractors that will provide continuous service throughout the life of the contract (Defense Procurement and Acquisition Policy memorandum dated 18 February 2009, Subject: Review Criteria for Acquisition of Services)?

j. Contain FAR clause 52.222-50, Combating Trafficking in Persons, or Alternate I for contracts with performance outside the U.S. or by reference in FAR 52.212-5?

k. Contain the item unique identification clause (DFARS 252.211-7003, or its alternate) in all applicable contracts (DFARS 211.274-4)?

l. Receive peer reviews conducted appropriate to the value and complexity of the acquisition (DFARS 201.170, and AFARS 5101.170)?

m. Receive legal review prior to being published (AFARS 5101.602-2-90)?

Step 5: Publicizing Contract Opportunities and Award Information.

a. Are solicitation notices publicized through the Government point of entry, or determination for exception executed (FAR 5.201, FAR 5.202, FAR 5.301, and AFARS 5104.502)?

b. Are justifications and approvals for other than full an open competition posted with solicitations, as applicable (FAR 6.305, FAR 8.405-6(a)(2), and FAR 16.505(b)(2)(ii)(D))?

c. When using competitive procedures, if a solicitation allowed fewer than 30 days for receipt of offers and resulted in only one offer, are contracting officers resoliciting requirements for an additional period of at least 30 days, except as provided in (DFARS [215.371-4](#), DFARS [215.371-5](#), and DFARS 205.203)?

BB-202 Event Cycle 3: Source Selection/Evaluation, Negotiation, and Award.

Step 1: Source Selection and Evaluation .

a. Are source selection plans established in accordance with regulation (FAR 15.303(b)(2), DFARS 215.303(b)(2), DFARS PGI 215.303(b)(2), AFARS 5115.303(b)(2), DoD Source Selection Procedures (11 March 2011), and AFARS appendix AA, Army Source Selection Supplement (21 December 2012))?

b. Are the source selection authority (SSA) and source selection organizations appropriately appointed given the level and complexity of the acquisition (FAR 15.303, AFARS 5115.303, DoD Source Selection Procedures (11 March 2011), and AFARS appendix AA, Army Source Selection Supplement (21 December 2012))?

c. Are evaluation factors developed in accordance with Federal regulation, DoD and Army guidance (FAR 15.304, DFARS 215.304, AFARS 5115.304, DoD Source Selection Procedures (11 March 2011), and AFARS appendix AA, Army Source Selection Supplement (21 December 2012))?

d. Is past performance being evaluated, or rationale for not evaluating past performance documented (FAR 15.304 (c) (3))?

e. Is the price and quality of products or services being evaluated in all negotiated source selections (FAR 15.304(c) (1))?

f. Are technical factors developed specifically for each acquisition, i.e., technical approach, management approach, experience, and personnel qualifications?

g. Are source selection evaluations conducted in accordance with the source selection plan and the evaluation criteria specified in the solicitation (FAR 15.305, DFARS 215.305, AFARS 5115.305, DoD Source Selection Procedures (11 March 2011), and AFARS appendix AA, Army Source Selection Supplement (21 December 2012))?

h. Are source selection decisions derived from the conduct of the source selections, fully documented, and does the source selection authority independently exercise prudent business judgment to arrive at a decision based on the best value to the Government consistent with the evaluation criteria stated in the solicitation (FAR 15.308 and AFARS 5115.308)?

i. For cost type contracts, was a cost realism assessment performed (FAR 15.305(a)(1))?

Step 2: Negotiation.

a. If discussions are held, is the competitive range determination substantiated and clearly documented (FAR 15.503(a) (1) and FAR 15.306(c)(3))?

b. Do records support that discussions were meaningful and the requests for final proposal revisions adequately capture discussion issues (FAR 15.306(d)(3) and FAR 15.307(b))?

c. Are pre-negotiation objectives clearly stated, approved at the appropriate level, and documented in the file (FAR 15.404-4, FAR 15.406-1, and AFARS 5115.406)?

d. Are the results of negotiations documented (e.g. price negotiation memorandum) in sufficient detail and include the contracting officer's determination of fair and reasonable pricing (FAR 15.406-3(a), DFARS 215.406, and AFARS 5115.406)?

e. Are certificates of current cost or pricing data obtained, or an appropriate exception utilized (FAR 15.406-2)?

f. Is there evidence in the official contract files that contracting officers are making determinations that the proposed or agreed price is fair and reasonable (FAR 13.106-3(a) and FAR 15.406-3(a)(11))?

Step 3: Award.

a. Is the System for Award Management (SAM) website (www.sam.gov) used to determine if a offeror is debarred or suspended after opening of bids or receipt of proposals (FAR 9.405(d)(1))? Is verification obtained from SAM prior to making an award (FAR 9.405(d)(4) and FAR 9.104-6)?

b. Are appropriate verifications of the prospective contractors' registration in the SAM database completed prior to award of contracts (FAR 4.1103)?

c. Are sufficient funds available and compliant with the bona fide needs statute (AFARS 5101.602-2(a) and 31 U.S. Code 1502(a))?

d. Are responsibility determinations being conducted prior to award (FAR 9.4, FAR 9.105-1, and FAR 9.105-2)?

e. Are Equal Employment Opportunity compliance approvals obtained prior to award (FAR 22.805)?

f. If greater than \$6.5M, are congressional notifications submitted (FAR 5.303(a), DFARS 205.303, and AFARS 5105.303(a)(ii)(1))?

- g. Are CARs prepared, accurate and complete (FAR subpart 4.6)?
- h. For services procurements, are properly certified contracting officer's representative (COR) appointments executed before award (FAR 37.101, DFARS 201.602-2, and AFARS 5101.602-2-91)?
- i. Are contracting officers ensuring CORs have completed all mandatory training requirements and documenting qualifications prior to appointment (DFARS 201.602-2, DFARS PGI 201.602-2 and AFARS 5101.602-2-91)?
- j. Are performance-based requirements clearly defined? (FAR 37.6, DFARS 237.170-2 and AFARS 5137.590)
- k. Are quality assurance surveillance plans developed, and are clear, measurable performance standards incorporated into the contract (FAR 37.604, FAR 46.4 and DFARS 246.4)?
- l. Are notifications of award provided to unsuccessful offerors (FAR 15.503)?
- m. For small business set-aside competitions, are pre-award notices provided to unsuccessful offerors (FAR 15.503(a)(2))?
- n. For awards to large businesses, are subcontracting plans incorporated in contracts and do they include Electronic Subcontracting Reporting System requirements (FAR 19.702 and FAR 19.704)?
- o. Do official contract files contain evidence that the requirement for commercial software and related services, such as software maintenance, are acquired in accordance with the DoD Enterprise Software Initiative (DFARS 208.7402, and DFARS PGI 208.74)?
- p. Are peer reviews obtained as appropriate to the value and complexity of the acquisition (AFARS 5101.170)?
- q. Are legal reviews obtained prior to making award? (AFARS 5101.602-2-90 and as required by local policy)
- r. Are contract awards synopsisized through the Government point of entry (FAR 5.301)?
- s. Are steps taken to ensure that the notice of award is received in a timely manner, particularly where the successful offeror must "mobilize" subcontractors and equipment?

BB-203 Event Cycle 4: Contract Administration.

Step 1: Documentation.

- a. Is file documentation sufficient to constitute a complete history of the transaction (FAR 4.801)?
- b. Is there adequate documentation to support modification changes (FAR 4.803(26)(ii) and (iii))?

Step 2: Functional Representatives' Responsibilities and Limitations.

- a. Are qualified individuals selected as CORs (DFARS 201.602-2)?
- b. Do COR designations clearly indicate their authority and the limitations of that authority?
- c. Is there evidence in the official contract files that the contracting officer reviews (at least annually) the COR official files (AFARS 5101.602-2-91)?
- d. Is there evidence in the official contract file that the COR has summarized the contractor's performance in the Contractor Performance Assessment Reporting System annually? (AFARS 5153.303-1.2.d)?

Step 3: Postaward Orientation Conferences.

Is consideration given to the need for postaward orientation conferences to foster a mutual understanding of the contractual agreement and the responsibilities assigned (FAR 42.502)?

Step 4: Contract Modifications.

- a. Is legal counsel requested to make a legal sufficiency determination prior to issuing a supplemental or bilateral agreement, as applicable?
- b. Is a deviation approval requested when a clause other than a standard clause is to be incorporated into a supplemental agreement?
- c. Are modifications issued under the proper authority (FAR 43.102 and FAR 43.201)?
- d. Are change orders issued for work within the scope of the contract (FAR 43.2 and DFARS 243.2)?

Step 5: Government Property Administration.

- a. Are contractors required to publish a property control system describing the procedures and techniques to be used in managing Government property (unless the Government property administrator determines it unnecessary)?
- b. Is regulatory guidance followed to determine contractor liability should Government properties become lost, damaged, destroyed or unreasonably consumed (FAR 45.104)?
- c. Has it been determined to be in the best interest of the Government to provide additional Government property beyond that required under contract?
- d. If Government property is being provided to the contractor, does the contract contain specific identification of all Government property to be furnished, and are property administration records being maintained in the official contract file (FAR 45.201 and AFARS 5145.390)?

e. If Government property is being provided to the contractor, has all property on the contract been properly reported, reutilized, and/or disposed of during the life of the contract and contract completion (FAR 45.6)?

Step 6: Options .

a. Before exercising an option, do contracting officers execute a written determination that exercising the option is in the best interest of the Government (FAR 17.207 and DFARS 217.207)?

b. Is there evidence in the official contract files that the contracting officer provided written notice to the contractor within the time period specified in the contract of the intent to exercise the option (FAR 17.207 and FAR 17.208(g))?

Step 7: Funding.

a. For incrementally funded cost type contracts, are contractors notifying the Government in writing when they expected the costs will exceed 75% of the estimated contract amount (FAR 32.703-1(b), FAR 32.706-2(b), and FAR 52.232-22)?

b. If the contracting officer initiated a contract action in advance of funds was the correct clause used (FAR 32.703-2, FAR 32.706-1, and FAR 52.232-18)?

c. Are award fees being awarded commensurate with contractor performance over a range from satisfactory to excellent performance as identified in the award fee plan (FAR 16.401(e)(2) and (3))?

Step 8: Quality Assurance.

a. Are nonconforming supplies or services offered to the Government rejected, except as provided in applicable regulations (FAR 46.407)?

b. Is contractor performance monitored according to established surveillance plans?

Step 9: Delinquency Actions and Terminations.

a. Do contracting officers take timely action to alleviate or resolve delinquencies (FAR 49.607)?

b. Do contracting officers obtain legal counsel and technical advice prior to taking action when a default termination is being considered (FAR 49.402-3)?

c. Are excess funds from terminated contracts deobligated by the responsible contracting officer (i.e., PCO, ACO or TCO) in a timely manner?

d. Are negotiation settlements promptly scheduled and audit reviews and negotiations tracked to ensure prompt settlement of termination actions (FAR 49.101(d))?

Step 10: Defense Contracting Audit Agency Audits on Cost Reimbursement Contracts.

a. Are determinations regarding the allowability of incurred costs on cost reimbursement contracts consistent with the factors to be considered in determining allowability (FAR 31 and DFARS 231)?

b. Are final cost determinations that are inconsistent with the auditor's advice supported by a memorandum in the contract file describing the pertinent events and factors considered in reaching the decision?

c. Are reimbursements due the Government after final audit promptly processed for collection?

Step 11: Receiving Reports, Acceptance, Final Payment, Contract Completion, and Contractor Evaluation.

a. Are decisions to accept or reject supplies, or services performed, documented and distributed in a timely manner?

b. Are all contractual claims and obligations satisfied prior to contract closeout and do contracting officers follow proper procedures in determining and processing claim(s) (FAR 33.2)?

c. Are contract administration offices initiating administrative closeout of the contract after receiving evidence of its physical completion (FAR 4.804-5)?

d. Is there evidence in the official contract file that the contracting officer prepared a contractor performance assessment report (FAR 42.1502, DFARS 242.1502, DoD Class Deviation [2012-O0017](#) and Deviation 2012-O0018, and AFARS 5142.1503)?

Step 12: Other Contracting Officer Administrative Responsibilities.

a. Is there evidence in the official contract file that contracting officers have enforced the remedies under FAR clause 52.222-50 or by reference in FAR 52.212-5?

b. Is there evidence in the official contract file that the contracting officer is ensuring that the contractor is performing in accordance with FAR 52.219-14? (FAR 19.811-3(e) and FAR 19.508(e))

BB-204 Event Cycle 5: Special Acquisition Situations and Requirements.

Step 1: Simplified Acquisition Procedures.

a. Is a source list being maintained (FAR 13.102)?

b. Are files reviewed to ensure that:

1. Requirements are not split or manipulated to avoid exceeding the simplified acquisition threshold (FAR 13.003(c)(2))?
2. Related items are consolidated when practical and advantageous (FAR 13.101 (b))?
3. Unpriced orders contain appropriate monetary limitations (FAR 13.302-2 (c))?
4. Price reasonableness is adequately documented (FAR 13.106-3)?
- c. Are recurring orders evaluated at least annually to determine the appropriateness of establishing, updating, or canceling blanket purchase agreements (FAR 13.303-2 and FAR 13.303-6)?
- d. Are ordering officers':
 1. Appointments limited to those situations essential for the efficient operation of the contracting mission (AFARS 5101.602-2-92(b))?
 2. Activities physically inspected or reviewed, at least once each year (AFARS 5101.602-2-90(c)(2))?
- e. For use of the Government commercial purchase card:
 1. Are purchases in compliance with regulations, restrictions, and controls (FAR 13.301, DFARS 213.270, DFARS 213.301, AFARS 5113.201 and AFARS 5113.270-90)?
 2. Are procedures in place to ensure bills are paid promptly?
 3. Are purchase cards being utilized as a payment vehicle on contracts over the micro-purchase threshold, when appropriate?
 4. Are procedures in place to track Government property acquired with the Government purchase card?

Step 2: Construction Requirements .

- a. Are bid guarantee and bonding requirements in compliance with the guidance at FAR 28.101 and DFARS 228.102?
- b. Is a release of all claims or liens against the Government obtained prior to final payment (FAR 52.232-5)?

Step 3: Job Order Contracting .

- a. Do unit price book prices, including contractual changes to those prices, include direct material, direct labor, and equipment costs, but not indirect costs or profits?
- b. Are negotiated prices fair and reasonable for items that are not prepriced?

Step 4: Architect-Engineers (AE) Requirements.

- a. Are the qualifications data files on AE firms kept current, to include review and update at least once a year (FAR 36.603(d))?
- b. Are the required clauses included in AE contracts to protect the interests of the Government (FAR 36.609)?
- c. Are the reasons for recovering or not recovering costs from an AE firm whose design deficiencies contributed to a construction contract modification documented in writing and in the contract file (FAR 36.608)?

Step 5: Services and Performance Based Contracting.

- a. Are formal, measurable (i.e., in terms of quality, timeliness, quantity, etc.) performance standards and surveillance plans developed to monitor the services to be performed (FAR subparts 12.102(g)(1)(iv), FAR 37.503(a), FAR 37.601(b)(2), FAR 37.601(b)(3), FAR 37.603 and FAR 37.604)?
- b. Are contractor employee complaints regarding wage rates, overtime, and related matters under the Service Contract Act referred to the Department of Labor for investigation?
- c. Do service contracts have a written quality assurance surveillance plan in place that defines the work requiring oversight and explains how surveillance reviews will be documented?
- d. If a services requirement, does the customer provide a "Request for Civilian Hire or Services Contract Approval" with the purchase request? (For current form, see <http://www.asamra.army.mil/insourcing/>.)
- e. If the acquisition is a service, is an acquisition strategy prepared and approved in accordance with AFARS 5137.5?

Step 6: Acquisition of Information Technology.

Are the modular contracts for information technology awarded within 180 days after the solicitation is issued, and is delivery scheduled to occur within 18 months to the maximum extent practicable (FAR 39.103 (e))?

Step 7: Major System Acquisitions.

- a. Does the system acquisition objective promote innovation and full and open competition (FAR 34.002(a))?
- b. Is effective competition between alternative system concepts and sources sustained for as long as it is beneficial (FAR 34.002(b))?
- c. Are formal source selection procedures described in AFARS appendix AA: Army Source Selection Supplement being applied?

Step 8: Research and Development Requirements.

- a. Are work statements adequately tailored by technical and contracting personnel to obtain the desired degree of flexibility for contractor creativity and the objectives of research and development (FAR 35.005(a))?
- b. Are recommendations of technical personnel considered by the contracting officer prior to selection of a contract type to fit the research work required (FAR 35.006 (b))?
- c. Does the evaluation and award of research contracts consider the prohibition against obtaining capabilities that exceed those needed for successful performance (FAR 35.008(a))?
- d. Do those research contracts with educational institutions or nonprofit organizations requiring a named principal, investigator, or project leader, contain sufficient controls to ensure an adequate degree of involvement by the named individual (FAR 35.015(a)(1))?

Step 9: *Undefinitized Contract Actions (UCAs)* .

- a. For UCAs, is there evidence in the official contract file that the contracting officer received written approval before issuance of the UCA and has the action been definitized within 180 days or as otherwise allowed by federal regulation (DFARS 217.7403, DFARS 217.7404-1, DFARS 217.7404-4, DFARS PGI 217.7404 and FAR 16.603-2)?
- b. Do definitization schedules contain all FAR 16.603-2(c) and DFARS 217.7404 requirements, a ceiling not-to-exceed price, and appropriate contract clauses (FAR 16.603-4, DFARS 216.603-4, and DFARS 217.7405)?

Step 10: *Financial and Cost Aspects of Other Transactions for Prototype Projects.*

- a. Are the terms and conditions of the “other transaction” clear, and do they protect the Government’s interests?
- b. When an “other transaction” has cost reimbursable features using payable milestones, does the “other transaction” address the procedures for adjusting the payable milestones based on actual expenditures?
- c. To ensure advance payments do not result under an “other transaction” with cost reimbursable features, does the “other transaction” require the contractor to submit a report of actual expenditures as a condition for milestone payment? Does the “other transaction” stipulate that the milestone payment will not exceed actual expenditures?
- d. When an “other transaction” has firm-fixed price characteristics with payable milestone provisions, are the payable milestone values commensurate with the estimated value of the milestone events?
- e. When an “other transaction” requires the submittal of technical, business or annual report, has the agreements officer considered whether these reports are important enough to warrant establishment of separate milestones, or if report requirements should be incorporated as part of a larger payable milestone?
- f. Does the “other transaction” require the delivery of technical reports to the Defense Technology Information Center, upon completion of the research and engineering project (DoD Instruction 3200.14)?
- g. If the contractor fails to comply with the terms of the “other transaction”, has the agreement administrator taken timely, appropriate action to remedy the situation?

Step 11: *Financial and Cost Aspects for Technology Investment Agreements (TIAs).* (A TIA is defined as a class of assistance instruments that may be used to carry out basic, applied, and advanced research projects when it is appropriate to use assistance instruments, and the research is to be performed by for-profits or by consortia that include for-profit firms, particularly firms that have done business with the Government.)

- a. If a TIA provides for payment to be made based on payable milestones, are these payable milestones based on observable, technical progress?
- b. At the completion of each payable milestone or upon receipt of the quarterly business status report, has the agreements officer compared the total amount of project expenditures with the amount of payments for completed milestones? Has the agreements officer adjusted future payable milestones as needed to closely match payments to the recipient’s cash needs for the project?
- c. For TIAs which use payable milestones, has the agreements officer included a term or condition in the award document or otherwise required the recipient to maintain in an interest-bearing account any payable amounts received in advance of needs to disburse the funds for program purposes, unless one of the following conditions applies:
 1. The recipient receives less than \$120,000 in Federal awards per year;
 2. The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on such cash advances; or
 3. The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources for the project.
- d. Has the agreements officer forwarded any annually earned interest received from a recipient under a TIA to the responsible payment office for return to the Department of the Treasury’s miscellaneous receipts account?

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Army Procurement Management Review Program

October 1, 2014

Part 1 - Introduction

CC-100 Purpose.

This Appendix prescribes policy, responsibilities, and procedures for the Department of the Army (DA) Procurement Management Review (PMR) Program.

CC-101 Mission and Objectives.

The Department of the Army, through the Office of the Deputy Assistant Secretary of the Army (Procurement), shall establish, execute, and provide oversight of a tiered PMR program reviewing each contracting activity every three years in order to –

- (a) Assess, analyze, and communicate the health of Army contracting to senior Army leadership;
- (b) Ensure management oversight and control of contracting related issues;
- (c) Ensure compliance with Federal, Defense, and Army acquisition regulations and policies; and
- (d) Provide best practices for the Army to enhance the procurement process.

CC-102 Applicability.

This Appendix applies to all elements of the Army that exercise contracting authority emanating from the Army Senior Procurement Executive (SPE) regardless of funding source, type of commodity, or service.

Part 2 - PMR Policy and Philosophy

CC-200 Policy.

The DA, at every level of management, shall review, assess, analyze, and improve contracting operations and management for effectiveness, efficiency and compliance with acquisition policies and regulations.

CC-201 Philosophy.

The PMR Program effects change through continuous improvement and verifies compliance with acquisition policies and regulations. The PMR Program provides an interactive framework emphasizing communication, assessment, and assistance throughout the Army. Data collection, analysis, identification of best practices, and other information allow the assessment of the state of Army contracting operations, organization and management, and provide a forum for solution and development of issues.

Part 3 - Responsibilities

CC-301 Assistant Secretary of the Army (Acquisition, Logistics and Technology) (ASA(ALT)).

The ASA(ALT) is the Army Acquisition Executive (AAE) and the Senior Procurement Executive (SPE) and is responsible for all procurement and contracting functions across the Army to include providing oversight of contracting functions through an enterprise-wide Procurement Management Review Program.

CC-302 Deputy Assistant Secretary of the Army for Procurement (DASA(P)).

The DASA(P) is the DA proponent for the PMR Program supporting the Senior Procurement Executive to provide oversight and evaluation of Army contracting.

CC-303 Directorate of Review and Oversight, Office of the DASA(P).

The Review and Oversight Directorate is responsible for the effective administration and conduct of the PMR Program. To this end, the Directorate will –

- (a) Provide a Program Director to coordinate, manage, and oversee the Army-wide PMR Program and lead the Army's PMR Advisory Working Group;
- (b) Provide acquisition management advice to the Army;

- (c) Analyze and assess the effectiveness and efficiency of Army contracting programs and operations;
- (d) Identify and communicate contracting trends, best practices and lessons learned;
- (e) Oversee Army-wide execution of the PMR Program as administered by the heads of contracting activities (HCAs);
- (f) Periodically provide PMR guidance to HCAs, including guidance for DASA(P) special areas of interest;
- (g) Be an advocate of the field for the coordination and resolution of issues at DA or higher levels; and
- (h) Prepare the Army's Annual Summary Health Report.

CC-304 Heads of Contracting Activities.

HCAs shall –

- (a) Execute the Army PMR program under the direction of the DASA(P) to ensure fulfillment of HCA responsibilities for a responsive and cost-effective contracting system, and review contracting compliance with FAR, DFARS, AFARS, Command Supplements, and DA Policy consistent with DA PMR objectives and DASA(P) special areas of interest;
- (b) Designate a senior representative from their staff to act as their representative on the Army's PMR Advisory Working Group;
- (c) Provide supplemental staff support as required to conduct DA-level reviews; and
- (d) Identify and communicate procurement trends, best practices, lessons learned, and information to SAAL-PR.

Part 4 - Procedures

CC-400 Scheduling.

At a minimum heads of contracting activities or their senior contracting official (SCO) will conduct PMRs on contracting activities, to include subordinate contracting offices, regardless of the level, at least once every 36 months and provide the schedule of reviews no later than 31 August of the preceding fiscal year to the Review and Oversight Directorate. DASA(P) may grant, in writing, an extension to four years on a one-time basis when circumstances are justified. Additionally, the DASA(P) may require, in writing, more frequent reviews of contracting activities as deemed necessary.

CC-401 Types of Procurement Management Reviews.

The PMR is a tiered program that includes the following:

- (a) PMR reviews by the Office of the DASA(P) (ODASA(P)) to Army Headquarters offices for contracting, Army contracting Commands/Activities, and Offices of the Senior Contracting Official (OSCOs). OSCOs not directly involved in the execution of contracts will propose a subordinate contracting activity for supplemental review.
- (b) PMR reviews by the HCA to Offices of the Directors of Contracting and other subordinate contracting offices.
- (c) PMR reviews by the Directors of Contracting to subordinate contracting offices.
- (d) Special assistance, review and assessment, Army-wide, as required.

CC-402 Approach of Procurement Management Reviews.

- (a) PMRs will be collaborative and will emphasize effectiveness of strategic planning, identification and effectiveness of metrics, and the flow of information among organizations at the headquarters and OSCO levels. PMRs will evaluate effectiveness along with compliance with procurement laws, regulations, policies, and best practices at the contract execution level. PMRs will identify improvements needed in contracting policies and procedures.
- (b) PMRs will provide for the exchange of information and advice on lessons learned, best practices, mitigation of barriers to effective change, and opportunities for continuous improvement.
- (c) Participation by the ODASA(P) in OSCO PMRs will address PMR objectives and enhance the OSCO team in achieving its responsibilities pursuant to this Appendix.

CC-403 Preparation for Procurement Management Reviews.

ODASA(P) will notify procurement organizations, if reasonable, 30 days before planned PMR visits. The activity shall provide the following in advance: metrics, specified statistics, lists of contracts, orientation data (such as vision and mission statements and standard operating procedures), logistical support, and copies of previous review reports and previous corrective action plans. Additionally, the activity may request additional areas of emphasis and assistance during the PMR.

CC-404 Results of Procurement Management Reviews.

(a) Reports of PMR results will contain a risk assessment, analysis of issues, commendations, observations, findings, and recommendations as appropriate. PMR report findings must be specific and include sufficient information to enable root cause analysis. PMR recommendations must be based on supported findings and be actionable.

(b) Contracting activities at all levels will perform timely PMRs. Untimely reporting erodes the review's effectiveness. At a minimum—

(1) Reviewers shall submit the initial PMR report to the reviewed activity within 30 business days of the Out-brief;

(2) The contracting activity reviewed shall submit a Corrective Action Plan (CAP) within 30 business days of report receipt; (3) The responsible official must review and approve the CAP and prepare a Final PMR report within 30 business days of CAP receipt ;

(4) The reviewed activity must complete corrective actions – if any – within the agreed timeframe, inform the PMR Team Lead of corrective actions taken, and request closure of the CAP.

CC-405 Annual Summary Health Report.

(a) HCAs shall provide to the Review and Oversight Directorate an Annual Summary Health Report for their organization to include copies of all PMR reports and associated analyses of subordinate contracting offices no later than 31 October each year.

(b) The Review and Oversight Directorate shall provide an Annual Summary Health Report to DASA(P) that presents a holistic assessment of Army contracting no later than 31 January each year.

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SUBCONTRACTING PLAN EVALUATION GUIDE

October 1, 2014

Part 1 - Introduction

DD-100 Purpose.

The guide provides a methodology for uniform and consistent evaluation of subcontracting plans within the Army. It is designed to facilitate compliance with the mandates of 15 U.S.C. § 637(d) to increase opportunities for small and small disadvantaged businesses.

DD-101 Applicability.

In accordance with requirements of FAR 19.705-4, DFARS 219.705-4 and AFARS 5119.705-4, the contracting officer shall use this guide to review all subcontracting plans (except those for commercial items), including those submitted in response to the provisions in FAR 19.705-2(d) and (e). When the contract will require subcontracting plans, use the clauses designated by FAR 19.708(b)(1) and (2) and DFARS 219.708(b)(1)(A) in the solicitation. A copy of the completed evaluation shall be included in the contract file.

DD-102 Goals.

Contracting officers must place special emphasis on negotiating subcontracting goals that are realistic, challenging and attainable. The plan must express goals in terms of percentages of total planned subcontracting dollars and must be comparable to the dollar commitments in the small business participation plan. In accordance with FAR 19.705-4(d), the contracting officer must review enough evidence to determine that the:

1. Offeror can meet subcontracting plan goals;
2. Offeror's goals are consistent with their cost or pricing data or information other than cost or pricing data;
3. Offeror will honor the terms of subcontract agreements (i.e., timely payments of amounts owed, use of firms cited in proposal, etc.); and
4. Offeror's make or buy policy or program does not conflict with the proposed subcontracting plan and is in the Government's best interest.
5. Plan includes the contractor's commitment to adopt and comply with its requirements and goals for small business utilization.

DD-103 Evaluation Rating.

Either the contracting officer, the small business representative, or both, shall evaluate and rate the subcontracting plan as "acceptable" or "unacceptable," in the context of the particular procurement. For instance, in smaller dollar value contracts, or contracts for uniquely manufactured items, it might be impracticable or not cost effective for offerors to take the type of actions that might be appropriate in contracts for larger dollar values or commercial components. To receive an "Acceptable" rating, the contractor must satisfy all objectives in Part 2 and meet each statutory subcontracting plan requirement outlined in Part 3. Failure to receive a subcontracting plan rating of acceptable could jeopardize the offeror's selection for contract award. The contracting officer must document the decisions in the contract file.

DD-104 Modification of Guide.

Pursuant to AFARS 5101.403, only senior contracting officials may approve individual deviations to this evaluation guide. This approval authority may not be further delegated.

DD-105 Use of Preaward Surveys.

For contracts administered by the Defense Contract Management Agency, obtain information needed to assess contractor compliance with subcontracting plans in current and previous contracts by requesting a preaward survey in accordance with FAR 9.106, DFARS 209.106 and DFARS PGI 209.106.

Part 2 - Rating System

DD-201 Acceptable Plans.

Objective: The subcontracting plan meets all of the requirements outlined in Part 3. The offeror has provided details that demonstrate an acceptable approach to assisting, promoting and utilizing small businesses, small disadvantaged businesses, women-owned small businesses, historically underutilized business zone small businesses, veteran-owned small businesses, service disabled veteran-owned small businesses and, for Defense Research Programs, historically black colleges and universities and minority serving institutions. The offeror has demonstrated an ability to meet prior subcontracting plan goals and honor the terms of subcontract agreements. Offeror has outlined an approach utilizing mentor protégé firms, joint venture teams, or other partners. The subcontracting goals are realistic, challenging, and attainable. Clarifications and minor rework of the submission may be required to correct slight omissions that do not prejudice other offers.

DD-202 Unacceptable Plans.

Objective: The subcontracting plan fails to meet a requirement outlined in Part 3. The offeror has not provided an acceptable approach to assisting, promoting, and utilizing small businesses. The offeror has a history of failing to honor subcontract agreements. The offeror did not discuss the establishment of mentor protégé relationships, teaming, or joint venture agreements with other firms. Ensure the proposed subcontracting goals are attainable in light of the contractor's past performance in meeting subcontracting goals. Proposed subcontracting goals reflect less than a good faith effort. Substantial rework of the document is required to correct omissions and establish realistic, challenging, and attainable goals. Failure to receive a rating of acceptable may jeopardize offeror's eligibility for contract award. See FAR 19.702(a)(1).

Part 3 - Subcontracting Plan Requirements

DD-301 Requirements.

If any of the following are answered "NO", the plan is not acceptable, and the offeror must revise it before contract award. Does the plan:

1. Contain a policy statement or evidence of internal guidance to company buyers that commits to complying with the Small Business Act (Public Law 99-661, Section 1207 and Public Law 100-180)?
2. Identify separate percentage goals for utilizing small businesses (including Alaska Native Corporations (ANCs) and Indian tribes), veteran-owned small businesses (VOSB), service-disabled veteran-owned small businesses (SDVOSB), historically underutilized business zone small businesses (HUBZone), small disadvantaged businesses (SDB), women-owned small businesses (WOSB), and, for Defense Research Programs, historically black colleges and universities and minority serving institutions where applicable? Negotiated subcontracting goals must correlate with percentages of small business utilization identified in the contractor's small business participation plan, see FAR 15.304 and DFARS 215-304, and/or minimum targets identified in the solicitation or contract modification. FAR 19.704(a)(1)
3. Project the total dollars planned to be subcontracted and a separate statement of the total dollars planned to be subcontracted to small business (including ANCs and Indian tribes), VOSB, SDVOSB, HUBZone, SDB, and WOSB concerns? FAR 19.704(a)(2)
4. Describe the principal types of supplies and services to be subcontracted and identify the types planned for subcontracting to small business (including ANCs and Indian tribes), VOSB, SDVOSB, HUBZone, SDB and WOSB concerns?
5. Describe the method to be used to develop the subcontracting goals? FAR 19.704(a)(4)
6. Describe the method for identifying potential sources for solicitation purposes? FAR 19.704(a)(5)
7. State if the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with small business, VOSB, SDVOSB, HUBZone, SDB (including ANCs and Indian tribes), and WOSB concerns? FAR 19.704(a)(6)
8. Identify the name of the employee who will administer the offeror's subcontracting program and describe that person's duties? FAR 19.704(a)(7)
9. Provide an approach for ensuring that small businesses, VOSB, SDVOSB, HUBZone, SDB, (including ANCs and Indian tribes) and WOSB concerns will have an equitable opportunity to compete for subcontracts?
10. Require the offeror to include the clause at FAR 52.219-8, Utilization of Small Business Concerns in all subcontracts that offer further subcontracting opportunities and require all subcontractors (except small business concerns) that receive

subcontracts over \$650,000 (\$1,500,000 for construction) to adopt a plan that complies with the requirements of the clause at FAR 52.219-9, Small Business Subcontracting Plan?

11. Provide assurances that the offeror will:

- a. Cooperate in required studies or surveys;
- b. Submit periodic reports so that the Government can determine the extent of offeror's compliance with the subcontracting plan;
- c. Submit semi-annual Individual Subcontract Reports (ISRs) and/or Summary Subcontract Reports (SSR) in the Electronic Subcontracting Reporting System (eSRS) (<http://www.esrs.gov>) in accordance with FAR 52.219-9 or provide other ancillary reports as requested by the contracting officer or Army Small Business Office;
- d. Ensure that its subcontractors with subcontracting plans agree to submit the ISRs and/or SSRs using the eSRS;
- e. Provide its prime contract number and its DUNS number and the e-mail address of the Government or contractor employee responsible for acknowledging or rejecting the reports, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their reports; and
- f. Require each subcontractor with a subcontracting plan to provide the prime contract number and its own DUNS number, and the e-mail address of the Government or contractor official responsible for acknowledging or rejecting the reports, to its subcontractors with subcontracting plans? FAR 19.704(10)

12. Describe the types of records that the contractor will maintain concerning procedures adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, VOSB, SDVOSB, HUBZone, SDB, and WOSB concerns and to award subcontracts to them? FAR 19.704(11)

13. Does plan, pursuant to FAR 19.704(11)(c), provide a separate goal for the basic contract and, if applicable, each option?

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DEPARTMENT OF THE ARMY GOVERNMENT PURCHASE CARD OPERATING PROCEDURES 22 July 2015

Chapter 1 : The Government Purchase Card Program

1-1. Purpose

a. This document provides the procedures to be used within the Army to establish and manage the Army Government Purchase Card (GPC) program. Best practices are identified in Appendix A. Army activities may adopt more stringent internal control requirements than the requirements cited herein. However, as these are risk-managed programs, activities should maintain a proper balance between the control environment and ease of use to ensure that the benefits of the card continue to accrue. These procedures establish Army-wide standards designed to provide all Army activities with a foundation upon which to build specific standard operating procedures governing their programs.

b. Nonappropriated activities implement policies and procedures governing the Army's morale, welfare, and recreation programs and general policies on Nonappropriated Fund Instrumentalities (NAFI). Chaplaincy activities implement policies and procedures governing Army Chaplain Corps activities. Army NAFIs/entities must operate within the parameters of these procedures.

1-2. Glossary

Acronyms and special terms are in the Glossary, Appendix J.

1-3. Background

The General Services Administration (GSA) awarded a multiple award schedule contract for U.S. Government commercial purchase card services. The contractor (hereinafter referred to as the "Servicing Bank") provides commercial GPCs and associated services. The Army issues a task order to the servicing bank for its GPC services.

1-4. References

- a. Federal Acquisition Regulation (FAR), Part 13 "Simplified Acquisition Procedures"
- b. Defense Federal Acquisition Regulation Supplement (DFARS), Part 213.301 "Government-wide commercial purchase card"
- c. Army Federal Acquisition Regulation Supplement (AFARS), Part 5113.2 "Simplified Acquisition Procedures"
- d. Treasury Financial Manual, - Vol. I, Part 4, Ch. 4500, "Government Purchase Cards"
- e. Department of Defense (DOD) Financial Management Regulation (FMR) Vol. 10, Ch. 23, "Purchase Card Payments"
- f. DOD FMR Vol. 10, Ch. 23, Annex 1, "Purchase Card Certification Statements"
- g. DOD FMR Vol. 10, Ch. 2, "Discount Offers and Rebates/Refunds"
- h. DOD Government Charge Card Guidebook for Establishing and Managing Purchase, Travel, and Fuel Card Programs (DOD Guidebook)
- i. OMB Circular No. A-123, Appendix B Revised

1-5. GPC Authority

a. The Chief of the Contracting Office (CCO) shall delegate micro-purchase procurement authority to individuals at the lowest level in accordance with FAR Part 1-603-3(b). This authority may be redelegated in writing to the Level 3 or 4 Agency/Organization Program Coordinator (A/OPC). Sample appointment letters are located at Appendix F.

b. Orientation and training on the Army purchase card program is a prerequisite to receiving a GPC.

c. Generally, only government employees can be cardholders. However, a number of exceptions apply:

(1) Under certain conditions, GSA can authorize contractors to establish cards directly with the issuing bank, if necessary. (DOD Guidebook page A-1). Requests for GPC by contractors working under cost type contracts shall be forwarded to the Army contracting officer for the cost-reimbursable contract. If the contracting officer determines that the contractors are eligible, the contractors must file a Request for Eligibility Determination with the GSA SmartPay contracting officer. (AFARS 5113.202-90(b)).

(2) Foreign nationals may be designated as accountable officials - Billing Officials (BOs) and Cardholders (CHs) provided they are direct hires, even though they may not be subject to pecuniary liability under U.S. law. Given the above, purchase cards may be issued to foreign national employees of the Army if they meet accountable official requirements

(nomination and training). They are subject to the same disciplinary actions for card misuse as U.S. citizen employees, subject to host country agreements and local law. (DOD Guidebook page A-1 and DOD FMR Volume 5, Chapter 33, paragraph 330204)

(3) Junior Reserve Officer Training Corps (JROTC) Instructors are members of the Armed Forces in accordance with AR 145-2, paragraph 4-3, and may be designated micro-purchase procurement authority as GPC cardholders. (FAR Part 1-603-3(b))

d. Army cardholders who are ordering officers may be authorized to use the GPC as a payment instrument for orders made against Federal Supply Schedule contracts (FSS), Blanket Purchase Agreements (BPAs), DOD Indefinite Delivery/Indefinite Quantity (IDIQ) contracts that contain a provision authorizing payment by purchase card, or other contracts when authorized by the contracting officer.

e. The GPC may provide a streamlined way of paying for contracts and other contracts than those listed above, but a contracting officer shall first determine that use of the GPC is in the best interest of the government (AFARS 5113.202-90(d)). See FAR Subpart 32.1110(d) and 32.1108 for instructions for use of the appropriate clause when payment under a written contract is made through use of the card. If payment under a written contract is made by the GPC, then the contracting officer shall insert the FAR clause 52.232-36, Payment by Third Party, in solicitations and contracts. Payment by a purchase card may also be made under a contract that does not contain the clause at 52.232-36, to the extent the contractor agrees to accept that method of payment. When the clause at 52.232-36 is included in a solicitation or contract, the contracting officer shall also insert the clause at 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration, as appropriate.

f. The maximum single transaction dollar limit for the GPC for stand-alone purchases shall be the micro-purchase threshold as defined at FAR 2.101, DFARS 213.301(2) and AFARS 5113.270-90. The maximum single transaction dollar limit for contract payments against existing contracts shall be as identified in the contract and shall be within the limits defined in the CH written Delegation of Authority letter or the contracting officer's warrant. In the event of an emergency need for contingency or humanitarian aid operations, the Executive Office of the President may sign into law an emergency procurement authority allowing increased GPC and convenience check limits and revised procedures in support of contingency and humanitarian aid operations. In such circumstances, the Director of Defense Procurement and Acquisition Policy also may authorize class deviations to allow organizations to deviate from the FAR and DFARS. Such deviations may include raising GPC spending limits. These contingency/emergency purchases require separate training and Delegation of Authority by the A/OPC on contingency/emergency procedures and authority must be issued/granted by the Chief of Contracting or other authorized person.

g. The GPC shall be used to pay for government-owned material or government-performed services received from other government sources (e.g. Defense Logistics Agency Document Services, GSA Global, and Defense Logistics Agency).

h. The GPC shall be used as a method of payment for all commercial training \$25,000 and below. The Standard Form (SF) 182 must be completed for training up to \$25,000. If training costs exceed \$25,000, submit the training requirement to your local contracting office. A separate and dedicated training GPC card must be issued and used to purchase training. These GPC training cards are only used to purchase training requirements.

i. Where it is identified that the purchase is processed via a third party merchant (such as PayPal), the CH should make every attempt to choose another merchant with whom to procure the goods and/or services. If found necessary to procure using a third party payment merchant, the BO must ensure adequate supporting documentation showing that there was a detailed review of the purchase and that the use of the third party payment merchant was unavoidable.

1-6. Applicability

These procedures apply to all GPC purchases with cards issued by the Army. Non-Army tenant organizations issued Army GPCs or convenience checks by an Army contracting office are also subject to these procedures. All BOs, CHs, A/OPCs (at all levels), Resource Managers (RMs), Logisticians, and other stakeholders that participate in the GSA SmartPay Purchase Card Program under the Army Level 2 hierarchy are subject to these procedures. The policy established in this document supersedes previous guidance issued in the Draft Army Regulation (AR715-xx). Explanation of the Army level hierarchy is provided at 1-8.

1-7. Program Organization, Roles and Responsibilities

The general roles and responsibilities of the participants in the purchase card program are presented in the references listed in paragraph 1-4 and the following: AFARS 5113.201, Chapter 2 and Appendix A of the DOD Government Charge

Card Guidebook; Volume 1, Part 4, Chapter 4500 of the Treasury Financial Manual; Office of Management and Budget (OMB) Circular 123, Appendix B Revised, Chapters 4.3, 4.4, and 4.8; 31 U.S.C. §3528 “Responsibilities and Relief from Liability of Certifying Officials; DOD Financial Management Regulation (DOD FMR) Volume 5, Chapter 33 “Departmental Accountable Officials, Certifying Officers and Review Officials”, and DOD FMR Volume 10, Chapter 23, paragraph 2303 and 2304.

Army Level Hierarchy GPC Program structure uses a multi-level approach defined by level numbers		
Level 1 A/OPC	DOD	DOD Purchase Card Program Management Office (PCPMO) is the reporting agency representative to DOD.
Level 2 A/OPC	ASA(ALT) DASA(P) SAAL-PP	Assistant Secretary of the Army (Acquisition, Logistics, and Technology), Office of the Deputy Assistant Secretary of the Army for Procurement Policy Programs and Oversight staff member serves as the Level 2 A/OPC
Level 3 A/OPC	Army Command (ACOM) or equivalent	ACOM or equivalent organization must possess Head of Contracting Activity authority and the SCO designates a Level 3 A/OPC and alternate The Level 3 A/OPC reports to the Level 2 A/OPC as required The SCO’s management responsibility for the GPC program may be delegated to the CCO.
Level 4 A/OPC	Installation or equivalent	The installation or equivalent organization’s CCO designates a contracting staff member as the Level 4 A/OPC - The Level 4 A/OPC reports to the Level 3 A/OPC as required
Level 5	Billing Official (BO) and Alternate BO	BO appointed by COC - may be delegated to Level 4 A/OPC - see sample letter in Appendix F Certifying Officer (which is the Billing Official) appointed by Installation Commanders or activity directors on DD577 BO monitors and approves CH purchases and certifies billing statements
Level 6	Cardholder	Individual issued the GPC or convenience checks Appointed by Level 4 A/OPC (when COC delegates the authority to A/OPC) CH must acknowledge authority and duties by signing appointment letter

a. Level 2 – A/OPC duties:

- (1) administering the Army GPC Program;
- (2) establishing policies and guidelines;
- (3) designing and maintaining hierarchies and approving subordinate A/OPCs;
- (4) ensuring effective surveillance within the ACOMs, Army Service Component Commands, Direct Reporting Unit;
- (5) serving as a liaison with Army organizations, the Servicing Bank, the PCPMO, and GSA; and,
- (6) managing and implementing technical enhancements (developing, testing and deployment of GPC hardware/software/networking systems enhancements).

b. Level 3 – A/OPC duties: Alternate Level 3 A/OPC duties are the same as the Primary Level 3 A/OPC.

- (1) implementing, administering, and monitoring the ACOM GPC program subject to DOD and Army policies;
- (2) serving as a liaison with Army Headquarters, the Servicing Bank, ACOM staff, and field organizations;
- (3) keeping Level 2 A/OPC apprised of GPC Program trends and issues as they arise;
- (4) providing program support to ACOM and installation Level 4 A/OPCs;
- (5) establishing and implementing ACOM-specific policy and guidelines;
- (6) disseminating GPC Program-related information to Level 4 A/OPCs
- (7) developing and writing GPC program internal control requirements, reporting mechanisms and surveillance plan.
- (8) participating in GPC programs meetings sponsored by US Bank and Headquarters;
- (9) tracking training requirements for Level 4 A/OPCs (see section 2-2);
- (10) ensuring all Level 4 A/OPCs and Alternates hold appointment letters
- (11) leading systems implementation at Command level;
- (12) maintaining GPC Program documentation: Level 4 A/OPC training records, appointment letters, certifications, etc.;
- (13) ensuring all Level 4 A/OPCs meet education, training and certifications requirements (see Section 1-8(b));
- (14) coordinating GPC program changes with Level 2 A/OPC, including hierarchy changes, Level 3 appointments, etc.;
- (15) responding to all data calls timely and with concise, current data;
- (16) overseeing Level 4 A/OPC program controls, including BO account reviews, semi-annual surveillance, etc; and,
- (17) Manage agent numbers: periodically assess the ongoing need for agent numbers.

c. Level 4 - A/OPC duties: Alternate Level 4 A/OPC duties are the same as the Primary Level 4 A/OPC.

- (1) managing the day-to-day operation of the GPC Program at the installation/organization;
- (2) assisting CHs and BOs in fulfilling their responsibilities;
- (3) ensuring local agency training is provided to CHs and BOs via an appropriate training method (i.e. classroom, VTC, electronic, etc.) prior to participation in the GPC program;
- (4) ensuring installation-specific training is provided to CHs on property accountability procedures (in coordination with local Property Book Officers);
- (5) ensuring an alternate billing official is in place;
- (6) oversight responsibilities that may not be redelegated (e.g. annually reviewing BO and CH accounts, span of control);
- (7) maintaining delegation of authority appointment letters and a current listing of all CHs and BOs under the Level 4 A/OPC's jurisdiction;
- (8) determining annually each CH's continuing need to maintain an account;
- (9) issuing purchase cards in controlled limited quantities to authorized personnel with a demonstrated need to make purchases when reasonably necessary to meet operational requirements;
- (10) cancelling accounts with no activity for six months; or
 - a) set the single purchase limit to \$1 in the event of unauthorized activity/fraud on the account.
 - b) receive justification in writing when individuals are deployed or other authorized absence for six months or longer;
 - c) receive justification in writing from BOs when accounts that have little activity must remain open in the event of an emergency service outage, emergency repair, contingency, etc.
- (11) developing and implementing local procedures to identify and make CHs aware of unauthorized and prohibited items from purchase with the GPC;
- (12) ensuring completion of the following training for all CHs and BOs (see Section 2-2 for training links);
 - a) mandatory Defense Acquisition University (DAU) initial GPC training
 - b) local specific agency training through any authorized training method deemed appropriate by the activity
 - c) mandatory refresher training every two years
 - d) mandatory annual ethics training
 - e) U.S. Bank Access Online web based training

- (13) maintaining training records including a database of all completed training;
 - (14) monitoring bank transaction reports to disclose potential prohibited or improper use, and taking immediate action to address suspected legal or policy violations;
 - (15) monitoring bank transaction declination reports to identify potential fraud activity;
 - (16) conducting an annual review of each assigned BO's records and procedures ensuring a minimum representative sample size review of 25% of all transactions;
 - (17) reviewing transactions and buying logs within four months of newly appointed CHs; and,
 - (18) processing requests for user identifications and passwords for the Servicing Bank's Electronic Access System (EAS).
- d. **Level 5 – Billing Official duties:** Alternate BO duties are the same as the Primary BO, and should only be performed in the absence of the Primary BO.

- (1) BO should be in the CH's direct chain of command;
- (2) providing written approval/disapproval of purchases to the CH;
- (3) reconciling invoices and timely certifying the billing statement for payment and verifying payments to be legal, proper, necessary, and correct in accordance with government rules and regulations;
- (4) ensuring CHs fulfill their responsibilities by conducting an annual review of all CHs;
- (5) reporting questionable transactions to the Level 4 A/OPC and/or appropriate authorities for investigation;
- (6) recommending in writing appropriate GPC credit limits to the Resource Manager and Level 4 A/OPC for CHs under the BO's oversight;
- (7) reviewing CH's statement and approving CH statement in the CH's absence within the required time frames;
- (8) identifying and communicating billing discrepancies to the bank's transaction dispute point of contact when the CH is unavailable - for Access Online users;
- (9) retaining an electronic (printable) or manual copy of each billing statement, and maintaining with the billing statement all original supporting documentation, receipts, logs, invoices, delivery tickets, approvals, etc. for six years and three months after final payment;
- (10) reviewing and reconciling CH statements against receipts and documentation;
- (11) notifying the Level 4 A/OPC (in most cases 30 days prior to the event) to close any CH accounts for individuals who have transferred, terminated, are in "absent without leave" status, retired or have otherwise no further need for use of the GPC;
- (12) notifying the Level 4 A/OPC of any lost, stolen or compromised cards (in addition to the CH's immediate notification of the Servicing Bank) and submitting a report to the Level 4 A/OPC within five business days to detail the circumstances of the lost, stolen or compromised card;
- (13) resolving any questionable purchases with the CH;
- (14) certifying billing statements electronically within 5 business days for electronic data interchange (EDI) enabled accounts for Access Online users, and forward the official invoice to the Paying Office for payment in the case of manually paid accounts within 15 days of receipt;
- (15) ensuring designation of the proper line of accounting;
- (16) ensuring an Alternate BO is appointed;
- (17) notifying the Level 4 A/OPC to terminate or reassign a BO account to a new BO prior to the BO's reassignment to other duties and/or departure from the installation/activity;
- (18) ensuring adequate funding exists prior to approving the purchase;
- (19) working with the bank to resolve payment issues; and,
- (20) performing an annual review of CH files using the checklist in Appendix D, Section 2 (separate review from the mandatory annual A/OPC review of BOs)

e. **Level 6 – Card holder duties:**

- (1) making authorized purchases;
- (2) collecting and maintaining the required documentation;
- (3) maintaining files and records;
- (4) rotating merchants when practicable;
- (5) verifying independent receipt and acceptance of goods and services;
- (6) verifying the establishment of the legitimate government need;
- (7) complying with required sources:
 - (a) FAR Part 8 and DFARS 208 Required Sources of Supply/Service
 - (b) Utilize mandatory BPAs to purchase office supplies

- (c) Utilize CHES for IT hardware and software purchases;
 - (d) Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794d)
 - (e) Environmentally Preferable Purchasing (EPP). FAR Part 23.
 - (8) obtaining all required pre-purchase approvals in support of requirements;
 - (9) Screen all requirements for their availability from the mandatory Government sources of supply (i.e. Office Supplies - FSSI BPAs on Army Corridor of DOD EMALL);
 - (10) verifying receipt/acceptance of purchased goods or services received including tracking of partial shipments and components that must be received within the dispute window;
 - (11) reviewing and reconciling monthly statements;
 - (12) resolving unauthorized, erroneous, or questionable transactions with merchants;
 - (13) disputing questionable transactions and disputing with the merchant any unresolved transaction for which a charge occurred during the prior billing cycle(s) but the item(s) have not been received, and tracking the dispute to completion;
 - (14) notifying the BO of unusual/questionable requests and disputable transactions;
 - (15) maintaining physical security of the GPC (and convenience checks) to avoid unauthorized use, allow no one but the CH to use the GPC, and do not release the GPC account number to entities other than a merchant processing a transaction;
 - (16) notifying the BO of a lost, stolen, or compromised GPC within one business day so the BO can meet the requirement to submit a report to the Level 4 A/OPC within five business days;
 - (17) maintaining the Servicing Bank's electronic access system (EAS) purchase log throughout the billing cycle, reconciling all transactions, and approving the statement of account within three business days of the end of the billing cycle;
 - (18) maintaining a manual purchase log if the electronic purchase log is not accessible;
 - (19) ensuring adequate funding is available prior to the purchase;
 - (20) properly allocating the transactions to the proper line of accounting;
 - (21) checking with the Property Book Officer to determine what is considered pilferable property to be recorded in the property control systems records or which items can be placed on a hand receipt;
 - (22) ensuring all pilferable and other vulnerable property receipts are provided to the supporting Property Book Officer (PBO) within five working days to enable the PBO to establish accountability and asset-safeguarding controls by recording the asset in the property control system records;
 - (23) notifying the BO prior to departure, when you are on leave or travel and are not available to promptly sign and forward the CH statement of account. Forward all sales receipts and credit vouchers to the BO; and,
 - (24) providing to the BO upon departure the disposition of CH records and transfer all CH records to the BO with all statements, supporting documentation, receipts, logs.
- f. **Resource Managers (RMs)** fund GPC purchases using the General Fund Enterprise Business System (GFEBS), and in the case of organizations on legacy systems, continue to use the "bulk" method in lieu of creating and citing unique accounting classifications for each individual GPC purchase. The bulk funding method requires a periodic (monthly, bimonthly, quarterly, or annually) fund reservation, through obligation, equal to the anticipated purchases for that period. Bulk funds may be assigned as a single line of accounting to each CH account to cover anticipated GPC purchases for a specified period. The Resource Manager's duties:
- (1) Provide a system of positive funds control by coordinating credit and cycle limits with the BO and Level 4 A/OPC;
 - (2) establishing funding for each account, at either the CH or BO level; non-applicable to U.S. Army Corps of Engineers;
 - (3) assisting the Level 4 A/OPC in establishing and maintaining BO and CH accounts in the Servicing Bank's EAS; non-applicable to U.S. Army Corps of Engineers;
 - (4) assigning default and alternate lines of accounting as appropriate;
 - (5) ensuring obligations are posted prior to invoicing for non-EDI accounts;
 - (6) assisting with resolving accounts that are in a delinquent status and providing payment information when requested;
 - (7) assisting the Level 4 A/OPC with the surveillance of assigned accounts;
 - (8) monitoring GFEBS daily to identify account payment issues to prevent and resolve GPC payment delinquencies, correct Intermediate Document (IDOC) errors, and provide payment information upon request; and,
 - (9) providing guidance and training to installation RMs, certifying officials, and cardholders on GFEBS processes.
- g. **Defense Finance and Accounting Service (DFAS)** duties:
- (1) maintaining the DD Form 577 for certifying officials;
 - (2) receiving and processing EDI transaction sets 821, Obligation Files; and 810, invoice files, and notifying the responsible installation or activity when the corresponding files are not received;

- (3) notifying the installation/activity, within one day, of rejects and interest penalties assessed to individual accounts (confirm-does this happen);
- (4) receiving and processing requests for manual payments; for example, bank system rejects and non-EDI accounts; and,
- (5) assisting in resolving GPC payment issues.

h. Property Book Officer duties:

- (1) Ensuring established property control and accountability procedures are developed and disseminated to all personnel who are entrusted with the acquisition of Army property and equipment;
- (2) Assisting the A/OPC in review of the purchase card account to ensure that property accountability procedures are being followed;
- (3) Compliance with accountability procedures in AR 710-2, AR 735-5;
- (4) Promptly record in agency property systems, sensitive and pilferable property purchased with the GPC; and,
- (5) Determining the accounting requirements for the GPC purchased property, such as nonexpendable or controlled (requires property to be accounted for on property book records), durable (requires control when issued to the user) and expendable (no requirement to account for on property book records).

1-8. Management of the GPC Program

a. Responsibility for the establishment and operation of an agency's GPC program is delegated to the agency's Senior Contracting Official (SCO). The SCO, or in activities that do not have a SCO, the Chief of the Contracting Office (CCO), designates a Level 3 A/OPC and an alternate(s) who once appointed is dedicated to the GPC Program within their agency/organization.

b. The SCO or CCO forwards the Level 3 A/OPC Appointment Letter to the Level 2 A/OPC using the template found at Appendix F. The letter delegates responsibility for managing the agency GPC program and details responsibilities, training and certification requirements, and grade level preferences for the Level 3 A/OPC role. The Level 2 A/OPC reviews the nomination and ensures the Level 3 A/OPC meets all requirements of the position. Once approved, the Level 2 A/OPC provides written endorsement and coordinates Level 3 A/OPC appointment with the servicing bank. The Level 2 A/OPC is the final approval authority for agency Level 3 A/OPC appointments.

c. SCOs must ensure adequate resources are dedicated to the GPC program within their agency/organization to ensure successful management of the program. Adequate GPC resources refer to an agency's efficient and effective deployment of assets (such as number of personnel, training, funding, facilities, knowledge and skills, etc.) when and where needed to meet agency requirements in compliance with the laws and regulations governing the GPC Program. Adequate resources must be deployed to reasonably ensure that programs achieve their intended results; resources are used consistent with agency mission; programs and resources are protected from fraud, waste, and mismanagement; laws and regulations are followed; and reliable and timely information is obtained, maintained, reported and used for decision making.

d. Individuals meeting the following criteria may be appointed as Level 3 or 4 A/OPCs for the GPC Program; GPC knowledge, training, and experience, basic contracting knowledge and/or acquisition training. The Defense Acquisition Workforce Improvement Act (DAWIA) requires the Department of Defense to establish education and training standards, requirements, and courses for the civilian and military workforce. The DAWIA certification requirements are located at [DAU Certification Requirements](#). DAWIA contracting or purchasing certification includes a training, education, and experience requirement. The Army requires Level 3 and Level 4 A/OPCs to be DAWIA Level II certified in contracting. A/OPCs that are not DAWIA Level 2 certified in contracting must either complete the DAWIA Level 2 contracting training requirement within 24 months or achieve DAWIA Level 2 certification in purchasing within 24 months of being assigned to the Level 3 or Level 4 A/OPC position. This requirement is effective immediately upon appointment of all A/OPCs. Although the Level 3 A/OPC position typically warrants a minimum equivalent grade of GS-13 or higher, the grade depends on the responsibilities, complexity, and volume of the program. In addition to certification requirements, Level 3 and 4 A/OPCs are required to have completed the training requirements detailed in Section 2-2.

e. The SCO management responsibility authority for the GPC Program is further delegated to the CCO. The CCO must ensure adequate resources are dedicated to the GPC program within their installation/activity to allow effective administration of the program. The CCO coordinates with the local personnel office(s) to ensure procedures are established requiring individuals involved in the GPC Program to clear through the Level 4 A/OPC when they out-process from the installation. The Level 4 A/OPC is appointed at a sufficient grade/rank to exercise their authority depending on the responsibilities, complexity, and volume of the program. Only individuals who meet the criteria in paragraphs 1-8(d) may be appointed as A/OPCs for the GPC Program.

- a. The Level 3 and 4 A/OPCs must have the following knowledge, skills, and abilities:

- (1) understanding of the relevant policies, procedures, and commercial contracting practices;
- (2) understanding of the relevant procurement laws and regulations;
- (3) understanding of what constitutes and authorized purchase transaction;
- (4) understanding of procurement methods and standards;
- (5) ability to communicate, organize, and manage effectively;
- (6) basic analytical and computer skills;
- (7) ability to summarize data, draft reports and write effectively using proper grammar, punctuation, and tone;
- (8) ability to analyze, research, and provide concise recommendations to the chain of command on required actions to anticipate, prevent, or correct problems in business processes that are supported by the GPC.

Chapter 2 : Establishing and Maintaining a GPC Account

2-1. Nomination, Selection, and Appointment of Cardholders and Billing Officials

a. Nomination, selection, and appointment of CHs and BOs are in accordance with AFARS Part 5113. The nominating official must be in the supervisory chain of the individual being nominated. CHs, BOs, and Checkwriters must be issued written authority identifying their limits of authority, duties, responsibilities, credit limits, and the written authority must reference mandatory compliance with the AFARS Subpart 5113.2 and the Army Government Purchase Card Operating Procedures. The BO, or CH will acknowledge receipt (electronic signature and date permissible) of appointment letters. Warranted contracting officers do not require a separate delegation of authority to use the GPC.

b. The CH is also a Departmental Accountable Official (DAO) according to paragraph 3305 and 3306, Chapter 33, Volume 5, of the DOD FMR. CHs must successfully complete the required GPC and ethics training to be delegated micro-purchase authority prior to receiving a GPC (see paragraph 2-2). The SCO or COC may delegate in writing to the Level 3 or 4 A/OPC the authority to delegate micro-purchase authority to CHs. A sample delegation of micro-purchase authority is provided at Appendix F.

c. The BO is also a Certifying Officer within the context of the GPC program. The Certifying Officer's minimum qualifications and eligibility are further discussed in DOD FMR Volume 5, Chapter 33. BOs are responsible for the accuracy of payments, including designation of the proper appropriation(s) or other funds certified to the paying office and Disbursing Officer. BOs are financially responsible for any illegal, improper, or incorrect payment as a result of an inaccurate or misleading certification. To certify GPC invoices for payment by the DFAS, the BO must be appointed as and accept the responsibilities of a Certifying Officer using the DD Form 577 and complete ethics and fiscal law training (see paragraph 2-2). The BO completes and signs the DD577 and provides to the A/OPC in order for the A/OPC to set up the BO account. The A/OPC provides the original signed and completed DD Form 577 to the supporting DFAS, ATTN: GPC. The BO and A/OPC retain a copy.

2-2. Training Requirements

a. Individuals must complete the training identified in the chart below. The training must be completed prior to issuance of appointment letters and/or establishment of GPC accounts. Proof of training must be documented and retrained by the A/OPC.

GPC Training Requirements		
Training Requirement	Role	Source
Mandatory Training		
Ethics	A/OPC/CH/BO	AR 350-1 paragraph G-18 and DOD 5500.7-R, the Joint Ethics Regulation HBS 415 Ethics at Work http://clc.dau.mil
U.S. Bank Access Online	A/OPC/CH/BO	https://access.usbank.com/cpsApp1/index.jsp
Purchase Card Online System (PCOLS) CLG 005	A/OPC/CH/BO	http://clc.dau.mil/
Local GPC Training	CH, BO	Activity/Level 3 A/OPC developed
DoD GPC (CLG001)	A/OPC/CH/BO	http://clc.dau.mil/
DoD GPC Refresher Training (every 2 years) (CLG004)	A/OPC/CH/BO	http://clc.dau.mil/
Suggested Training		

Fraud Awareness (AUD 1283)	A/OPC/CH/BO	http://clc.dau.mil/
Effective Report Writing (AUD 6115)	A/OPC/CH/BO	http://clc.dau.mil/
Simplified Acquisition Procedures (CON 237)	Ordering Officers	http://clc.dau.mil/
GSA SmartPay Purchase Card Training (CH)	CH	https://training.smartpay.gsa.gov/ training/purchase-card-cardholders
GSA SmartPay Purchase Card Training (A/OPC)	A/OPC	https://training.smartpay.gsa.gov/ training/purchase-card-aopc

b. Each Level 4 A/OPC is responsible for providing training to CHs and BOs. No exceptions or substitutions for this training are authorized. At a minimum, the local training for CHs and BOs must cover the following:

- (1) Army Purchase Card Program policies and procedures
- (2) CH and BO duties and responsibilities
- (3) CH and BO guides developed by the Servicing Bank
- (4) Procedures and techniques for the use of the Servicing Bank's EAS
- (5) Funding, billing, payment, and file documentation requirements
- (6) Property accountability procedures
- (7) Ethics Training
- (8) Required sources of supply
- (9) FAR/DFARS/AFARS coverage of simplified acquisition procedures
- (10) Record retention requirements
- (11) Prohibited items and items that require pre-approval for purchase
- (12) Dispute procedures
- (13) Cancellation and lost, stolen, or compromised card procedures
- (14) Convenience check usage
- (15) Oversight tools and techniques
- (16) Card Security
- (17) Emphasize consideration of small business concerns when making micro-purchases
- (18) Mandatory use of Office Supply BPAs located on DOD EMALL Army Corridor
- (19) Use of the AbilityOne Base Supply Centers

c. A/OPCs provide additional training on simplified acquisitions procedures and required documentation to CHs who are given authority to place orders above the micro-purchase threshold against existing contracts (appointed as Ordering Officers), and for CHs outside the continental United States (OCONUS) who have a single purchase limit in excess of \$3,000 but does not exceed \$25,000 (DFARS 213.301).

d. GPC A/OPCs are required to track the training (including refresher training) of all program participants (CHs, A/BOs, Certifying Officers (CO), and A/OPCs) in a system of records and ensure that the required DAU initial and refresher training (Courses CLG001 and CLG004, respectively) have been completed. Successful completion of the initial training course is required before issuing cards. Successful completion of the refresher training course must be satisfied once every two years by program officials in order to continue in their roles. A/OPCs must ensure completion of the refresher training requirement is part of their annual review of all managing accounts under their cognizance.

e. CHs and BOs who fail to complete biennial refresher training must have their GPC account suspended until training is completed. The SCO or the local GPC activity may require refresher training more frequently to satisfy their training or operational needs. The training requirement for CHs and BOs trained at a previous duty station may be abbreviated or waived, in writing, as determined by the current A/OPC.

f. All trainees must sign a statement of training certifying they have received the initial GPC program training, they understand the training provided, GPC program training materials have been provided or made available, and they understand the penalties associated with misuse of the card. Cardholders should provide their Level 4 A/OPC with a copy of the training certificate and retain the original.

g. Level 3 and Level 4 A/OPCs should notify all participants in the GPC program of changes, as they occur, through the most efficient means (e.g. e-mail, newsletters, etc.).

h. Attendance at the annual GSA SmartPay Conference is mandatory for all Level 3 and 4 A/OPCs as funding permits.

i. All GPC personnel must receive mandatory ethics training annually in accordance with AR 350-1 paragraph G-18 and DOD 5500.7-R, the Joint Ethics Regulation.

j. GSA developed and hosts an online training course for to help A/OPCs and CHs understand their role and responsibilities. To visit the Purchase Charge Card Online Training, go to the GSA SmartPay® website at <https://training.smartpay.gsa.gov>. The servicing bank provides an A/OPC Guide available in hard copy and/or via the Internet at <https://access.usbank.com/cpsApp1/index.jsp2476933>.

k. Section 508 of the Rehabilitation Act (29 U.S.C 794d), as amended, requires that Federal agencies purchase and use electronic and information technology (EIT) that is accessible to people with disabilities and conforms to Section 508 standards. Visit <http://www.section508.gov/> for more information and Section 508 compliance training titled “Micro-purchases and Section 508” <http://www.section508.gov/index.cfm>. GSA developed several online and CD training modules that can be accessed at: <http://www.section508.gov/index.cfm?FuseAction=Content&ID=5>. The requiring activity must identify IT deliverables covered by Section 508 and then identify the applicable technical standards; functional performance criteria; and information, documentation and support that apply to each IT deliverable to produce products that conform to the accessibility standard.

2-3. Account Establishment

a. GPCs are issued only as mission requirements dictate. Only DOD civilian employees, military personnel, or members of the Armed Forces may be issued a GPC or be appointed a BO. GPCs may not be issued to contractor personnel, except as provided in Section 1-6. Junior Reserve Officer Training Corps (JROTC) instructors, OCONUS local national employees of the Army, and host Government direct hires for OCONUS agencies/organizations whose salaries are reimbursed by the Army, are not considered DOD contractors, and may be designated as CHs and BOs.

b. The spending limits and cycle limits can be changed as necessary to meet operational needs. The RM Office establishes the default and alternate lines of accounting for the proper designation of appropriation, and inputs the spending limits in Access Online (AXOL).

c. Each GPC account has a single purchase transaction limit and monthly purchase limit. Generally the single purchase limit is the micro-purchase threshold. The cumulative spending total of all CHs’ monthly purchases make up the billing cycle limit for the BO. Total monthly purchases may not exceed the billing cycle limit that is established in the Servicing Bank’s transaction authorization system. The CH’s monthly spending limits are modified by the RM in AXOL when operational circumstances warrant. The Level 4 A/OPC is notified of the monthly spending limits change, approves the change, and forwards the change to the Servicing Bank.

2-4. Account Maintenance

The Level 4 A/OPC is required to maintain current account information.

2-5. Liability of the Government Cardholders and Billing Officials

a. Use of the GPC by an authorized CH to make an unauthorized purchase is the liability of the Government. However, the installation/organization is responsible for taking appropriate action against the CH including efforts to recover the funds.

b. The intentional use of the GPC for other than official Government business may be considered an attempt to commit fraud against the U.S. Government. Misuse may result in immediate cancellation of an individual’s card, financial liability, and negative administrative and/or disciplinary action against the CH and, if warranted, against the BO.

c. Liability: GPC BOs are personally and pecuniarily liable for the full amount of any improper payments resulting from misuse, abuse, or unauthorized purchases of the GPC, in accordance with Title 31 U.S.C. § 3528. Strict pecuniary liability attaches automatically when there is an erroneous (illegal, improper, or incorrect) payment. GPC CHs are pecuniarily liable for erroneous payments that result from the negligent performance of duties in the amount of erroneous payment, up to one month’s pay. All accountable officials are required to comply with DOD regulations, policies, and procedures, including standard operating procedures. Failure to act in accordance with such regulations, policies, and procedures is generally considered evidence of negligence. Following orders from superiors that are contrary to regulations, policies, and procedures, is no defense to negligence or bad faith. A heavy workload or a lack of experience, supervision, or training, is not a factor in determining relief from liability.

d. Statutory authority: Any misuse of the GPC is subject to criminal, civil, Uniform Code of Military Justice, administrative, and disciplinary actions as appropriate.

(1) CHs: DOD FMR defines a CH as a DAO, and as such, are liable for up to one month's pay for misuse resulting from their negligent actions. DOD Directive 7000.14-R imposes financial liability for negligent performance of the CH's duties. The FMR Vol. 5, Chapter 33, §3309 also discusses pecuniary liability. Accountable Officials shall be personally and pecuniarily liable for erroneous payments that result from the negligent performance of duties in the amount of the erroneous payment, up to one month's pay.

(2) BOs: Title 31 U.S.C. §3528 provides for personal and pecuniary liability for improper payments resulting from misuse/abuse of the purchase card for Certifying Officials. The GPC BO meets the definition for Certifying Officer in the DOD FMR. The BO is financially liable for improper payments resulting from misuse or abuse of the GPC. The act of certifying a billing statement for payment makes the BO financially responsible for illegal, improper, or incorrect payment due to an inaccurate or misleading certification. Consequently, a BO who knowingly makes a false certification may be asked to repay the Government for the items or service purchased. If a BO is unsure about certification, he/she should contact the supporting Level 4 A/OPC for guidance and/or assistance.

e. Investigation Required: When a review/audit of the GPC account indicates questionable purchases, to include unauthorized purchases, the reviewer must ask the Certifying Officer for justification. If there is no justification, the reviewer must notify the BO's Commander or Director. The Commander or Director must conduct an investigation in accordance with AR 15-6. The investigation must provide the DOD employee or military member with an opportunity to rebut the presumed liability. Failure to follow regulation and policy constitutes negligence.

2-6. Card Suspension Policy

a. In accordance with DOD business practices, when any of the following conditions exist the Servicing Bank automatically suspend BO accounts when:

(1) BO's account goes over 60 days past due (90 days after the billing date), that BO's account, and those of all assigned CHs within the account, is suspended until the delinquent payment is posted at the Servicing Bank.

(2) BO's account goes over 180 days past due (210 days after the billing date) all accounts assigned under the respective Level 4 A/OPC is suspended.

(3) BO's account has more than 20 open Card and/or checking accounts, the BO's account is suspended unless a waiver has been approved by the Army Level 2 A/OPC.

b. Only the Army Level 2 A/OPC may reopen suspended accounts before the cause of the suspension has been corrected. Before reopening a closed account due to a delinquent payment, the Level 3 A/OPC documents the payment was made to the Servicing Bank to clear the delinquency. Accounts will be closed permanently if more than two suspensions occur within a 12-month period. Only the Army Level 2 A/OPC may approve waivers to this policy.

2-7. Card Security

a. CHs are responsible for properly using and safeguarding their GPCs. Only the CHs make purchases using their GPC. The CH must maintain the physical security of the card. If the card is lost or stolen, notify the issuing bank, A/BO, and A/OPC immediately.

b. In addition to corrective or disciplinary action, military personnel who misuse their GPC may have their access to classified information modified or revoked if warranted in the interest of national security. Commanders and supervisors shall follow Army guidance to ensure that security clearance reviews are conducted when the holder of a government purchase card comes under investigation for card misuse.

c. The Servicing Bank must ensure that adequate controls are in place to ensure the security of transaction data within their electronic access system. Only the cardholder or A/BO can approve, dispute, or reallocate purchase card transactions. The Servicing Bank must ensure that adequate controls are in place within their data warehouse to preclude anyone other than the A/BO or alternate A/BO from accessing, making changes and certifying the monthly bill.

Chapter 3 : Operational Guidance and Procedures

3-1. Making Purchase Transactions

a. Requiring activities must perform acquisition planning to: consider strategic sourcing vehicles; identify procurement needs; and initiate procurement actions with sufficient lead time to buy appropriate products at the right price from the right suppliers in a timely manner. Requirements and logistics personnel should avoid issuing requirements on an urgent basis or with unrealistic delivery or performance schedules, since it generally restricts competition and increases prices.

b. CHs should consider small businesses and installation AbilityOne Base Supply Centers to the maximum extent practicable, when making micro-purchases to increase their participation when using the GPC below the micro-purchase threshold.

c. Purchase requirements exceeding the micro-purchase threshold must be referred to a contracting office for formal contracting action. Splitting requirements into smaller parts to avoid formal contracting procedures, competition requirements, or to keep spending limitations under the micro-purchase threshold is prohibited. GPC micro-purchases should be distributed equitably among qualified suppliers, in accordance with FAR 13.202(a)(1), with special consideration paid to supporting your installation AbilityOne Base Supply Center, and local, small, and small disadvantaged businesses. When purchasing from FSSs and BPAs, cardholders must review prices on at least three contracts/agreements, unless it is a competitively awarded BPA and select the best value item for their requirements.

d. CHs who receive authorization and training from their Level 4 A/OPC may use the GPC to make commercial purchases up to \$25,000 if the CH making the purchase is located outside the United States and the purchase is for use outside the United States (OCONUS). CH's must use mandatory sources identified in this regulation (e.g. FAR Part 8, DOD EMALL for office supplies), before deciding to use outside commercial vendors. For the use of the GPC outside the United States, CHs must follow policy in accordance with DFARS 213.301(2).

e. OCONUS Units. For CONUS purchases for use overseas, the CH must contact their local Director of Logistics Traffic Management Office for assistance regarding transportation and packaging requirements and/or instructions prior to contacting the vendor. CHs must ensure the final price includes all costs associated with the mode of transportation and packaging selected to the destination country, customs import duties, and any other charges that may accrue. Consult DOD Directive 4500.54-E, DOD Foreign Clearance Program (FCP) prior to the requisitioning action to ensure compliance with host nation customs requirements.

f. The GPC may be used as a method of payment (MOP) for simplified acquisitions and contracts in accordance with DFARS 213.301, AFARS 5113.202-90 and 5113.270-90. An individual authorized as an Army ordering officer, and other designated contracting personnel may use the purchase card as a method of payment up to the limit as identified in the contract; under the supervision of the contracting officer or from Army contracts that, by their terms, expressly allow Army ordering officers to place orders and pay with the GPC as identified in AFARS 5113.202-90. GPCs contract payment cards must be issued and dedicated solely for this purpose.

g. Federal Procurement Data System – Next Generation (FPDS). Agencies are responsible for collecting and reporting Army procurement data to FPDS as required by FAR Subpart 4.6. The requirements for reporting GPC actions to the FPDS is contained in DPAP memo dated 26 October 2010, [http://www.acq.osd.mil/dpap/pdi/eb/docs/Reporting_GPC_Actions_to_FPDS_\(Oct_26_2010\).pdf](http://www.acq.osd.mil/dpap/pdi/eb/docs/Reporting_GPC_Actions_to_FPDS_(Oct_26_2010).pdf), and DFARS PGI Part 204.6.

h. CHs may place orders online via the Internet if authorized by their internal agency procedures to do so. When making online purchases, CHs must take appropriate measures to safeguard their account numbers at all times and ensure they are purchasing on a secure Web site.

3-2. Use of the GPC for Training and Education

a. The GPC shall be used by Training and Education Office personnel, and may be used by CHs, to pay for commercial off-the-shelf training and education up to \$25,000 for an individual or planned series of the same training event, activity, or course material - AFARS 5113.270-90(g). GPC training cards must be issued and dedicated solely for this purpose.

b. The Standard Form (SF)-182 (Request, Authorization, Agreement, Certification of Training and Reimbursement) remains the authorized and required training source document. GPC payment for commercial off-the-shelf training must be accompanied by an SF-182.

c. GPC training cards are established with a single purchase limit of \$25,000. Use of the GPC above the training micro-purchase level of \$25,000 constitutes a payment mechanism, not a contracting method. Any use of the GPC above \$25,000

as a payment method for commercial services must have a valid underlying contract in which payment can be made using the GPC. Training cards will have all merchant category codes (MCCs) blocked except the following sources of training:

- 7392 - Management, Consulting and Public Relations Services
- 7399 - Business Services (Not Elsewhere Classified)
- 8220 - Colleges, universities, junior colleges, and other professional schools
- 8241 - Correspondence schools
- 8244 - All business/secondary schools
- 8249 - Vocational/trade schools
- 8299 - Schools and Education Services (Not Elsewhere Classified)

3-3. Use of the GPC for Military Tuition Assistance

The GPC shall be used for the payment of military tuition assistance invoices. DD Form 2171, Request for Tuition Assistance (TA), provides financial assistance for voluntary off duty education programs in support of soldiers' professional and personal self development. Advance payments are authorized under the TA Program in accordance with AR 621-5. All course enrollments must be approved prior to start of class. Soldiers must request TA through www.GoArmyEd.com, prior to the course start date or before the school's late registration period.

3-4. Reimbursement of Training Expenses

Commanders at all levels must insure that the Government's interests are protected when an employee fails to complete training for which the Army pays all or part of the training expenses. (This includes both Government and non-Government training.)

a. Government training. If an employee fails to complete training satisfactorily, one of the following actions will take place:

- (1) If failure is due to the employee's negligence or willful misconduct, disciplinary action will be taken.
- (2) If failure is for reasons beyond the employee's control (such as illness or recall by proper authority), no action will be taken.

b. Non-Government training.

(1) If an activity pays for training only when the training is completed or requires the employee to share the training costs, the activity will fully inform the employee in advance. In some cases, this information may be included in the continued service agreement. (Training must still be approved in advance.)

(2) If an employee fails to complete non-Government training satisfactorily, actions in (a) or (b) below will be taken. Employees must be advised in writing of these requirements before the training starts.

- (a) If the failure to complete training is due to the employee's negligence or willful misconduct, he or she must repay training expenses other than salary costs. If appropriate, disciplinary action will be taken.
- (b) If failure is for reasons beyond the employee's control, no action will be taken.

3-5. Required Sources of Supplies and Services

a. Specific guidance on use of required sources and order of precedence of sources is prescribed in FAR, Part 8, and DFARS, Part 208, e.g., National Industries for the Blind (NIB), National Industries for the Severely Disabled (NISH), Federal Prison Industries (a.k.a. UNICOR), and FSS/GSA schedule requirements. In addition to those mandatory sources listed in FAR Part 8, cardholders should strongly consider using small and small disadvantaged businesses whenever possible. The AbilityOne Program is a mandatory source of supply, with any procurement method and at any dollar value, in compliance with the Committee for Purchase from People Who Are Blind or Severely Disabled statute, (41 U.S.C. §8501-8506). The AbilityOne Program's mandatory status remains in effect for all purchases--including those under the micro-purchase threshold. A full line of AbilityOne products can be found at your local installation AbilityOne Base Supply Center, DOD EMALL Army Corridor, and through AbilityOne.com where installation agreements do not exist for Base Supply Centers.

http://www.abilityone.com/OA_HTML/ibeCZzpHome.jsp?sitex=10020:22372:US

b. In accordance with AFARS 5139.101-90(a), Computer Hardware, Enterprise Software and Solution (CHES) is the Army's mandatory source for commercial Information Technology (IT) hardware and software purchases. CHES, accessible at <https://chess.army.mil>, is a set of multiple award Indefinite Delivery Indefinite Quantity (IDIQ) contracts that offer IT products and services that comply with NETCOM, Army and DoD policy and standards. Cardholders must utilize CHES contracts and DoD enterprise software agreements first regardless of dollar value. Any purchase made outside of the CHES contracts requires a waiver. The waiver process is located at <https://chess.army.mil>. Waivers are granted when products are

unavailable on CHES contracts or when hardware and software is available at a lower price from an alternate source. A CHES waiver does not constitute approval to purchase any product or deviate from any other Army regulation or policy. Individual waivers are approved by CHES and Army organization/activity blanket waivers are approved by the Army Chief Information Officer (CIO)/G-6. There is no fee associated with using CHES and cardholders should maximize the use of discounts when ordering off CHES contracts.

If no small business capability exists, CHES contract vehicles are the preferred source for acquisition of IT services. Waivers from CHES are not required when procuring IT services. However, if IT Hardware and Software are required as part of a non-CHES IT services contract, a waiver for the hardware and software is required.

c. Green procurement is the purchase of environmentally preferable products and services (see FAR 23.202, 23.403, and 23.703). The Army Green Procurement Policy Memorandum, dated 22 Nov 06, established the Army Green Procurement Program (GPP) policy that “All Army personnel must comply with green procurement requirements to facilitate attainment of the DOD goal of 100% compliance with mandatory Federal purchasing preference programs” (see AR 70-1). The Army Green Procurement Guide provides an overview of the Federal procurement preference programs and guidance on implementing an effective GPP including A/OPC and cardholder responsibilities. A copy of the guide can be found at: <http://www.garrison.hawaii.army.mil/sustainability/Documents/SustAcquisition/ArmyGreenProcurementGuide.pdf>.

(1) Training on GPP requirements should be conducted when cards are issued and on a recurring basis to provide updates and remind buyers of responsibilities and procedures. The Level 3/4 A/OPC should ensure that initial card training includes a module on green procurement, particularly the mandatory GPP requirements. Green procurement training is available from sources found in the Army Green Procurement Guide.

(2) The Level 4 A/OPC is responsible for ensuring GPP compliance and documenting noncompliance on the semi-annual surveillance report.

(3) Cardholders must show preference to recycled content and biobased products whenever they are cost effective and meet technical requirements. Installations must consider environmental factors in all purchasing decisions and give preference to those products and services designated by or recommended in Federal green purchasing preference programs.

(4) Per the National Defense Authorization Act of 1998, as of January 1, 2004, paper purchased using the GPC must be 50% post-consumer recycled paper. If 50% post-consumer recycled paper is not available for purchase, then as an alternative to meeting the standards for all printing and writing papers, the minimum content standard shall be no less than 50% recovered materials.

(5) Acquisition of EPA-designated items that do not meet the EPA minimum recovered material standards must be justified in writing if over the micro-purchase threshold. A written determination must cite one or more of the following reasons and be maintained by the cardholder for exemption from recovered material standards:

(a) Items containing EPA-recommended recovered content standards are not available within a reasonable period of time.

(b) Items are only available at an unreasonable price. Include sufficient information to support price decision.

(c) Items are not available from a sufficient number of sources to maintain a satisfactory level of competition.

Include list of sources queried.

(d) Items based upon technical verification fail to meet performance standards or specifications.

3-6. Separation of Duties

a. OMB standards for internal controls require that key duties and responsibilities be divided or segregated among individuals to ensure they do not exceed or abuse their assigned authority, OMB Circular A-123, Appendix B Revised, paragraph 4.3. Separation of duties is an internal control activity, intended to provide checks and balances to the GPC process, to prevent or minimize innocent errors or intentional fraud occurring without detection. This is done by ensuring that no single individual has control over multiple phases of a purchase card transaction. To protect the integrity of the procurement process, no one person is responsible for an entire purchase card transaction. Key purchase card functions must be handled by different individuals. Inadequate separation of duties could allow errors and fraud to occur without detection. Key duties, such as making purchases—CH, authorizing payments—BO, certifying funding—RM, and reviewing transactions—Level 4 A/OPCs and PBOs must be assigned to different individuals in order to minimize the risk of loss to the Government to the greatest extent possible.

b. If resource constraints prevent assignment of the key duties to different individuals, as set forth in paragraph (a) above, the activity must request a waiver through the Level 4 A/OPC and the CCO to the Level 3 A/OPC for approval, and will require additional surveillance.

c. Notwithstanding the above-described waiver process, certain key duties must not be assigned to the same individual. In no case shall the same individual be the CH and the BO for a GPC account. In no case shall the CCO, Property Book Officer, or any Level 4 A/OPC (primary or alternate) also be a CH, BO or contracting officer who is making contract payments with a GPC or executing GPC purchases. A CH, who is a hand receipt holder, should not purchase property for their own use. PCOLS provides the functionality to generate a report identifying potential conflicts of interest in GPC Program duties.

3-7. Span of Control

a. The Army standard for span of control for a Level 4 A/OPC is 300 accounts. This number includes both BO and CH accounts. A ratio of not more than seven card accounts to an A/BO is the Army standard. Ensuring a reasonable number of card accounts are assigned to each A/BO or Certifying Officer account is paramount to the effective accomplishment of the A/BO or Certifying Officer's responsibilities. The total number of transactions, as well as the number of assigned card accounts, must be considered when determining an acceptable account-to-A/BO ratio. Span of control refers to the extent of oversight and review responsibilities placed on a single A/OPC or BO. An appropriate span of control must efficiently and effectively allow the A/OPC or BO to provide reasonable assurance they can effectively perform their responsibilities regardless of the number of accounts assigned. The assigned span of control must factor in a Level 4 A/OPC's responsibility to conduct an annual review of all BO accounts including semi-annual surveillance of 25% of all transactions under his/her oversight. A span of control too large may preclude the A/OPC from accomplishing this task effectively and efficiently.

b. When the number of accounts (300:1 accounts per A/OPC) or workload complexity/administration assigned to a Level 4 A/OPC exceeds the Army standard, the SCO and the CCO must ensure adequate resources are made available to allow the Level 4 A/OPC's successful performance of his or her duties. When the span of control exceeds the Army standard by more than 10 percent and the CCO elects not to provide additional resources, the CCO must provide the SCO with formal documentation stating that the CCO has personally reviewed the existing span of control and has determined the span of control is adequate to ensure program administration and surveillance can be performed at a satisfactory level. The Level 3 A/OPC must retain a copy of this documentation.

c. When the ratio for CH accounts to BOs exceeds the Army standard, the BO shall prepare a request for a waiver to policy. The approval levels for waivers are indicated in paragraph 3-7e. The total number of transactions as well as the number of assigned CH accounts must be considered when determining an acceptable card and/or checking account-to-BO ratio.

d. Upon the nomination and approval of a prospective CH and during the annual review of BO accounts, the Level 4 A/OPCs determines if the span of control is acceptable—that is, whether the BO can reasonably be expected to complete a thorough review of all transactions and certify the invoice within five business days of its receipt.

e. The Level 4 A/OPC documents all cases where the CH-to-Billing Official ratio exceeds the Army standard. In these cases, the BO prepares a request for a waiver to policy. The request must address the unique conditions that affect the process and show, with a high degree of certainty, that the BO can be expected to comply with the review and certification procedures. The request must include the number and location of assigned CHs, the total average number of transactions made by the CHs, the amount of time the BO can devote to the certification process, the history of delinquencies, and other factors that seem appropriate. The waiver is approved at the following level indicated below and maintained by the approver with copies furnished to the BO:

- (1) 8–10 CHs accounts: Through the Level 4 A/OPC to the CCO.
- (2) 11–19 CHs accounts: Through the A/OPC (Level 4 and Level 3) to the SCO.
- (3) 20 or more CHs accounts: Through the A/OPC (Level 4, Level 3, to the Level 2).

3-8. Tax-Exempt Status

a. Centrally Billed GPC accounts are exempt from state tax in EVERY state but require tax exemption forms in 13 states, including Florida, Georgia, Louisiana, Michigan, Minnesota, Rhode Island, South Dakota, Tennessee, Texas, Utah, West Virginia, Wisconsin, and Wyoming. For purchases within the United States, the CH informs the merchant that the purchase is for official U.S. Government purposes and, therefore, is not subject to state or local sales tax. The GPC is embossed with the statement "U.S. GOVT TAX EXEMPT" and the CH will point this statement out to any merchant attempting to apply taxes to a purchase. In those states where a tax exemption form is required, the CH obtains the required form from the GSA SmartPay Website at:

<https://smartpay.gsa.gov/about-gsa-smartpay/tax-information/state-response-letter>. By clicking on the state in the map, there is a link to download the required forms, as well as contact information for the Department of Revenue should

additional questions arise. CHs are responsible for ensuring no sales tax has been included in their purchase, except where applicable.

b. Exceptions to the state tax rules above include Hawaii and Illinois. Both states levy a General Excise Tax (GET) on businesses selling tangible personal property which is allowed to be passed on to the Federal Government (customer).

c. Some companies, such as Amazon, have established a Tax Exemption Program, in which the CH must enroll in order to receive the tax exemption at the point of sale. The GSA SMARTPAY® SMART BULLETINS are found at: <https://smartpay.gsa.gov/news/smart-bulletins>.

The Federal Government Tax Exemption Information	
Tax Exempt	Not Tax Exempt
Sales Tax	Certain federal and state excise taxes (Hawaii and Illinois)
Federal communications and highway vehicle users tax – FAR 29.203	If you pay for a service, you may pay the tax on labor only for work that is performed in that state. (e.g. New Mexico Gross Receipts Tax (NMGRT))
	The commissary surcharge is a federally mandated charge
	Overseas purchases are not exempt from foreign taxes unless foreign tax agreements so specify
	Tax exemption does not apply at the point of sale for any fuel purchases

3-9. Surcharges

a. Surcharges are fees that a retailer adds to the cost of a purchase when a customer uses a charge/credit card. As a result of the settlement between a class of retailers and the brands, on January 27, 2013, merchants in the United States and U.S. Territories are permitted to impose a surcharge on cardholders when a charge/credit card is used.

b. Not all merchants impose a surcharge, and some states (California, Colorado, Connecticut, Florida, Kansas, Maine, Massachusetts, New York, Oklahoma and Texas) have laws which do not allow or limit surcharges. Cardholders who receive a surcharge or a check out fee in any of the above mentioned states should report the merchant to the state Attorney General's Office.

c. Surcharges may not be added to debit, prepaid or cash purchases and cardholders are required to be notified in advance of making the purchase if a merchant will impose a surcharge. Merchants must also include the surcharge fee on any receipt(s) provided to the cardholder.

d. Per Visa and MasterCard guidance, there is a limit to the allowable surcharge amounts. These limits vary by brand and by merchant discount rate. Information on surcharge limitations for Visa and MasterCard is available at:

<http://www.mastercard.us/merchants/support/surcharge-rules.html>

http://usa.visa.com/personal/using_vis_checkout_fees/index.html

e. A/OPCs should ensure cardholders and other charge card management personnel are aware of the possibility of surcharges when making purchases using credit/charge cards. If a merchant is imposing a surcharge, the cardholder should consider choosing another merchant that offers the same or similar item(s) to avoid paying the surcharge.

3-10. Property Accountability

a. Personnel who are entrusted with the acquisition of Government property are responsible for its proper custody, safekeeping, and accountability in accordance with AR 710-2 and AR 735-5. .

b. GPC Property Book Procedures:

(1) PBO approves purchases on purchase request form prior to delivery of the PR form to the cardholder; (2) Cardholder screens PR form to ensure PBO approval obtained prior to making the purchase:

(3) Cardholder provides purchase receipt to PBO within 5 days of obtaining the receipt per AR 710-2;

(4) Monitoring and oversight reviews must assess whether cardholders provided the GPC receipts to the PBO per AR 710-2; and

(5) Training must be updated to include the above procedures.

3-11. Statement Reconciliation and Certification

a. The CH reconciles the statement of account throughout the month by reviewing it for accuracy and comparing it with his or her purchase log entries. If the statement is correct, the CH approves it within three business days from the end of the billing cycle. If the statement is incorrect, the CH must contact the merchant and request correction. If the merchant does not cooperate or provide the ordered goods and services, the CH disputes the incorrect transaction.

b. The BO must ensure GPC transactions are legal, proper, and correct in accordance with Government rules and regulations. If the billing statement is correct following the BO's review throughout the month, certification of the billing statement is done within five business days from the end of the billing cycle. If the BO finds questionable transactions, the CH must be contacted to review supporting documentation. If the BO determines the CH is negligent, the BO takes appropriate action in accordance with DOD and Army policy, and informs the Level 4 A/OPC of the action taken. Disputes must be filed by one of three methods: calling the Servicing Bank, faxing over a Cardholder Statement of Questioned Items form or using the Servicing Bank's dispute process in AXOL, within 60 days of the cycle end date in which the transaction appeared in order to retain the Government's dispute rights.

c. **Independent Receipt and Acceptance.** The cardholder ensures receipt and acceptance of goods, services, and accountable (to include sensitive, classified, and pilferable) property purchased is properly performed and confirmed through proper documentation by an individual other than the CH. The date received, along with the signature (or electronic alternative when supported by appropriate internal controls), printed name, telephone number, and office designator or address of the receiving official will be recorded on the sales invoice, packing slip, bill of lading, or other shipping or receiving document as confirmation of receipt. The billing official verifies the existence of receipt and acceptance documentation during reconciliation of the billing statement.

3-12. Confirm and Pay

a. The Army certifies invoices for payment after all purchased items have been confirmed. This procedure has been called "Confirm and Pay". Each BO must establish a system to flag and track all transactions certified for payment with proof of receipt and acceptance. This procedure ensures all transactions reconciled and approved for payment have receipt verified.

b. Under the following condition, the Army has adopted the following process in order to allow the Servicing Bank to be paid for items that have been shipped by the merchant but not received by the organization to prevent withholding payment of the entire billing statement for a few transactions. Transactions that have been reconciled and approved for payment will have receipt verified no later than 45 days after the date of the original invoice. If receipt and acceptance cannot be verified, the CH shall protect the Government's rights by disputing the transaction prior to the end of the dispute period.

3-13. File Retention

a. The approving or certifying official maintains certified billing statements and supporting documents for six years and three months in accordance with National Archives and Records Administration (NARA), General Records Schedule (GRS) 6, "Accountable Officers' Accounts Records". See DOD FMR Volume 15, Chapter 6 for additional information on document retention for accountable officers' records (10 years from the date of case closure for Foreign Military Sales).

b. All financial records, both paper and electronic, must be retained documenting the GPC transactions in a file to include (1) the BO statement, (2) the CH statement, and (3) all original receipts and documentation for those statements.

c. Receipts are considered supporting documents for the certified billing statement and in accordance with the DOD FMR, Volume 1, Chapter 9, must be retained for six years and three months after final payment. Original receipts are preferred; however, printed electronic forms or copies of an itemized receipt are acceptable. The receipt must be legible; goods must be itemized/detailed with the item description, quantity, price, and extended price; indicate vendor's name and address; date of the purchase; and must indicate paid by credit card or zero amount due. The BO maintains these records, either physically in his/her physical possession, or when appropriate transfers to a records holding area. However, if certifying electronically, the CH and BO may rely on the Servicing Bank recordkeeping for the BO and CH statements. Original records are the property of the U.S. Government and may not be removed from government control by the BO for any reason.

d. Level 4 A/OPCs shall retain hard copy file documentation for Government credit card files documenting application for cards and approval, account maintenance, letters of GPC delegation (CH or BO), ethics certification (if applicable), required training certifications, results of annual reviews, and related information for three years after the fiscal year in which the card account is cancelled.

e. Documents received and/or generated by the cardholder to support transactions shall be retained for six years and three months after final payment. Data residing in the bank's electronic access system is maintained by the bank for six years and

three months. Reports may be retrieved from the Bank's electronic access system (EAS) for the previous two years. Reports covering data for periods beyond the previous two years are available from the Bank upon request.

3-14. Convenience Checks and Foreign Draft Checks

a. Convenience checks and Foreign Draft Checks (FDCs) provide activities with the flexibility to issue checks for payment of supplies and services. With the exception of contingencies, convenience checks shall not be written over the micro-purchase threshold. Convenience checks are issued for domestic purchases valued in U.S. dollars when the merchant does not accept the GPC. DOD activities have the flexibility to issue convenience checks to pay for products and services at the activity level. FDCs are issued for overseas purchases valued in foreign currency when the merchant does not accept the GPC. The following requirements apply to one or both of these financial instruments as specified.

b. The CH shall not use a convenience check or FDC unless its use is considered advantageous to the activity after evaluating all alternative methods of purchase. Convenience checks and FDCs may not be used to avoid the normal GPC payment process. Before a check is issued, the paying agency must make every effort to use the GPC, including making maximum efforts to find and use merchants that accept the GPC. The authority to maintain a checkbook shall be justified on an individual organization basis and controlled and monitored by the organization's CCO. The number of checkbooks per installation must be kept to a minimum. A delegation of procurement authority is granted in writing by the CCO for the maintenance and use of convenience checks.

c. Convenience checkbook accounts are available only to organizations that maintain active GPC accounts in good standing. A convenience checkbook holder may have a GPC account and a separate convenience checkbook account. Convenience checks are pre-numbered, and their use is controlled with a separate convenience check purchase log for each account. Checkbook holder shall maintain original voided checks.

d. Convenience checks and FDCs are not issued for more than the micro-purchase threshold (or the foreign currency equivalent), and must be issued for the exact payment amount. In the case of an FDC, the payment amount includes the administrative processing fee. However, in the case of convenience checks, the payment amount does not include the administrative processing fee. The convenience check processing fee is added by the servicing bank during processing of the transaction, and the addition of the processing fee is not considered a split requirement. "Splitting" payment amounts across more than one convenience check or FDC to keep the purchase amount per check below the micro-purchase threshold limit is prohibited. Convenience checks and FDCs will not be issued as an "exchange-for-cash" vehicle to establish cash funds. If merchants issue credit or refunds by cash or check, the funds must be immediately credited to the account against which the purchase was originally made.

e. Convenience checks and FDCs are negotiable instruments and must be stored in a locked container, such as a safe or locking filing cabinet. Checks must be accounted for appropriately to prevent loss, theft, or potential forgery. Convenience check and FDC accounts must be reviewed quarterly by a disinterested party and not the A/OPC. The checks are reconciled just as other GPC transactions, as a part of the monthly statement billing cycle. Copies of voided checks must be retained through the carbon copy or photocopy the original check as a part of the account-holder's original documentation files.

f. The same purchase prohibitions that apply to the GPC apply to the convenience check and the FDC.

g. The normal dispute process associated with the GPC is not applicable to convenience checks and FDCs. Any concerns over a purchase made with a check must be resolved directly with the merchant. The check writer is solely responsible for securing credit or disputing purchases with the merchant. Each organization is responsible for all checks written on an account; unless it is determined fraud is involved (see Section 4-5 on fraud). In some cases, payment can be stopped on a convenience check that has been written if the check has not yet been posted to an account. To stop payment on a check, the check-writer must call the Servicing Bank's Customer Service Department to receive instructions on processing the action.

h. FDC accounts are established in the contracting office. Customer activities desiring FDC accounts outside the contracting office must justify, in writing, to the CCO why an account is necessary. FDC BOs, cashiers, and custodians must receive standard GPC training prior to being issued active FDC accounts.

i. The check cashier is the only person who has the authority to issue and sign checks. He or she may hold a GPC account in addition to the convenience check FDC account, as long as the accounts are maintained separately.

j. The check custodian orders, receives, stores, issues, inventories, reconciles, and disposes of FDC stock. He or she is not responsible for approving and processing requirements for check writing.

k. The BO authorizes and certifies the issuance of FDCs written by the cashier. In order to maintain effective internal controls, the BO may not perform the check-writing and maintenance functions of the cashier and custodian. All convenience checks and FDCs must be reconciled as a part of the monthly billing statement at the end of the billing cycle.

l. Establishing Convenience Check Accounts. Any U.S. Government employee, military or civilian, including local national employees, may be selected for appointment as a check writer. Contractors working for the Army must not be selected for appointment. Requests to establish convenience check accounts must be justified in writing by the organization's Commander/Director and forwarded to the Level 4 A/OPC. If approved, a delegation of procurement authority is granted in writing by the CCO, for the maintenance and use of convenience checks. Required information must consist of the following:

- (1) Reason for requesting checks
 - (2) Types of vendors the check will be written to
 - (3) Estimated dollar amount of checks intended to be written within a 12-month period
 - (4) Single and monthly purchase limits
 - (5) Check writer's complete name, office name, address, e-mail, phone/fax number
- m. Use of Convenience Check Accounts.

(1) Convenience checks may be used for small purchases, when supplies or service are available for delivery within 15 days whether at the contractor's place of business or at destination. Convenience checks must not be used for employee reimbursements, cash advances, cash awards, travel-related transportation payments, or meals. Purchases made with the check must not require detailed specifications or an inspection report. Convenience checks should not be used for recurring payments.

(2) Convenience checks may be used for purposes not related to small purchases when such expenditures are authorized by other regulations such as:

(a) Delivery charges associated with the purchases made with a convenience check when the contractor is requesting to arrange delivery. These charges include local delivery, parcel post including cash on delivery (COD) postal charges, and line haul or inter-city transportation charges, provided the charges are determined in the best interest of the Government.

(b) C.O.D. charges for supplies ordered for payment with a convenience check upon delivery.

n. Tax Reporting - The 1099 Tax Reporting Process (TRP) was developed to collect convenience checks written for services, rent, medical and health care services and other Internal Revenue Service (IRS) requirements. This data is used to process IRS 1099-MISC forms. The BO is responsible to monitor the check writer's compliance with 1099-TRP.

(1) Convenience check holders must submit check data to DFAS on any checks they issue for tax reportable categories. This should be done throughout the year and is suggested to be completed monthly, and can be done on-line once the check writer and their corresponding A/OPC officially request access to the 1099 TRP. The 1099 TRP is restricted to authorized users only. Access is optional for the BO, but may be necessary to fulfill the BO's responsibility to ensure the check writer is compliant with 1099 TRP.

(2) 1099 TRP System Access: To obtain access, users must complete two system access forms, DD form 2875 and DD form 2869. The link to access the System Access Request Forms is: <https://dfas4dod.dfas.mil/systems/1099/>. Carefully follow the instructions for completing the forms. All check writers and A/OPCs must complete both forms. Fax completed forms to 614-693-5452 or Defense Switched Network (DSN) 869-5452, or scan and email them to cco.checks@dfas.mil. Prior to accessing the 1099-TRP, all users should read the Convenience Check User's Manual.

3-15. Office Supply Blanket Purchase Agreements (BPAs)

The Army must satisfy requirements for supplies and services from or through the sources and publications listed in the descending order of priority in FAR Part 8.002. The Office Supply BPAs fall under mandatory Federal supply schedules and must be utilized for office supply purchases unless an exception applies. The Office Supply BPAs can be accessed through the Army Corridor of the DOD EMALL site: <https://dod-emall.dla.mil/acct/>. The primary goals of the Office Supply BPAs are to ensure that office product purchases are in compliance with the statutory preferences afforded to products manufactured under the AbilityOne Program, capture economies of scale, and realize significant savings while providing opportunities for small business. Exceptions to the mandatory use of the BPAs and DOD EMALL are as follows:

(1) This policy does not apply to purchases made Outside the Continental United States (OCONUS).

(2) Purchases made directly from AbilityOne or from AbilityOne Base Supply Centers (BSCs). Cardholders may purchase office and cleaning supplies directly from AbilityOne Base Supply Centers and are exempt from using the Office Supply BPAs. These products are available at Base Supply Centers on military installations or in federal buildings.

(3) Cardholders may purchase National Stock Number (NSN) items directly from AbilityOne BSCs and are exempt from using the Standard Army Retail Supply System (SARSS) or the Office Supply BPAs. When NSN products are not available from the BSCs, then cardholders should use the SARSS to purchase NSN Products.

(4) Purchases made from wholesale supply sources such as stock programs of the General Services Administration (e.g. GSA Global Supply Center).

(5) Cardholders may purchase an item from another source if an urgent need exists for an unplanned requirement needed for the same day. Poor acquisition planning and inadequate market research would not apply to this exception. Use of this exception requires valid documentation and retention in the purchase card file.

(6) NAFI cardholders must comply with the required sources (see paragraph 3-5). When purchasing office supplies, NAFI GPC cardholders shall consider the AbilityOne Base Supply Centers or the Office Supply BPAs on the DOD EMALL Army Corridor as a practical choice. If it is not in the best interest of the NAFI to purchase through AbilityOne Base Supply Centers or the Office Supply BPAs, the cardholder may consider other required sources. The cardholder must adequately document the decision to not purchase from the AbilityOne Base Supply Centers or the Office Supply BPAs before an open-market source can be considered.

(7) In the event the DoD EMALL is unavailable for more than 24 hours, cardholders may place orders with the Office Supply BPA vendor through another form of communication.

3-16. Rebates/Credits

a. Rebates are posted as credits against billing statements and applied at the billing statement level unless specified otherwise by the Level 2 A/OPC. Rebates are automatically assigned to the default line of accounting (LOA) on the billing statement. BOs should reallocate the rebates across various LOAs (of the same appropriation) to the extent that no single LOA has a credit balance. Under no circumstance will the CH retain gift checks, vendor rebates or other purchase incentives that can be converted to personal use. If received, these items must be turned over to the U.S. Treasury.

b. Unless specific authority exists allowing rebates to be used for other purposes, rebates must be returned to the appropriation or account from which they were expended, and can be used for any legitimate purchase by the appropriation or account to which they were returned, or as otherwise authorized by statute.

c. Credit transactions are posted as credits against billing statements, applied at the billing statement level. When a closed account carries a credit balance the amount shall be sent via check to the Level 4 A/OPC. The check will be addressed to US Government or US Treasury. The Level 4 A/OPC shall work with his/her RM in identifying an account and in determining how the credit is distributed within the installation.

d. Reimbursements such as rebates, merchant credits, or other credits attributable to accounts closed during the quarter or accounts not having enough purchases to offset the credit, require the Servicing Bank to issue quarterly checks to the Level 4 A/OPC. Merchant credits must be applied back to the funding appropriation. Rebates must be used in the fiscal year they are received.

e. Each Level 4 A/OPC is directed to deliver all reimbursement check(s) to their RM within five (5) days of receipt, retain a copy of each reimbursement check(s), and obtain the RM's signature acknowledging their receipt and acceptance of the reimbursement check(s). The CH, BO, and RM should have a process to ensure adequate controls are in place to track credits and rebates. Questions related to reimbursements in the form of a rebate, merchant credit, or other credit should be directed to your local RM. CHs must forward their monthly cardholder statement to the BO with the appropriate supporting documentation, within 5 working days, to maximize rebates and minimize prompt payment penalties.

f. Rebate policy guidance is available in the DOD FMR Volume 10 Chapter 2, OMB Circular A-123 Appendix B Chapter 7, and DOD Charge Card Guidebook Appendix K paragraph 13.

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Chapter 4 : Management Controls and Program Oversight

4-1. Management Controls

a. This section provides specific management controls required of GPC programs, guidelines for disciplining abusers, and other control information. Office of Management and Budget (OMB) Circular A-123, Appendix B, provides additional guidance on implementing strong internal controls. PCOLS is designed to both maintain the integrity of these controls and validate their effectiveness in safeguarding Government resources. Management officials are responsible for establishing a process of internal controls that is (1) designed to provide reasonable assurance that the GPC program is used efficiently, effectively, and legally to achieve the purpose for which the program was established and (2) is in compliance with applicable laws and regulations.

b. Required Management Controls include:

(1) **Maintain Purchase Log:** All CHs are required to maintain either an electronic or a manual log (if not electronically enabled) for each transaction made using the card.

(2) **Maintain Positive System of Funds Control :** Spending limits (such as monthly and office limits) are tied directly to the funding allocated for each card account (monthly, quarterly, and semiannually). Fund limits should be consistent with historical spending patterns to minimize Government exposure and ensure adequate funds availability. This provides an overall control to ensure funding is available prior to purchases being made with the card.

(3) **Ensure Separation of Duties :** For the GPC, a mandatory management control is the separation of duties. Key duties such as making purchases (CH), verifying purchases are proper (A/BO), authorizing payments (BO and FSO), certifying funding (Finance and Resource Managers), independent acceptance for accountable property, and reviewing and auditing functions (A/OPC and Property Book Officers) must be assigned to different individuals to the greatest extent possible to minimize the risk of loss to the Government.

(4) **Reconciliation/Approval by the CH :** During each billing cycle, CHs are required to reconcile the CH statement they receive from the issuing bank against the purchase card log they are required to maintain for card purchases.

(5) **Reconciliation/Approval by the A/BO:** After the CH has approved his/her entire CH statement, he/she forwards the electronic or hard copy file to the cognizant A/BO. The A/BO is required to approve or reject each purchase made by the CHs under his/her hierarchy. When the A/BO has completed their review of each invoice submitted for his/her card accounts, the A/BO, acting in the role of Certifying Officer, can certify the entire invoice as legal, proper, and correct in accordance with his/her responsibilities.

(6) **Exercise Dispute Authority :** The CH has 60 days from the date of the billing statement to dispute the transaction.

(7) **Exercise/Maintain Authorization Controls:** Appropriate spending limits and Merchant Category Code (MCC) access are tailored to each CH account. Spending limits and MCC access should reflect historical buying patterns/trends.

(8) **Systems Access Security:** Appropriate safeguards must be in place to control issuance and safeguarding of access credentials to the EAS.

(9) **Available Funding Integrity:** Certified lines of accounting (LOAs) must be traceable through disbursement. All changes to LOAs must be documented and certified.

(10) **Invoice Integrity:** An electronic certification process ensures the original electronic invoice is traceable from the vendor through the certification and entitlement processes and retained in a Government record. Should the original invoice submitted by the contractor be in paper form, the Certifying Officer shall determine if the invoice is proper for payment and affix his/her signature in accordance with the governing provisions of the [DoDFMR](#). If appropriate, the Certifying Officer makes any required “pen and ink” changes on the original invoice to reallocate the payment to different funding lines from those reflected on the original invoice. The Certifying Officer determines whether these changes are proper and affix his/her signature with the standard certification language on the original paper invoice.

4-2. Surveillance Reporting and Surveillance Reviews

a. The Level 4 A/OPC must conduct a review of 100% of BO accounts annually to include a minimum representative sample size of 25% of transactions for each BO account. The A/OPC should utilize PCOLS Data Mining/Risk Assessment (DM/RA) reviews, transactional reports from the Bank’s EAS (or other electronic oversight process), DoD Checklist and Certification Template (appendix D), and the Formal Reporting Requirements Template (Appendix G) to perform the review.

b. Reviews may be conducted in person, remotely, or electronically depending on the size, complexity, and past review history of the BO account. Reviews should focus on transaction activity and overall adherence to the purchase card program requirements, as well as provide a response to previous findings and recommendations and resulting corrective actions taken.

Results of the review should be documented and briefed to the BO and the BO's supervisor detailing findings, discrepancies, issues, and/or identifiable trends.

c. In conjunction with reviewing all BO accounts annually, the Level 4 A/OPC is responsible for drafting a semi-annual surveillance report and providing it to the Level 3 A/OPC (due April 21st and October 21st). The report should address all aspects of the activity's GPC program, including BO/CH account/transaction reviews; appointment and account issuance/maintenance; GPC usage requirements; GPC documentation, processing, and financial requirements; convenience check writer requirements; and training.

d. In reporting BO/CH account and transaction data, the review should include the following: at least 25% of transactions based on a representative sample of data, inclusion of high risk transactions as flagged in Access Online and PCOLS, and transactions from every BO and CH account. The semi-annual surveillance report must thoroughly analyze and summarize all items addressed in the DoD Checklist and Certification Template (Appendix D) and the Formal Reporting Requirement Template (Appendix G). The report should be all-inclusive as to provide a clear, precise representation of the agency GPC Program and its daily operations.

e. Level 3 A/OPCs must conduct semi-annual reviews of all Level 4 Programs within their oversight and must provide a formal semi-annual report (due May 1 and November 1) to the Army Level 2 A/OPC. The report should provide the results of the surveillance programs for their prospective organization, should summarize repetitive or systemic weaknesses by activity, and should address all aspects of a surveillance plan. The surveillance report should provide a detailed summary of the reports provided by his/her respective Level 4 A/OPCs. The report must be drafted and presented to the Level 2 A/OPC using the template found at Appendix H which summarizes all aspects of the GPC Program, consistent with the DoD Checklist and Certification. All area of the template should be fully analyzed, discussed, and supported with metrics, concrete examples and evidence that a surveillance plan was implemented and surveillance conducted throughout the reporting period.

f. The Level 2 A/OPC will provide an Army-wide GPC Semi-annual surveillance report describing the Army GPC Program. The report will identify trends, corrective actions, and dates for implementing changes throughout the GPC community to support identified program trends, strengths and weaknesses. The Level 2 A/OPC may interview Level 3 and/or Level 4 A/OPCs to gain further insight into GPC trends across the Army GPC program and may perform a separate random sample review of GPC transaction to determine whether or not identified trends are substantiated.

a. Review reports must be maintained on file for six years and three months. Repeat findings from the previous fiscal year review report may result in suspension of your account.

b. Convenience check and FDC accounts shall be reviewed quarterly by a disinterested party and not the BO of the convenience check account or A/OPC.

c. Reports of surveillance reviews must provide information to each management level, which identifies repetitive problems and systemic weaknesses at the individual and organizational levels.

d. A/OPCs, BOs, and CHs must use PCOLS to assist and monitor the use of the GPC

e. The Army shall use PCOLS as an electronic tool for managing its GPC program. See section 4.4 for a description of PCOLS. PCOLS enables A/OPCs to conduct oversight and surveillance of an organization's GPC program utilizing PCOLS reporting capabilities. By clicking on the "PCOLS Reporting" section upon logging into the PCOLS website, the A/OPC is able to run various reports based upon her/his role in PCOLS. These reports assist the A/OPC in identifying GPC program trends and strengths and weakness and should be monitored and used in conjunction with conducting GPC surveillance. The Army GPC Program Office will utilize PCOLS reporting capabilities to decipher the overall health of the GPC Program and to validate finding of each agency's semi-annual surveillance and Office of Management and Budget (OMB) report findings.

4-3. Suspected Fraud or Abuse

a. All instances of suspected fraud or abuse must be reported. Various channels of reporting include the Chain of Command, the A/OPC, the command's procurement fraud advisor (Staff/Command Judge Advocate), the servicing Criminal Investigation Division office, internal review organizations, and Inspector Generals at all levels.

b. The following may be indicators of possible fraud, waste, or abuse:

- (1) Repetitive buys from the same merchant;
- (2) Lack of documentation for a purchase;
- (3) Failure to safeguard cards and account numbers;
- (4) CHs/BO authorizing the use of their cards by others;
- (5) Inadequate oversight by BOs and agencies;
- (6) Payments made for items not received;
- (7) Split purchases to avoid spending limitations;

- (8) Lack of accounting for items requiring accountability;
- (9) Payment delinquencies incurring interest penalties;
- (10) Approval of a CH's statement of account by someone other than the CH or A/BO;
- (11) Unauthorized purchases; and,
- (12) CHs returning merchandise to merchants for store credit vouchers instead of having credits issued back to their GPC accounts.

4-4. Purchase Card Online System (PCOLS)

a. PCOLS is a DoD-wide suite of electronic systems that GPC officials use to improve the management and accountability within their GPC program organizations. PCOLS is comprised of five applications: Enterprise Monitoring and Management of Accounts (EMMA), Authorization, Issuance, and Maintenance (AIM), PCOLS Reporting, Data Mining (DM), and Risk Assessment (RA). PCOLS is Common Access Card (CAC) enabled to ensure secure authentication and nonrepudiation. Due to enhancement of program oversight, the Purchase Card On-Line System (PCOLS) is mandated for GPC participants Army-wide and accessible at: <https://www.dmdc.osd.mil/appj/pcols-web/>.

b. EMMA is used to capture and define organizational purchase card hierarchies, document authority chains, and identify relationships among purchase card roles. EMMA increases the accuracy of personnel data and institute more robust inclusion of supervisors (e.g., cardholder and managing account supervisors). EMMA acts to electronically define the GPC hierarchy, the roles within the hierarchy, and assigns individuals to those roles. Additionally, EMMA enables the A/OPC to alter or remove any personnel from assigned roles reflecting changes to hierarchy structures, also known as provisioning.

c. AIM is used to initiate, approve, and transmit requests for GPC issuance and maintenance actions. AIM draws from hierarchies (e.g., role responsibilities and permissions) established in EMMA. It directly engages GPC supervisors, helps ensure business rules comply with internal organizational management controls, and is a workflow tool performing various GPC Program account authorization and maintenance functions.

d. Data Mining (DM) programmatically reviews 100% of the DoD purchase card transactions using sophisticated intelligent/learning software and identifies correlations, patterns, and trends in purchase card buying actions. This transaction review allows daily, near-real-time mining of the data. The Case Manager, which is an integral component of DM, interprets the referred transactions and creates specific cases that are assigned to the Approving/Billing Officials (A/BOs) for review. Through the use of the Case Manager Interview Process, the A/BO demonstrates that due diligence is exercised in the review of the referred transactions. With this DM tool, scarce human resources can be targeted on identified high-risk transactions and maintain a record of actions taken on referred transaction reviews for improved internal audit ability of the program.

e. Risk Assessment (RA), together with results from the DM Application, assess and report on the overall "health" of a DoD organization's purchase card program. RA allows users to monitor risks associated with their purchase card program. Users assess the risk of their purchase card program by monitoring certain risk controls on a cycle-by-cycle basis. This monitoring is accomplished through the following components within the RA Application: controls, dashboards, and quarterly reports.

f. PCOLS automatically un-provisions, or removes users from their PCOLS roles in EMMA when their retirements or separations are reported to the Defense Enrollment Eligibility Reporting System (DEERS). DEERS receives personnel information updates from the DoD services and agencies on a regular basis.

g. As discussed in Section 2-2, PCOLS users are responsible for completing DAU GLG005, Purchase Card Online System (PCOLS) prior to GPC appointment and GPC account issuance. DAU GL 005 provides comprehensive role-based PCOLS training and assists in understanding how to utilize the preceding applications in providing oversight of your GPC Program.

4-5. Violation of Army GPC Procedures

If, as a result of findings from a surveillance visit, or by any other means, the A/OPC discovers a CH or BO has violated GPC procedures, the A/OPC shall document the violation and take action to resolve the noncompliance to include, if necessary, retraining of the CH or BO and/or temporarily suspending the CH or BO's GPC privileges. Any determinations to cancel or permanently suspend a CH or BO account shall be made by the Level 2 A/OPC, CCO or designee (e.g. Level 3 or 4 A/OPC), and their findings forwarded to the CH or BO's supervisor. Continual violation of GPC procedures by an individual CH or BO shall result in termination of GPC privileges. A/OPCs shall verify that all potentially fraudulent and erroneous transactions that have been identified are disputed and properly resolved. Evidence of deliberate abuse shall be referred to the CH's and/or BO's Commander by the CCO for appropriate action in accordance with the Uniform Code of Military Justice or civilian disciplinary rules. Evidence of fraud or other criminal activity shall be referred, by the Commander/CCO,

to the appropriate investigative body (e.g. Office of the Inspector General (OIG), Army Audit Agency (AAA)) or other investigative body for a follow up investigation. The violation and action taken shall be documented in the A/OPC's files.

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DEPARTMENT OF THE ARMY PLAN FOR CONTROL OF
NONSTANDARD CLAUSES

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DEPARTMENT OF THE ARMY PLAN FOR CONTROL OF NONSTANDARD CLAUSES

September 3, 2014

1. PURPOSE. The purpose of this plan is to implement, maintain, and comply with a plan for controlling the use of clauses other than those prescribed in the Federal Acquisition Regulation (FAR) and the Defense Federal Acquisition Regulation Supplement (DFARS) as required in DFARS 201.304(4). This plan supersedes the July 31, 2009, update.

2. DEFINITIONS.

a. Clause – The term “clause” includes solicitation provisions and means a term or condition of the type set forth in FAR part 52 and DFARS part 252.

b. Deviation – The term “deviation” includes any clause that is inconsistent with the FAR or DFARS.

c. Regulation – The term “regulation” includes any contracting supplement, policy letter, clause book, automated system, acquisition instruction (AI), or similar regulatory instrument.

3. REVIEW AND APPROVAL OF NONSTANDARD CLAUSES. Army contracting activities coordinate all nonstandard clauses with the Office of the Deputy Assistant Secretary of the Army (Procurement) (ODASA(P)) Policy and Programs Directorate in accordance with Army Federal Acquisition Regulation Supplement (AFARS) 5101.304(1)(i). The ODASA(P) Policy and Programs Directorate coordinates with the Office of the Army General Counsel during review of nonstandard clauses.

a. Director of Defense Procurement and Acquisition Policy (DPAP) Clause Approval –

(1) Obtain DPAP approval to use clauses that have a significant effect beyond the internal operating procedures of the Army or impose a significant cost or administrative impact on contractors or offerors (DFARS 201.304(1)). Included are class deviations from the FAR or DFARS (DFARS 201.404(b)) and the six categories of individual deviations set forth in DFARS 201.402(1).

(2) Coordinate with the ODASA(P) Policy and Programs Directorate to publish clauses requiring DPAP approval in the *Federal Register*, conduct analysis to ensure compliance with the Paperwork Reduction Act and the Regulatory Flexibility Act (FAR 1.301(c)), and analyze public comments. Submit the clause and all analysis through the Defense Acquisition Regulations (DAR) Council Director (DFARS 201.304(5) and AFARS 5101.301(b)).

b. Other than DPAP Clause Approval –

(1) Obtain Deputy Assistant Secretary of the Army (Procurement) (DASA(P)) approval to use clauses that do not require DPAP approval and do not require publication in the *Federal Register* for public comment, but are included in contracting activity AIs or clause books.

- (2) Obtain Army Principal Assistant Responsible for Contracting (PARC) approval for individual deviations as defined at FAR 1.403, other than those specified in paragraph 3.a.(1) and 3.b.(1), as required in AFARS 5101.403(1), and forward a copy to the ODASA(P) Policy and Programs Directorate. One-time use clauses (including Section H clauses) are individual deviations.
 - (3) Obtain Army PARC (or their designee) approval for contracting activity and local clauses that implement FAR or DFARS clauses that permit “substantially the same as” use prior to using them. This review is necessary to determine that tailoring is required and to ensure that the tailored clause is not materially different from the parent clause.
4. CLAUSE NUMBERING. Adhere to the numbering and identification requirements of FAR subpart 52.1, as supplemented by DFARS subpart 252.1 when prescribing clauses in an Army regulation:
 - a. Number clauses with the Army prefix of 51 (AFARS 5101.303(a)(i)), except see paragraph 4.c. regarding one-time use clauses;
 - b. Assign 9000 numbers as an extension to clauses approved for Army-wide use for incorporation into the AFARS, to clauses approved for specific command use for incorporation into Command Supplements, and to clauses approved for subordinate commands or contracting offices (DFARS 252.101 and AFARS 5152.101(b)(2)(ii)(B)); and
 - c. Do not number one-time use clauses but identify them by the title, date, and name of the organization that developed it (FAR 52.103).
5. CONTROLS.
 - a. Army contracting activities review nonstandard clauses as part of their pre-solicitation, pre-award and legal reviews.
 - b. Procurement management review teams address non-standard clauses as a special review item.
6. CLAUSE CONTROL PLAN RESPONSIBILITIES. The Army DAR Council policy member is the Army's action officer responsible for clause control. Please send any questions to the Office of the DASA(P) (ODASA(P)), e-mail usarmy.pentagon.hqda-asa-alt.list.saal-pp-staff@mail.mil, through your chain-of-command, as appropriate. Include “Clause Control” in the “Subject” block.

DEPARTMENT OF THE ARMYPLAN FOR CONTROL OF NONSTANDARD CLAUSESCENTCOM- JOINT THEATER SUPPORT CONTRACTING COMMAND (C-JTSCC)
ADDENDUM

1. PURPOSE. The purpose of this addendum is to implement an expedited nonstandard clause approval process for C-JTSCC.
2. UNITED STATES CENTRAL COMMAND (CENTCOM) – JOINT THEATER SUPPORT CONTRACTING COMMAND (C-JTSCC) EXPEDITED PROCESS:
 - a. When the Deputy Assistance Secretary of the Army (Procurement) determines that urgent and compelling circumstances make compliance with the review and approval process set forth in the Department of the Army Plan for Control of Nonstandard Clauses impracticable (see TAB A), C-JTSCC may incorporate clauses in its solicitations and contracts concurrent with the review and approval process (41 U.S.C. 1707(d)). In these instances, the clause will have the same force and effect as if the cognizant approving official had approved it until such time that the Army and/or DPAP completes the review and approval process and an approved clause replaces the unapproved clause.
 - b. C-JTSCC shall follow the process set forth in Tab B of this addendum to expedite approval of nonstandard clauses under urgent and compelling circumstances.

[C-JTSCC LETTERHEAD]

In rely refer to
[Clause Title and number]

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)

SUBJECT: DETERMINATION OF URGENCY

I have determined that the following urgent and compelling reasons exist to publish this clause prior to affording the public an opportunity to comment.

[Insert a factual description of the urgent and compelling circumstances that justify this action, for example: The current changing threat environment, such as X and Y/circumstances relating to demobilization or X and Y/challenges requiring immediate action to avoid harm including A and B].

This clause [resolves the situation by accomplishing X and Y/provides necessary guidance/clarifies existing guidance/to ensure that X and Y do not occur]. Furthermore, it clarifies that [insert descriptive language].

Public comment will be obtained by publication of this clause in the Federal Register.

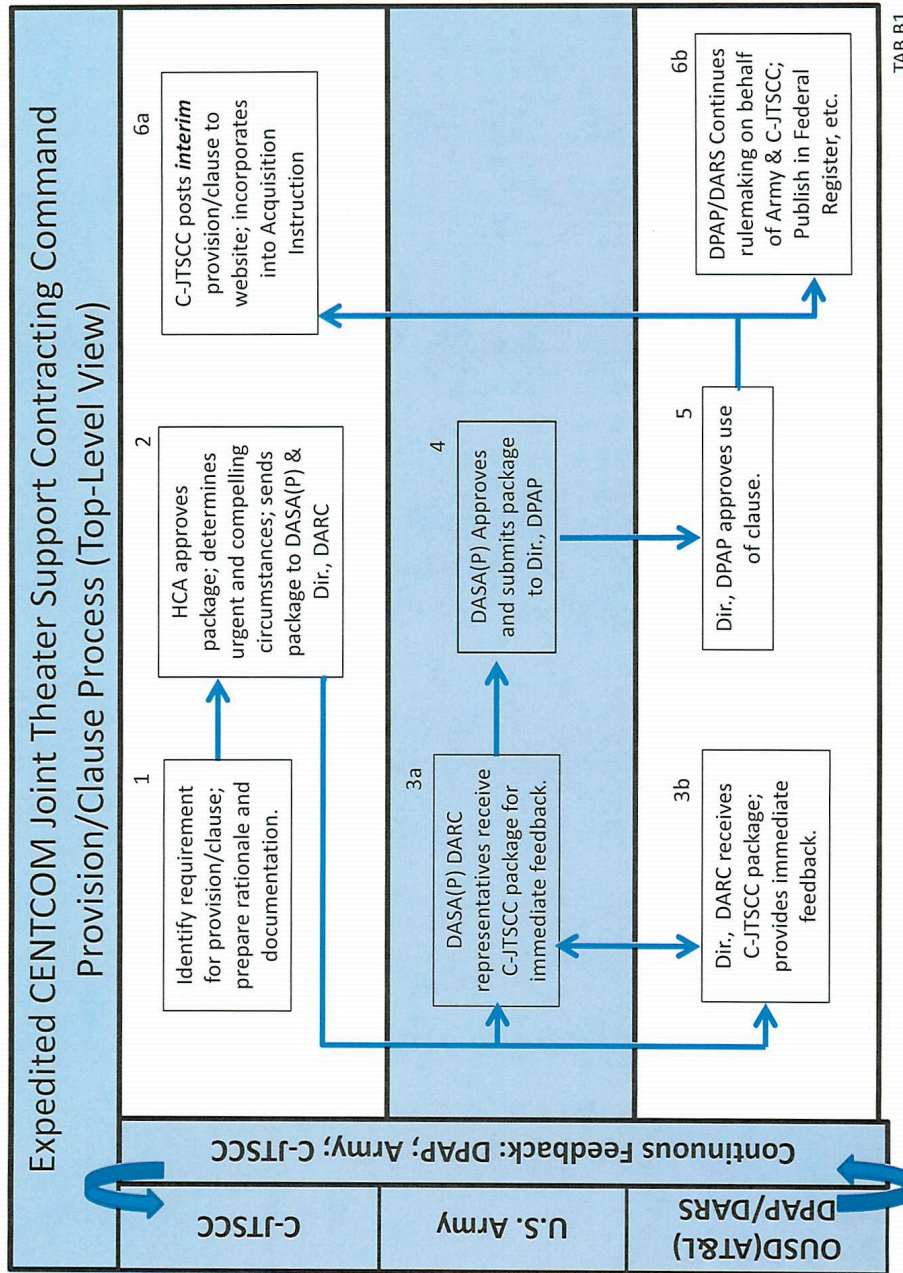
[Insert name]
Head of Contracting Activity
CENTCOM – Joint Theater Support
Contracting Command

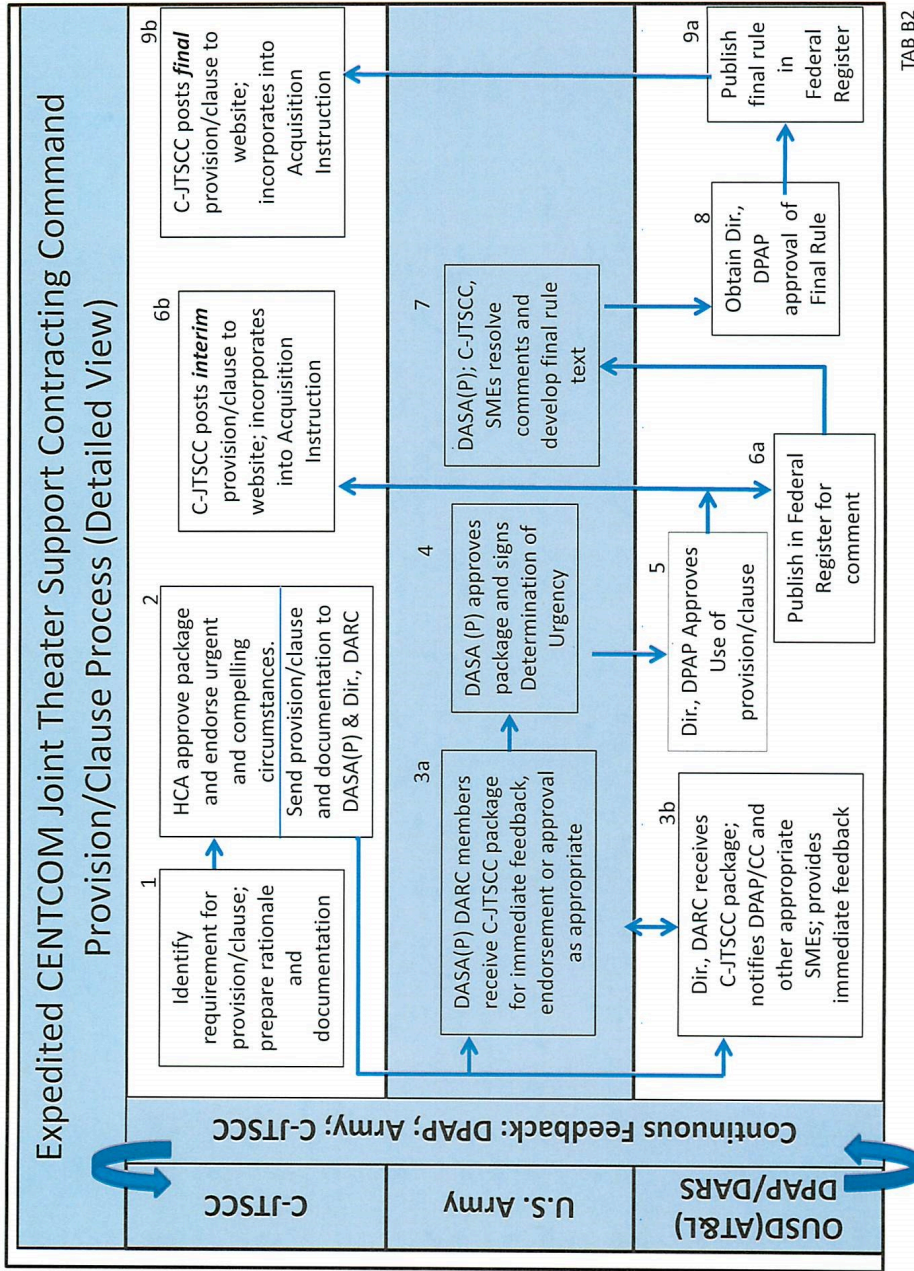
SAAL-ZP

[Insert date]

Pursuant to 41 U.S.C. 1707 and based upon the facts presented above, I have determined that urgent and compelling circumstances exist that require publishing this clause prior to affording the public an opportunity to comment. I am, therefore, authorizing issuance of this clause for immediate use.

Harry P. Hallock
Deputy Assistant Secretary
of the Army (Procurement)





TAB B2

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Appendix GG

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Appendix GG

Part	Title of Section	Description of Authority	Federal Reference (FAR)	Federal Approving Official	Delegable	Level	Defense Reference (DFARS PGI)	Defense Approving Official	Delegable	Level	Army Reference (AFARS)	Army Approving Official/Designee	Delegable	Level
1	Preaward Peer Reviews	Conducting a peer review for contracts for competitive procurements above \$1B, except MDAP/USD(A&S) special interest programs.					201.1701(a)(1)(i)	DASA(P)	Yes	No	5101.1701(a)(1)(i)	DASA(P)	Yes	HCA non-delegable, except for DASA(P) special interest acquisitions

DOD FEDERAL ACQUISITION REGULATION SUPPLEMENT

1	<p>Preaward Chairing- Peer Solicitation Reviews Review Board (SRB) and a Contract Review Board (CRB) for competitive procurements valued at \$250M or more but less than \$1B; or noncompetitive procurements valued at \$250M or more but less than \$1B.</p>	-	-	-	201.170(b) (1) and (2)	-	-	5101.170(b) (6)	Yes	No Lower than the SCO
1	<p>Preaward Chairing- Peer SRB Reviews and CRB for all procurements valued at \$50M or more but less than \$250M.</p>	-	-	-	201.170(b) (1) and (2)	-	-	5101.170(b) (6)	Yes	No Lower than the CoCO

1	Preaward Chairing- Peer SRB Reviews and CRB for all procurements valued below \$50M	-	-	-	201.170(b) (1) and (2)	-	-	5101.170(b) (6)	No or Designee	-
1	Independent Conducting Management ReviewsIMRs (formally for Postaward contracts Peer for Reviews) services valued at \$1B or more	-	-	-	-	-	-	5101.170(b) (6)	DASA(P) or SSM	-
1	Independent Conducting Management ReviewsIMRs (formally for Postaward contracts Peer for Reviews) services valued at \$100M or more but less than \$1B	-	-	-	-	-	-	5101.170(b) (6)	DASA Yes	No Lower than the SCO
1	Agency Issue 1.301 Acquisition Regulations Authorize the issuance of agency acquisition regulations that implement or supplement FAR.	Agency Head	Yes	No Limitation	No additional Guidance	-	-	5101.301 (6)	DASA(AI) Yes	DASA(P), without further delegation

DOD FEDERAL ACQUISITION REGULATION SUPPLEMENT

1	Deviation from the FAR	Approval of Class Deviation	1.404(b) In accordance with DFARS	-	-	201.404(S)(E)(ii)	Yes	No	5101.404(S)(E)(ii)	Yes	DASA(P), without power to further delegate
1	Ratification of Unauthorized Commitments	Ratification of Unauthorized Commitments	602-3(b) unless a higher level official is designated by the agency	Yes	No lower than CoCO	No additional Guidance	-	-	5101.602-3(A)	Yes	HCA non-delegable above \$100,000, except to USACE Director of Contracting, HQ, or Commander, ACC. Greater than \$10,000 up to \$100,000, no lower than \$10,000 or less, no lower than the chief of contracting
1	Career Development Contracting Authority and Responsibility for Contracting Officers	Selection, Appointment, Termination of Appointment	1.603-1 Agency Head	Yes	No Limitation (consistent with OFPP standards)	No additional Guidance	-	-	5101.603(A)(1)(E)	Yes	DASA(P) or HCA, with further delegation to No Lower than the CoCO

3	Procurement Disclosure, Integrity and marking of contractor bid or proposal information and source selection information.	3.104-4(a)	Agency Head or Contracting Officer	Yes	No limitation	No additional Guidance	-	-	-	5103.104-8(a)	AS/AL/CS or Contracting Officer	Yes	Personnel serving in the positions identified in AFARS 5103.104-4(a)(i) through (vii).
3	Procurement Integrity of disqualified official to resume participation in a procurement	3.104-5(b)	HCA	Yes	No limitation	No additional Guidance	-	-	-	5103.104-11	HCA	Yes	No lower than SCO. If SCO is disqualified individual, HCA will make the determination.
3	Procurement Integrity and determinations related to possible or actual procurement integrity violations	3.104-7(b)	HCA	Yes	No lower than one level above KO and of GO, Flag, SES, or equivalent rank	No additional Guidance	-	-	-	5103.104-11	HCA	Retain	-

DOD FEDERAL ACQUISITION REGULATION SUPPLEMENT

3	<p>Treatment of Violations 3.204(a) and determinations against contractor under a contract containing Gratuities clause</p>	<p>Agency Head Yes</p>	<p>No limitation</p>	<p>No additional Guidance</p>	-	-	-	5103.204(A)(1)	No	No	-	<p>Suspension and Debarment Official or other senior official designated by the Judge Advocate General</p>
3	<p>Treatment of Violations 3.204(c) Make the determination whether to terminate the contractor's right to proceed under the contract, and, if so, whether to assess exemplary damages and in what amount.</p>	<p>Agency Head Yes</p>	<p>No limitation</p>	<p>No additional Guidance</p>	-	-	-	5103.204(A)(1)(i)	No	No	-	<p>HCA, without power to further delegate</p>
3	<p>Contracts with Government Employees or Organizations Owned or Controlled by Them 3.602 Authorization of acceptance requirement award contract Gov't employee or their business / organization</p>	<p>Agency Head Yes</p>	<p>No lower than HCA</p>	<p>No additional Guidance</p>	-	-	-	5103.602 Lower Than HCA	No	No	-	

3	Voiding and Rescinding Contracts and rescinding contracts upon final conviction for bribery, conflicts of interest or violations of 18 U.S.C. 201-224.	Make determinations concerning voiding and rescinding contracts upon final conviction for bribery, conflicts of interest or violations of 18 U.S.C. 201-224.	3.703	Agency Head	Yes	No limitation	203.703	No lower than an official appointed by and with advice of the Senate	Yes	No lower than an official appointed by and with advice of the Senate	5103.703	ASA(AIR)	Retain	-
3	Voiding and Rescinding Contracts and rescinding contracts, recovering amounts expended, and recommending suspension/debarment upon conviction/preponderance of evidence for an offense punishable under 41 U.S.C. 2105	Consider and rescinding contracts, recovering amounts expended, and recommending suspension/debarment upon conviction/preponderance of evidence for an offense punishable under 41 U.S.C. 2105	3.704(c)	HCA	Yes	No limitation	No additional Guidance	-	-	-	5103.704	HCA	Retain	-
3	Remediation (Whistleblower Protection for Contractors Employees)	Direct contractor to take certain actions	-	-	-	-	203.906	Agency Head	Yes	No limitation	5103.906	ASA(AIR)	HCA,	without power to further delegate

DOD FEDERAL ACQUISITION REGULATION SUPPLEMENT

3	Preventing Authority Personal to Conflicts impose of conditions Interest that for mitigate Contract conflicts Employees Performance Acquisition Functions grant a waiver	3.1104 HCA	No	-	No	-	-	-	-	HCA	No	-	
4	Electronic Establish Commerce and In Use of Contract Electronic Commerce	4.502(b) Head of Agency	Yes	No	No	-	-	-	5104.502-90	AIR	Retain	-	
4	Contract Reporting for developing and monitoring a process to ensure timely and accurate reporting of contractual actions to FPDS	4.604(a) SPE	Yes	No	No	-	-	-	5104.604-90	SPE	Yes	DASA(P), without power to further delegate	
4	Closeout of Contract Files highest priority to close out of contracts awarded for performance in contingency area	Assignment of	-	-	-	204.804-10	HCA	Yes	No limitation	5104.804-10	HCA	Yes	No lower than CoCO

4	Reporting Requirements of Contractor Information to the IRS	5.903(a)	Head of Federal Agency	Yes	No Limitation	No additional Guidance	-	-	-	5104.903(A)	ASA(AD) Yes	DASA(P), without power to further delegate
5	Availability of Solicitations of Government Point of Entry (GPE) is not in the Gov't's interest	5.102(a)(5)(iii)	SPE	Yes	No limitation	No additional Guidance	-	-	-	5105.102(5)(iii)	SAE Yes	HCA, with authority to delegate to No lower than SCO
5	Release of Long-Range Acquisition Estimates	5.404-1(A)	Agency Head	Yes	No limitation	No additional Guidance	-	-	-	5105.404(A)	SA(AD) Yes	HCA, with authority to delegate to No lower than CoCO
5	Paid Advertisements contracting activities are delegated authority to approve the publication of paid advertisements in newspapers.	5.502	Agency Head	Yes	No limitation	205.502 HCA	Yes	No limitation	No	5105.502(A)	HCA Yes	No lower than 1 level above the KO

DOD FEDERAL ACQUISITION REGULATION SUPPLEMENT

6	Establishing or of a Maintaining Alternative Sources from a contract action in order to establish or maintain an alternative source(s) for the supplies or services being acquired	6.202(a)	Agency Head	Yes	No	No	-	-	-	5106.202(A)	Yes	Yes	Approval Levels IAW 5106.304(a)(2), (3) and (4).
6	Only one responsible source and no other supplies or services will satisfy agency requirements of an unsolicited proposal without providing for full and open competition	-	-	-	206.302H(1)	206.302H(2)(i)	-	-	-	5106.302H(1)	Yes	No lower than CoCO	No lower than CoCO

6	<p>Only Authority one to responsible source the and no requirement other to supplies post a or request services for will information satisfy or a agency sources requirements notice, and include the results of this inquiry in the justification required by FAR 6.303.</p>	- - -	DFARS HCA PGI 206.302-1(d)	Yes	No lower than a GO/ SES	5106.302-1(c)(4)	Yes	SCOs at GO/ SES level only; otherwise HCA
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6	<p>Unusual Total 6.302-2 (H) Head Yes No No - - - 5106.302-2 (1)(ii) AS (1)(ii) HCA, without power to further delegate</p> <p>Compelling Urgency performance of a contract awarded or modified may not exceed one year, including all options, unless the head of the agency determines that exceptional circumstances apply.</p>	<p>(1)(ii) of Agency</p>	<p>No</p>	<p>No</p>	<p>Limitation</p>	<p>additional Guidance</p>	<p>(1)(ii)</p>	<p>AS (1)(ii)</p>	<p>HCA, without power to further delegate</p>
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6	Unusual and Compelling Urgency	Any subsequent modification that extends the period of performance beyond one year, requires a separate determination. This determination is only required if the cumulative period of performance using this authority exceeds one year.	6.302-2(a)(ii) of Agency (Must be Same Level as the Level to which the Agency Head Authority is in (d)(1) (ii)	Head Yes	No	No	-	-	-	5106.302-2(ii)	AS(A)As	HCA, without power to further delegate
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6	<p>International Determination - - - Agreement that J&A is not required for an int'l agreement and preparation of document such as LOA that has the effect of requiring use of other than competitive procedures for the acquisition</p>	-	-	-	206.302-4(c)	HCA	Yes	No	5106.302-14(c)	HCA	Yes	No	lower than the CoCO
6	<p>Other Than Full and Open Competition Justification -- Sole Source awards exceeding \$100 million</p>	6.302-5(b)	Head	Yes	No Limitation	-	-	-	5106.302-15(d)	HCA	Yes	SCO	at GO/SES Level; Otherwise HCA

6	Public Interest	Full and open competition need not be provided for when the agency head determines that it is not in the public interest in the particular acquisition concerned.	6.302-7	Secretary Level	No	-	No Additional Guidance	-	-	-	Secretary of the Army	No	-
6	Justification	Content Shall Contain Agency Specific Requirements	6.303-2	Head of Agency	Yes	No Limitation	No additional Guidance	-	-	5106.303-5	AS(A) Yes	DASA(P),	without power to further delegate
6	Approval of the Justification	Approval of the Justification over \$750K, but not exceeding \$15M	6.304(a)(2)	Advocate for Competition	No	-	No additional Guidance	-	-	-	Advocate for Competition	No	-
6	Approval of the Justification	Approval of the Justification over \$15M but not exceeding \$100M	6.304(a)(3)	HCA	Yes	General/Flag Officer, SES, or grade above GS-15 only	No additional Guidance	-	-	5106.304-3	HCA Yes	SCOs at GO/SES Level only; otherwise HCA	

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6	Approval of the Justification over \$100M	Approval of (4)	6.304(a)SPE	No	-	No additional Guidance	-	-	-	SPE	No	-
6	Advocate for Competition	Appointment of special advocates for competition	6.501	Head of Each Executive Agency	Yes	No limitation	No additional Guidance	-	-	5106.50ASA(ALT)	Yes	DASA(P) serves as Army Advocate for Completion; HCAs serve as the Command Advocate for Competition, with authority to delegate to No Lower than the SCO

7	<p>Agency-Acquisition Head Plan Responsibilities Authority for PEO or DRPM Acquisitions</p>	<p>Agency Yes Head</p>	<p>No 207.103 limitation(i)</p>	<p>207.103 (M) Official Responsible for Program</p>	<p>Yes No 5107.103 limitation(l)</p>	<p>5107.103 (A) Yes</p>	<p>For programs assigned to program executive officers (PEOs) or program managers reporting directly to the Army Acquisition Executive (DRPM), the designated milestone decision authority (MDA), on a nondelegable basis, is the acquisition plan approval authority. In the case of PEO-/ DRPM- managed efforts for which no MDA has been designated, the PEO/ DRPM, on a nondelegable basis, is the acquisition plan approval authority.</p>
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7	Agency-Acquisition Head Plan Responsibility for Non-PEO or DRPM Acquisitions	70103	Agency Head	Yes	No	207.103(i)	PM/ Official Responsible for Program	Yes	No	5107.103(2)	ASO(A) Yes	HCA, with authority to delegate to No lower than SCO
7	Contents of Written Acquisition Plans that ensure contingency contracts will be closed in a timely manner, considering turnover and other contracting workload			-	-	-	DFARS HCA PGI 207.105(b) (C)(8) (iv)	Yes	No	5107.103(20) (C)(8) (iv)	HCA Yes	No lower than SCO
7	Consolidation of Contract Requirements more than \$500M	70107-2	SPE	Yes	-	-	-	-	-	5107.103(20) (i)	SPE Yes	DASA(P), without power to further delegate
7	Consolidation of Contract Requirements above \$2M and up to \$500M	70107-2	SPE	Yes	-	-	-	-	-	5107.103(20) (ii)	SPE Yes	HCA, with authority to delegate to No lower than the CoCO
7	Additional Requirements for bundling Acquisitions Involving Bundling	70107-3	(S)PE	No	-	No	-	-	-	-	SPE No	-
							additional Guidance					

7	<p>Equipment Determination - - - Lease that or contract Purchase for Statutory vessel, Requirement aircraft, or vehicle via lease, charter, or similar agreement with term of 18 months or more, or extension / renewal of such contract for 18 months, is in Government's best interest</p>	-	-	-	207.470	(HCA)	Yes	No	5107.470	(HCA)	Yes	No	lower	than	CoCO
8	<p>Use of Approval 8.404(h) HCA Yes Federal of (3)(ii) Supply D&Fs (C) Schedules for T&M or LH orders against FSS contracts when base period + options = more than 3 years</p>	-	-	-	-	-	-	-	5108.404	(HCA)	No	-	-	-	-

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8	Blanket Determination (BPA) that a single award with an estimated value exceeding \$100 million (including any options), may be awarded	8.405-3(h)(3)(ii)	Head of Agency	Yes	No Limitation	No additional Guidance	-	-	-	5108.405-3(ii)	AS(A) Yes	HCA, with authority to delegate to No Lower than SCO
8	Limiting Sources that access through eBay is not in Government's best interests	8.405-6(S)(3)(ii)(C)	SPE	Yes	No limitation	No additional Guidance	-	-	-	5108.405-6(C)	SPE Yes	HCA, with authority to delegate to No lower than SCO
8	Limiting Sources of Justification and Approvals BPA with an estimated value exceeding the simplified acquisition threshold, but not exceeding \$750,000.	8.405-6(1)	Ordering Activity Contracting Officer	No	-	No additional Guidance	-	-	-	-	Contracting Officer	-

8	Limiting Sources of Justification and Approvals BPA with an estimated value exceeding \$750,000, but not exceeding \$15 million.	Approval (2)	Advocate for Competition	No	-	No additional Guidance	-	-	-	Advocate for Competition	No	-
8	Limiting Sources of Justification and Approvals BPA with an estimated value exceeding \$15 million, but not exceeding \$100 million.	Approval (3)	Head of Procuring Activity	Yes	General/Flag officer, SES, or grade above GS-15 only	No additional Guidance	-	-	5108.4016(3)	Advocate	Yes	SCOs at GO/SES level only; otherwise HCA
8	Limiting Sources of Justification and Approvals BPA with an estimated value exceeding \$100 million.	Approval (4)	SPE	No	-	No additional Guidance	-	-	-	SPE	No	-

8	Leasing Approve of Motor Vehicle - Presolicitation Requirements	8.1102(c)	Head of Contracting Office	Yes	No limitation	No additional Guidance	-	-	-	5108.1102(c)	COCO	Yes	1 level above KO
9	Responsiveness Contracting with domestic inverted corporations	Waiver 9.108-4	Agency Head	Yes	No Limitation	No additional Guidance	-	-	-	5109.108-4	ASA(ALT)	Yes	HCA, without power to further delegate
9	Qualification Requirements Policy	Prepare 9.202(a)	Agency Head	Yes	No limitation	DFARS COCO 209.202(a)(1)	-	-	No limitation	5109.202(a)	COCO	No	-
9	Qualification Requirements Policy	Waiver 9.202(b)	HCA	Yes	No limitation	No additional Guidance	-	-	-	5109.202(b)	HCA	Yes	No lower than SCO

9	Qualification Requirements Policy	Establishing Qualification Requirement	9.202(e)	Agency Head	Yes	No limitation	No additional Guidance	-	-	-	5109.202(A)	(S)(A)(L)(E)	HCA, with authority to delegate to No lower than SCO
9	Acquisition subject to qualification requirements. General	Determine that an emergency exists	9.206-1(A)	Agency Head	Yes	No limitation	No additional Guidance	-	-	-	5109.206(A)	(S)(A)(L)(E)	HCA, with authority to delegate to No lower than SCO
9	Aviation and Ship Critical Safety Items	Enter into a contract for the procurement, modification, repair, or overhaul aviation or ship critical safety item only with a source approved by the head of the design control activity	209.270-1(a)	Agency Head	Yes	No limitation	209.270-1(a)	Yes	No	5109.270-1(a)	(S)(A)(L)(E)	Yes	No lower than CoCo
9	Debarment, Suspension and Ineligibility	Determine for, Contract included from and receiving contracts to be included	9.405(a), 9.405-1(b), 9.405-2(a), 9.406-1(c), 9.407-1(d)	Agency Head	Yes	No limitation	No additional Guidance	-	-	-	5109.405(A)	(S)(A)(L)(E)	Suspension and Debarment Official

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9	Debarment, Suspension, and Ineligibility	Determination, (2) and (3) from a debarred, suspended or proposed debarment contractor	9.405(d)	Agency Head	Yes	No limitation	No additional Guidance	-	-	-	5109.405(3)	(8)(A)(AL) Yes	Suspension and Debarment Official
9	Organizational and Consultancy Conflicts of Interest Waiver	Waiving any general rule or procedure of subpart 9.5	9.503	Agency head	Yes	Not below the level of HCA	No additional Guidance	-	-	-	5109.503	HCA, No power to further delegate	-
9	Contracting Officer of Responsibility	Approval of conflict of interest course of action	9.504(c)	HCA	Yes	No limitation	No additional Guidance	-	-	-	5109.504	HCA Yes	No lower than SCO
9	Organizational and Consultancy Conflicts of Interest Procedures	Approval of KO's resolution of conflict potential conflict of interest	9.506(d)	HCA	Yes	No limitation	No additional Guidance	-	-	-	5109.506(3)	HCA Yes	No lower than SCO

9	<p>Systems Waiver - Engineering and Technical Assistance Contracting for performance of systems engineering and tech assistance for MDAP or pre-MDAP by contractor or any affiliate of contractor from participating in development or production of weapon system under such program</p>	-	-	-	-	209.571 HCA (1)	No	-	-	-	HCA	No	-
10	<p>Market Research - Procedures the results of market research in a manner appropriate to the size and complexity of the acquisition.</p>	10.002(e)	Agency Head	Yes	No	-	-	-	-	5110.002(A)(1)(i)	HCA	with the authority to delegate to No Lower than the KO	-

11	Market Require 11.103(a) to Acceptance Offerors to Demonstrate that Items Offered have commercial market acceptance or been supplied under current or recent contracts	11.103(a)	Lead of Agency	Yes	No	No	-	-	-	5111.103(A)(1)	HCA	Yes	HCA, with authority to delegate to No Lower than SCO
11	Using and Maintaining Requirements Document process is not acceptable for a specific procurement	-	-	-	DFARS PGI 211.273	HCA or PEO	No	-	-	HCA or PEO	No	-	

11	Policy Determination for that Item Unique Valuation	-	-	-	211.274- 1(B) (1)	Yes	No limitation(1)	5111.274- 1(B) (1)	Retain	-
	to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, radiological attack, cyber attack, international disaster assistance, and response to an emergency or major disaster.									
11	Policy Approval for of Item Unique Valuation	-	-	-	211.274- 1(B) (2)(i) (B)	Yes	No limitation(2)(i)	5111.274- 1(B) (2)(i) (B)	Yes	No lower than SCO
	exception for contractor from requirement to provide DoD unique item ID									

11	Liquidated Damages Reduce the Amount of Liquidated Damages Assessed Under a Contract	11.501(d)	Head of Agency	Yes	No	No	Limitation Additional Guidance	-	-	-	5111.501-6	(S)(A)(AL)(E)	HCA, without power to further delegate
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12	<p>Acquisition Determination - - - of that Commercial Items. prior Applicable determination was appropriate and still applicable or issue a determination that the prior use of FAR part 12 procedures was improper or that it is no longer appropriate to acquire the item using FAR part 12 procedures, with a written explanation of the basis for the determination.</p>	212.102-11.1 (ii)(B)	Yes	No	5112.102-11.1 (ii)(B)	Yes	No	Lower than CoCO
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12	<p>Acquisition of Commercial Items. or Applications that are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, cyber attack, international disaster assistance, and response to an emergency or major disaster and can be treated as an acquisition of commercial items.</p>	<p>Determination of Agency Head</p>	<p>Yes</p>	<p>No</p>	<p>218.270 HCA</p>	<p>Yes</p>	<p>No</p>	<p>5112.101 HCA</p>	<p>Yes</p>	<p>No</p>	<p>lower than SCO</p>
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12	Contract Type	Determine a time- and- materials or labor-hour contract type is in the best interest of the Government for commercial services	-	-	-	212.207(b)(iii)	Agency Head	Yes	No limitation	5112.207(b)(iii)	75A(1)(c)	Yes	HCA, with authority to delegate to No lower than SCO
12	Preference for certain commercial products and services	Approval to make determination to enter into contracts above \$10M for facilities-related services, knowledge-based services (except engineering services), medical services, or transportation services that are not commercial services.	-	-	-	212.272(2)(i)	HCA	Yes	No limitation	5112.272(2)(i)	75A(1)(c)	Yes	No Lower than CoCO

12	Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items	Insert 12.301(H) of Agency	Head Yes	No	No	-	-	-	5112.301(A)(4)(i)	ISAR	Retain	-
12	Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items	Approval 12.301(S) supplementing provisions and clauses of FAR part 12	SPE No	-	No additional Guidance	-	-	-	-	SPE	No	-
12	Tailoring of Provisions and Contract Clauses for the Acquisition of Commercial Items	Approval of waivers under FAR 12.302(c)	-	-	-	212.302(D)CA	Yes	No limitation	5112.301(C)CA	Yes	No lower than SCO	-

12	<p>Limitation on Conversion of Procurement from Commercial Acquisition Procedures under FAR part 12 was in error or based on inadequate information, and that DoD will realize a cost savings compared to the cost of procuring a similar quantity or level of such item or service using commercial acquisition procedures.</p>	-	-	-	212.700HCA (1)	Yes	No	limitation(1)	5112.700HCA	Yes	No lower than the CoCO
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13	Actions Delegated at or Below the Micro-Purchase Threshold	3.201(a) Agency Head Authority	Yes	No limitation	No additional Guidance	-	-	-	5113.2015	HCA	Yes	HCA, with authority to delegate to No lower than CoCO
13	Actions at or Below the Micro-Purchase Threshold or Micro-Purchase Threshold are to be used in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, radiological attack, cyber attack, and response to an emergency or major disaster.	Micro-Purchase Threshold for Supplies or Services	Yes	No Limitation	218.27 HCA	-	-	-	5113.2015	HCA	Yes	No lower than SCO

13	Impreset Funds and Third Party Drafts	Use of Impreset funds or Third Party drafts	13.305-3(a) Agency Head	Yes	No Limitation	No additional Guidance	-	-	-	5113.305-3(a) ALDs	Yes	No Lower than KO
13	Simplified Procedures for Commercial Items	Authorized use of simplified procedures for commercial items that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, radiological attack, cyber attack, and response to an emergency or major disaster.	13.500(c) Agency Head	Yes	No limitation	218.27 HCA	Yes	No	5113.500(c) (1)	Yes	No Lower than SCO	

13	Test Program for Certain Commercial items	Approval of sole-source Commercial items over \$750K but not exceeding \$15M	13.501(2)(ii)	Advocate for Competition	No	-	No additional Guidance	-	-	-	-	Advocate for Competition	No	-
13	Test Program for Certain Commercial items	Approval of sole-source Commercial items over \$15M but not over \$100M	13.501(2)(iii)	HCA or Official Described at 6.304(a)(3) or (a)(4)	No	-	No additional Guidance	-	-	-	-	HCA or SCO at GO/SES Level	No	-
13	Test Program for Certain Commercial items	Approval of sole-source Commercial items over \$100M	13.501(2)(iv)	SPE	No	-	No additional Guidance	-	-	-	-	SPE	No	-
14	Preparation of Invitation for Bids	Waiving requirements for inclusion of clauses 51.214-27 and/or 52.214-28 in contract with a foreign government or agency of that government	14.201-7(c)(2)	HCA	Yes	No limitation	No additional Guidance	-	-	-	5114.207(c)(2)	HCA	Yes	No lower than SCO

14	Cancellation of Invitations After Opening and reject all bids before award but after opening	Determinations to and cancel invitations (e)(1)	14.404-1	Agency Head	Yes	No limitation	214.404-1	(Q)	No	-	-	KO	No	-
14	Other Mistakes Disclosed Before Award	Make determinations under paragraph (c) of FAR 14.407-3	14.407-3	Agency Head	Yes	No limitation	No additional Guidance	-	-	-	5114.407-3	(S)(A) (D)	Yes	HCA, with authority to delegate to No lower than CoCO
14	Other Mistakes Disclosed Before Award	Make determinations under paragraph (a, b, d) of FAR 14.407-3	14.407-3	Agency Head	Yes	No limitation	No additional Guidance	-	-	-	5114.407-3	(S)(A) (D)	Yes	HCA, with authority to delegate to No lower than CoCO

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14	Mistakes After Award	Authority 4.407-4(a)	Agency Yes	No limitation	No additional Guidance	-	-	-	5114.407-4(a)	HCA	Yes	No lower than SCO
15	Contract Format	Authority 5.204(e)	Agency Head Yes	No limitation	No additional Guidance	-	-	-	5115.204(e)	ASA(AI)	Yes	HCA, with authority to delegate to No lower than SCO
15	Contract Format	Authority 5.204(e)	-	-	-	-	-	-	5115.204(e)	ASA(AI)	Yes	DASA(P), without power to further delegate
15	Source Selection	Waivers for Solicitations valued below \$1B	-	-	-	DFARS SPE PGI 215.300 (See DoD Source Selection Procedures)	Yes	No limitation	5115.300-9	SPE	Yes	DASA(P), without power to further delegate

15	Source Waivers- Selection for Solicitations valued at \$1B or more	-	-	-	215.300DPC (See DoD Source Selection Procedures)	No	-	-	DPC	No	-
15	Source Appointment Selection of Responsibilities for acquisitions for systems and services, acquired through the Defense Acquisition System, for which milestone decision authority (or other decision authority) is at the AAE or Office of the Secretary of Defense level IAW the applicable Adaptive Acquisition Framework DoDI.	15.303(a)	Agency Head	Yes	KO or No other additional appointed Guidance individual	-	-	-	5115.303 AAE Table 15-1	Yes	AAE or AAE's Delegate

15	<p>Source Appointment 15.303(a) Agency Yes Selection of Head Responses 85415 for other service acquisitions with a total planned dollar value of \$500 million or more, or service acquisitions identified by the ASA(ALT) as a special interest. See DoDI 5000.74 and AR 70-13.</p>	<p>KO or No - - - other additional appointed Guidance individual</p>	<p>5115.303 Table 15-1</p>	<p>ASA(ALT) Yes</p>	<p>DASA(P) or SSM</p>
15	<p>Source Appointment 15.303(a) Agency Yes Selection of Head Responses 85415 all other acquisitions for which formal source selection procedures are used.</p>	<p>KO or No - - - other additional appointed Guidance individual</p>	<p>5115.303 Table 15-1</p>	<p>ASA(ALT) Yes</p>	<p>HCA, with authority to delegate to No Lower than SCO</p>

15	Only One Offer Waiver of requirement to resolicit for additional 30 days	Approval of waiver	-	-	-	215.371 HCA & (b)	HCA	Yes	1 level above KO	5115.37 HCA	Yes	1 level above KO
15	Prohibition on Obtaining Certified Cost or Pricing Data	Waiving requirement for submission of certified cost or pricing data	15.403-1 HCA	No	-	DFARS PGI 215.403-4(A)(2)	HCA, SPE	Yes	No limitation	HCA, with SPE coordination prior to HCA approval	No	HCA, with SPE coordination prior to HCA approval
15	Obtaining Certified Cost or Pricing Data	Determination that it is the best interest of the Government to make award to offeror who does not comply with requirement to submit other than certified cost or pricing data	15.403-3 HCA	Yes	No limitation	No additional Guidance	-	-	-	5115.403 HCA	Yes	No lower than SCO

15	Requiring Authorized Certified KO to (2) Cost obtain or certified Pricing cost or Data pricing data for actions below \$2M but exceeding SAT	15.403-4(c)	HCA	No	-	No	-	-	-	-	HCA	No	-
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15	<p>Proposal Determination - - - Analysis that Techniques in the best interest of the Government to make award to offeror who does not comply with requirement to submit other than certified cost or pricing data - When the contractor continues to refuse to provide data to the contracting officer.</p>	<p>DFARS HCA PGI 215.404-1(a) (i)(A) (iv)</p>	Yes	No	<p>5115.404-1(A) (i)(A) (iv)</p>	Yes	<p>No lower than SCO</p>
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15	Proposal Approval Analysis of Profit alternate approaches when weighted guidelines method does not produce reasonable profit objective	-	-	-	215.404-4(c)(2)(C)	HCA	Yes	No limitation	5115.404-4(c)(2)(C)	HCA	Yes	1 level above KO
15	Proposal Waiver - Analysis of use Forward of Pricing Rate Agreements forward pricing agreements when such rates are available.	-	-	-	215.407-4(i)	HBA	Yes	No limitation	5115.407-4(i)	HBA	Yes	1 level above KO
15	Should-Request-Cost Review an overhead should-cost review for a contractor business unit that does not meet the criteria found in DFARS PGI 215.407-4(c)(2)(A).	-	-	-	DFARS PGI 215.407-4(c)(2)(B)	HCA	Yes	No limitation	5115.407-4(c)(2)(B)	HCA	Yes	No lower than SCO

15	<p>Contract Approval Clauses determination and (when Provision contracting with the Canadian Commercial Corporation) that data other than certified cost or pricing data are needed in order to determine that the price is fair and reasonable.</p>	-	-	-	<p>215.408(HCA (i)(A) (2) & 225.870-4(c) (2)(ii)</p>	Yes	<p>2 levels above KO</p>	-	<p>No Lower Than 2 Levels Above KO</p>	No	-
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15	<p>Solicitation Approval Provision and Contract Clauses with the Canadian Commercial Corporation) that it is reasonably certain that data other than certified cost or pricing data will be needed in order to determine that the price of modifications is fair and reasonable.</p>	-	-	-	<p>215.408(HCA (ii)(A) (2) & 225.870-4(c) (2)(ii)</p>	Yes	<p>2 levels above KO</p>	-	<p>No Lower Than 2 Levels Above KO</p>	No	-
16	<p>Selecting Contract Types Waiver authority for determining contract types for FMS contracts</p>	-	-	-	<p>See Class Deviation 2018-00017, Determining Contract Type for FMS Contracts</p>	CoCO No	-	-	CoCO No	No	-

16	Fixed Approval Ceiling-of Price fixed- Contract price with contracts Retroactive Price retroactive Predetermination. Limitation determination	16.206-3(c)	HCA	No	-	No additional Guidance	-	-	-	-	HCA or Higher	No	-
16	Limitation on Cost- Awarding Reimbursement Contract Reimbursement Contracts in excess of \$25M.	16.301-3(a)		-	-	216.301-3(a)	H(2)	Yes	No	5116.301-3(a)	H(2)	Yes	No Lower than SCO
16	Incentive Sharing Contract Proven Incentive Strategies	16.401(g)	Agency Head	Yes	No	No additional Guidance	-	-	-	5116.401(g)	ASA(AI)	Yes	DASA(P), without power to further delegate
16	Award- Approval fee of Contract D&F for all award- fee contracts (except for cost- reimbursement award- fee contracts in excess of \$25 million) justifying use of this type of contract	16.401(d)	HCA	Yes	No	216.401(d)	HCA or Designee	Yes	No	5116.401(d)	(i)	No	-

16	<p>Incentive Approval Contracts of D&F for all incentive contracts (except for cost- reimbursement contracts valued in excess of \$25 million) incentive contracts, justifying use of this type of contract</p>	Yes	No	<p>216.401(d)(B) limitation</p>	Yes	<p>1 Level Above the KO</p>	<p>5116.401(d) Level Above the KO</p>	Yes	-
16	<p>Award- Approval fee of Contract D&F for cost- reimbursement incentive- or award fee contracts valued in excess of \$25 million</p>	Yes	No	<p>216.401(d)(ii) limitation</p>	Yes	<p>No limitation</p>	<p>5116.401(d) limitation</p>	Yes	<p>No lower than SCO</p>

16	Cost- Plus- Award- Fee Contract	Approval of remaining award fee	-	-	-	216.405 HCA	No	-	-	HCA	No	-
		pool less than 40% at time of final evaluation										
16	Single Source Award	No task or delivery order contract in an amount estimated to exceed \$100 million (including all options) may be awarded to a single source unless the head of the agency determination	16.504 (D)(1)	Lead of the Agency	Yes	-	216.504 (D)(1)	Yes	-	5116.504 (D)(1)	Yes	HCA, with authority to delegate to No lower than SCO

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16	Indefinite Delivery Contract Ordering for an exception to fair opportunity over \$15M but not exceeding \$100M	Approval of (2)(ii) justification for an	16.505(b)(3)	HCA	Yes	General/No Flag additional officer, Guidance SES, or grade above GS-15 only	-	-	-	5116.504(b)(2)(ii)(C)(3)	HCA	Yes	SCOs at GO/SES level only; otherwise HCA
16	Indefinite Delivery Contract Ordering for an exception to fair opportunity exceeding \$100M	Approval of (2)(ii) justification for an	16.505(b)(4)	SPE	No	-	-	-	-	-	SPE	No	-
16	Indefinite Delivery Contract Ombudsman task and delivery order ombudsman for the contracting activity.	HCA shall designate	16.505(b)(8)	HCA	Yes	No limitation	-	-	-	5116.505(b)(8)	HCA (A)(1)	Yes	HCA, with authority to delegate to No lower than SCO
16	Time- and- Material Contract Limitations of T&M when base period + options exceeds 3 years	Approval of (1)(ii) D&Fs for	16.601(d)(2)	HCA	Yes	No limitation (1)(A) (2)	216.601(d)(1)(A)	HCA	No	-	HCA	No	-

16	Determination of Price Reasonableness for Letter contract under dispute	Approval of FAR 16.603-2(c) Contracting Officer's Price reasonableness for Letter contract under dispute	HCA	No	-	No additional Guidance	-	-	-	-	HCA	No	-
16	Letter Contract Application	Approval of FAR 16.603-2(c) CO's determination of reasonable price to definitize UCA under certain circumstances.	HCA	Yes	No limitation	No additional Guidance	-	-	-	5116.603(3)	HCA	Yes	No lower than SCO
16	Letter Contract Limitation	Authorization of letter contract	HCA	Yes	No limitation	216.603-HCA	Yes	No limitation		5116.603(3)	HCA	Yes	No lower than SCO
17	Multi-Year Contracting	Authorization of modifications of the requirements	Agency Head	Yes	No Limitation	No additional Guidance	-	-	-	5117.104(5)	HCA	Yes	HCA, with authority to delegable to No Lower than SCO
17	Multi-Year Contracting Supplies	Authorization of multi-year contract for supplies	Agency Head	Yes	No limitation	No additional Guidance	-	-	-	5117.105(5)	HCA	Yes	HCA, with authority to delegate to No lower than SCO

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17	Multi-Year Contracting	Authorizing recurring costs in cancellation ceiling	48.106-30	Agency Head	Yes	No Limitation	No additional Guidance	-	-	-	5117.106-4	(S)(A) Yes	HCA, without power to further delegate
17	Multi-Year Contracting	the use of a solicitation requesting only multi-year prices, provided that dual proposals are not necessary to meet the objectives in FAR 17.105-2.	48.106-30	FOIA	Yes	No limitation	No additional Guidance	-	-	-	5117.106-4	(S)(A) Yes	No lower than SCO
17	Multi-Year Contracting	Approval of variable unit prices on multi-year contracts provided that, for competitive proposals, there is a valid method of evaluation.	48.106-30	FOIA	Yes	No limitation	No additional Guidance	-	-	-	5117.106-4	(S)(A) Yes	No lower than SCO

17	Multi-Year Contracting to Congress to Award a Multi-Year Contract which includes a cancellation ceiling in excess of \$150M	Written Notification of Agency Head of Agency	17.108(b)	Yes	No	No	-	-	-	5117.108(b)	(5)(A)(i)	Yes	DASA(P), without power to further delegate
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17	<p>Multi-Year Contracting Services for a period of not more than 5 years for certain types of services, even though funds are limited by statute to obligation only during the fiscal year for which they were appropriated; the Head of Agency must follow certain principals and before entering into a multiyear contract for services; and the head of the agency must make a written</p>	-	-	No limitation (c)	217.171 (a) Head Agency	Yes	No limitation (c)	5117.171 (a) (1) (c)	ASA (ADTs)	HCA, without power to further delegate
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17	<p>Multiyear Contracts for equal Suppliers greater than \$750 million, determination that the conditions required by paragraphs (h) (2)(i) through (vii) of this section will be met by such contract, in accordance with the Secretary's certification and determination required by paragraph (h)(2) of this section</p>	-	-	-	-	217.172(h)CA (2)	Yes	No limitation(2)	5117.172(h)CA (2)	Yes	No lower than SCO
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17	Multiyear Contracts for enter Electricity from contract Renewable Energy period Sources not more than 10 years for electricity from renewable sources	Authorization	-	-	-	217.174(a)	HCA	Yes	No limitation	5117.174(b)	HCA	Yes	No lower than CoCO
17	Multiyear Contracts for enter Electricity from contract Renewable Energy electricity Sources from renewable sources for more than 5 years based on business case analysis	Authorization	-	-	-	217.174(b)	HCA	Yes	No limitation	5117.174(b)	HCA	Yes	No lower than CoCO
17	Contracts for use of contract terms in excess of the limitations specified in FAR 17.204(e).	Approval	17.204(e)	-	-	217.204(e)		-	-	5117.204(c)	HCA	Yes	HCA, with authority to delegate to No Lower than SCO

17	Contracts Approval (Options) of ordering periods in excess of 10 years for task/delivery order contracts	17.204(e)	-	-	217.204(A)(i)(C)	Agency Head	Yes	No limitation	5117.204(A)(i)(C)	SA (AL) Yes	HCA, without power to further delegate	
17	Contracts Approval (Options) for task / delivery order performance more than 1 year beyond 10-year base contract limit in 217.204(e)(i)(C)	17.204(e)	-	-	217.204(A)(iii)	SA	Yes	No limitation	5117.204(A)(iii)	SA Yes	HCA, without power to further delegate	
17	Interagency Acquisitions – The Economy Act order to obtain supplies or services by interagency acquisitions when servicing agency covered by the FAR	Approval (2) D&F Economy Act	17.502-2(c)	KO of Requesting Agency or Another Official Designated by Agency Head	Yes	-	-	-	5117.502-2(c)	KO of Requesting Agency	No Requesting Agency	KO of Requesting Agency

17	<p>Interagency Approval Acquisitions (2) – The D&F Economy Act Economy Act order to obtain supplies or services by interagency acquisitions when servicing agency is not covered by the FAR</p>	17.502-2(SPE)	No	-	-	-	-	-	-	SPE	No	-
17	<p>Interagency Waiver Acquisitions termination for acquisitions of supplies and services by nondefense agencies on behalf of DoD</p>	17.703(d)(SD(A&S))	No	<p>See DPC Memo Subject: Re- delegation of Authority Under Section 801 FY18 NDAA "Internal Controls for Procurements on Behalf of DoD by Certain Non- Defense Agencies", dated 17 June 2019.</p>	SPE	Yes	No	Lower than HCA	5117.703(SPE)	Yes	DASA(P) or SSM, without power to further delegate	

17	<p>Interagency Acquisition Acquisition by DoD Nondefense Agency on to behalf public of announcement DoD of the requirement for acquisitions valued at or above the simplified acquisition threshold, but less than \$50 million</p>	-	-	-	217.770	<p>In Yes accordance with Department and Agency Procedures</p>	<p>No limitation(i)</p>	5117.770(12)	Yes	<p>No lower than 2 levels below SCO</p>
17	<p>Interagency Acquisition Acquisition by DoD Nondefense Agency on to behalf public of announcement DoD of the requirement for acquisitions valued at or above \$50 million but less than \$250 million</p>	-	-	-	217.770	<p>In Yes accordance with Department and Agency Procedures</p>	<p>No limitation(ii)</p>	5117.770(12)	Yes	<p>No lower than 1 level below SCO</p>

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17	Interagency Acquisition Acquisitions by DoD Nondefense Agencies on to behalf public of announcement DoD of the requirement for acquisitions valued at or above \$250 million	-	-	-	217.770	In Yes accordance with Department and Agency Procedures	No limitation (iii)	5117.770 (1)(ii)	HCA Yes	5117.770 (1)(ii)	HCA Yes	No lower than SCO
17	Undefined Contract Actions enter (UCA) into a Limitation for foreign military sales contracts	-	-	-	217.740 (1)(ii)	HCA Yes	No Limitation (ii)	5117.740 (1)(ii)	HCA Yes	5117.740 (1)(ii)	HCA Yes	No lower than CoCO if \$50m or less; SCO if greater than \$50m
17	Undefined Contract Actions unilaterally (UCA) definitizing Limitation with a value greater than \$50M	-	-	-	217.740 (2)	HCA No	-	-	HCA No	-	HCA No	-

17	<p>Approval of Contract Actions (UCA) Authorization (UCA).</p>	-	-	-	217.7404(1)	HCA	Yes	No limitation	5117.7404(1)	HCA	Yes	No lower than CoCO if \$50m or less; SCO if greater than \$50m
17	<p>Approval of Contract Actions determination (UCA) to Definitization Schedule schedule beyond an additional 90 days</p>	-	-	-	217.7404(1)	HCA	No	-	-	HCA	No	-

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17	<p>Undefined Contract Actions (UCA) in Limitations on Obligations and 217.7404-4 for UCAs if determined that the waiver is necessary to support a contingency operation; or a humanitarian or peacekeeping operation.</p>	-	-	-	-	217.7404-5	Agency Head	Yes	No limitation	5117.7404-5	AS (A) (1)	Yes	HCA, without power to further delegate
17	<p>Undefined Contract Profit Allowance when UCA is definitized after substantial portion of performance is completed</p>	-	-	-	-	217.7404-4	HCA	Yes	No limitation	5117.7404-4	HCA	Yes	No lower than CoCO
17	<p>Acquisition of Parts When Data is not available</p>	-	-	-	-	DFARS PGI 217.7504(ii)	HCA	Yes	No limitation(ii)	5117.7504-4	HCA	Yes	No lower than SCO

17	Limitation on Price Increases	217.7505(a)	HCA	Yes	No	5117.7505(b)	HCA	Yes	No	lower than 1 level above KO
	on certification of certain requirements to HCA before award of contract for a part, the price of which exceeds the limit in 217.7505(a)									
18	Protest to GAO	Override of CICA Stay due to a Protest	8.125 HCA (See 33.104(b) and (c))	No	-	No additional Guidance	-	-	-	HCA No -
18	Availability of Acquisition Flexibility	218.170(A)	Agency Head	Yes	No	5118.170(B)	Agency Head	Yes	No	5118.170(C) (AIR) Retain -
	Technical Data									

18	<p>Emergency Acquisition Contingency Operations support of contingency ops or defense against / recovery from nuclear, biological, chemical, radiological attack, cyber attack, international disaster assistance, and response to an emergency or major disaster.</p>	<p>8.201 Head of Agency</p>	Yes	No Limitation	218.201	<p>HCA (per 218.270, Head of Agency is replaced with HCA for FAR Part 18.2)</p>	Yes	No limitation	5,118.20	HCA	Yes	No lower than SCO
18	<p>Emergency Acquisition Contingency Operations if necessary to support a contingency operation or humanitarian or peacekeeping operation</p>	-	-	-	218.201 (9) & 217.7404	<p>Head of Agency</p>	Yes	No limitation	5118.201 (9)	HCA (ALY)	Yes	HCA, without power to further delegate

18	Emergency Acquisitions Head of contracting activity is determined based with "head of the contracting activity," as defined in FAR 2.101.	18.2	-	-	-	218.270(d)(4)	(HCA)	Yes	No limitation	5118.270(d)(4)	(HCA)	No	HCA	
19	Encourage small business participation in acquisitions	Determination that a consolidated requirement cannot be placed under one of the preference programs prior to release of the solicitation	-	-	-	-	-	-	-	5119.201	(HCA)	Yes	No lower than SCO	
19	Partial Set-Asides	Authorization (5) set-aside when only 2 concerns (1 large, 1 small) are expected to respond with offers	19.502-3	(HCA)	Yes	No limitation	No additional Guidance	-	-	-	5119.502-3	(HCA)	Yes	No lower than CoCO

19	Rejecting a Small Business Administration recommendation to an appeal of KO's rejection of SBA procurement center recommendation	Issuing 19.502-8(b)(1)(A)	Yes	No	No	219.502-8(b)	No	5119.502-8(b)	Yes	No lower than the Chief of Contracting Office	No lower than CoCO
19	Contracting with the Small Business Administration (The 8(a) Program)	Confirm or withdraw the request for waiver of the termination requirement	Agency Head	Yes	No	No	-	-	-	5119.812-8(A)(1)(E)	HCA without the power to further delegate
19	Contracting with the Small Business Administration (The 8(a) Program)	Suspension from the 8(a) Program	Head of Contracting Agency	Yes	No	No	-	-	-	5119.816-8(A)(1)(E)	HCA, without power to further delegate

19	HUBZone Determining Set-Aside Procedures	19.1305(d)(2)	(d)(2)	Yes	No limitation	No additional Guidance	-	-	-	5119.1305(d)(2)	(d)(2)	Yes	No lower than SCO
19	Service-Disabled Veteran Owned in Business Set-Aside Procedures	19.1405(d)(1)	(d)(1)	Yes	No limitation	No additional Guidance	0	-	-	5119.1405(d)(1)	(d)(1)	Yes	No lower than SCO

22	<p>Labor Designation of Relations of programs or requirements for which contractors are required to notify Gov't of actual or potential labor disputes that delay or threaten to delay timely contract performance</p>	22.101-1(c)	Yes	No limitation	DFARS Labor PGI Advisor 22.101-1	Yes	No limitation	5122.10	HCA	Yes	No lower than CoCO
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22	<p>Reporting Submit Labor a Disputesreport of findings and recommendations to the labor advisor regarding the impact of potential or actual labor disputes that involve a product, project (including construction), or service that must be obtained in order to meet schedules for urgently needed military programs or requirements.</p>	22.101-3	<p>ContractYes Administration Office</p>	<p>No limitation</p>	22.101-3	<p>HCFA(b) Yes</p>	<p>No limitation</p>	5122.101-3	<p>HCFA(b) Yes</p>	<p>No lower than SCO</p>
22	<p>Overtime Authority Approvals approve overtime</p>	22.103-4	<p>Agency Yes Approving Official</p>	<p>No limitation</p>	22.103-4	<p>Department Yes Approving Official</p>	<p>No limitation</p>	5122.103-4	<p>Sec(a) Yes AFARS</p>	<p>Various</p>

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22	Liquidated Damages and Overtime Pay	Determination 22.302(c)	Agency Head	Yes	-	No additional Guidance	-	-	-	5122.302(A)	SA (A) Yes	Chief of Engineers, Labor Advisor for other than USACE
22	Construction Wage Requirements Statute Wage Determinations	Extension request to modify wage determination	22.404-6(A)	Agency Head	Yes	No Limitation	No additional Guidance	-	-	5122.404-6(A)	(A) Yes	HCA, with authority to delegate to no lower than CoCO
22	Labor Standards for Contracting Officer's Involvement Construction	Processing of Contracting Officer's Report	22.406-8(A)	Agency Head	Yes	No Limitation	No additional Guidance	-	-	5122.406-8(A)	(A) Yes	DA, Labor Advisor
22	Contract Materials, Supplies, Articles, or Equipment Exceeding \$15,000	Exemption of specific contracts from the inclusion or application of one or more of the Small Business Act stipulations	22.604-2(A)	Agency Head	Yes	No Limitation	No additional Guidance	-	-	-	Director, OSBP	No
22	Equal Employment Opportunity Procedures	Approval without preaward clearance	22.805(a)	HCA	Yes	No limitation	No additional Guidance	-	-	5122.805(a)	HCA Yes	No lower than CoCO

22	Equal Employment Opportunity Exemptions	22.807(a)(1)	Agency Head	Yes	No Limitation	No additional Guidance	-	-	-	5122.807(a)(1)	ASA(ALT)	Yes	DASA(P), without power to further delegate	
22	Non-displacement of Qualified Workers Under Service Contracts	Waive or all of the provisions in FAR subpart 22.12	22.1203	SPE	No	-	No additional Guidance	-	-	-	SPE	No	-	
22	Equal Employment Opportunity for Veterans	Waiver of Requirements when determined that the contract is essential to the national security	22.1305	Head of Agency	Yes	No Limitation	No additional Guidance	-	-	-	5122.1305	ASA(ALT)	Yes	DASA(P), without power to further delegate
22	Employment of Workers with Disabilities	Waiver of Requirements when determined that the contract is essential to the national security	22.1403	Head of Agency	Yes	No Limitation	No additional Guidance	-	-	-	5122.1403	ASA(ALT)	Yes	DASA(P), without power to further delegate

22	<p>Procedures for imposing remedies of the end contractor products on the list of products requiring contractor certification as to forced or indentured child labor.</p>	22.1503(f)	Head of Agency	Yes	No Limitation	No additional Guidance	-	-	-	5122.1503(a)	ASA (ALYs)	HCA, with authority to delegate to No Lower than SCO
22	<p>Notification of Employees Rights Under the National Labor Relations Act</p>	22.1604(g)	Agency Head	Yes	No Limitation	No additional Guidance	-	-	-	5122.1604(a)	ASA (ALYs)	HCA, without power to further delegate

22	Combating Trafficking in the Persons requirement to provide return transportation or pay for the cost of return transportation	Exemption from (7)	22.1703(A)	Agency Head	Yes	No Limitation	No additional Guidance	-	-	-	5122.1703(A) (7)	ASA (AL)	Yes	HCA, with authority to delegate to No Lower than SCO
22	Combating Trafficking Persons - General Violations and Remedies	Receipt in agency Inspector - General Violations and Remedies	22.1704(D)	Head of Executive Agency	Yes	No Limitation	No additional Guidance	-	-	-	5122.1704(D) (A)	ASA (AL)	Yes	HCA, with authority to delegate to No Lower than SCO
22	Employment Eligibility Verification Policy requirement for a contract, subcontract, or class of contracts or subcontracts	Waive Verify requirement for a contract, subcontract, or class of contracts or subcontracts	22.1802(D)	HCA	No	-	No additional Guidance	-	-	-	-	HCA	No	-
23	Sustainable Acquisition Policy - Exceptions	Determination Application - Exceptions	23.104(A)	Agency Head	Yes	No Limitation	No additional Guidance	-	-	-	5123.104(A) (A)	ASA (AL)	Yes	HCA, with authority to delegate to No Lower than SCO
23	Sustainable Acquisition Policy - Exemptions Authority products	Exemption Authority to purchase sustainable products	23.105	Head of Agency	Yes	No Limitation	No additional Guidance	-	-	-	5123.105(A) (A)	ASA (AL)	Yes	Retain -

23	<p>Energy Determinations not to procure ENERGY STAR Energy or Procurement Exemptions product if no ENERGY STAR or FEMP-designated product is reasonably available or no ENERGY STAR or FEMP-designated product is cost effective</p>	23.204 Agency Head Yes	No	No	-	-	-	5123.204	ASA(A) Yes	HCA, with authority to delegate to No lower than the CoCO
23	<p>Safety precautions for ammunition and explosives Procedures for ammunition and explosives.</p>	-	-	-	DFARS HCA PGI 223.370-4(1) (i)	Yes	No	5123.370-4(i)	HCA Yes	No lower than SCO

23	Drug-Free Workplace Act	Determination to suspend contract payments, terminate a contract for default, debar or suspend	23.506(e)	Agency Head	No	No additional Guidance	-	-	-	-	ASA(AIN)	-	
23	Contract Compliance with Environmental Management Systems	Contract with the Environmental Management Systems With Environmental Management Systems clause for facilities located outside the U.S.	Determination	23.903	Agency Head	Yes	No Limitation	No additional Guidance	-	-	5123.903	ASA(AIN)	HCA, with authority to delegate to No Lower than SCO
25	Buy America Exceptions	Approval of Supplies for public interest exception to Buy American statute at various thresholds	25.103(a)	Agency Head	Yes	No limitation	225.103(A) a Level Above KO	Yes	No limitation	5125.103(a)	No Lower than 1 Level Above KO	No	-

25	Buy Approval of Supplies Exception for public interest exception to Buy American statute at various thresholds	25.103(a)	Agency Head	Yes	No limitation (ii)(B) (2)	225.103(a)(1)(A)	Agency Head	Yes	No limitation (ii)(B) (2)	5125.103(a)(1)(A)	Agency Head	Yes	No lower than SCO
25	Buy Approval of Supplies Exception for public interest exception to Buy American statute at various thresholds	25.103(a)	Agency Head	Yes	No limitation (ii)(B) (3)	225.103(a)(1)(B)	Agency Head	Yes	No limitation (ii)(B) (3)	5125.103(a)(1)(B)	Agency Head	Yes	HCA, without power to further delegate
25	Buy Approval of Supplies Exception for nonavailability exception to Buy American statute for acquisitions valued at or below SAT	25.103(b)(2)(i)	HCA	Yes	No limitation (ii)(A)	225.103(b)(1)(a)	Level Above KO	Yes	No limitation (ii)(A)	5125.103(b)(1)(a)	Level Above KO	No	-

25	Buy Approval of Supplies Exception for nonavailability exception to Buy American statute for acquisitions valued between the SAT and less than \$1.5M	25.103(H)(2)(i)	HCA	Yes	No limitation(ii)(B)	225.103(B)(ii)(B)	CO	Yes	No limitation(ii)(B)	5125.103(b)(ii)(B)	CO	No	-
25	Buy Approval of Supplies Exception for nonavailability exception to Buy American statute for acquisitions valued at \$1.5M or more	25.103(H)(2)(i)	HCA	Yes	No limitation(ii)(C)	225.103(H)(ii)(C) or Immediate Deputy	CO	Yes	No limitation(ii)(C)	5125.103(b)(ii)(C)	HCA	Yes	No lower than SCO
25	Buy Approval of Supplies Exception for nonavailability exception to Buy American statute for acquisitions valued at \$1.5M or more	25.105(a)(1)	HCA	Yes	No Limitation	No additional Guidance	-	-	-	5125.105(a)(1)	SA(AD)	Yes	DASA(P) and for the U.S. Army Corps of Engineers, the HCA USACE, without power to further delegate

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25	Buy Authority - determine Construction Material of a particular domestic construction material is impracticable	25.202(a)(1)	Agency Head	Yes	No limitation	No additional Guidance	-	-	-	5125.202(1)	(S)(A)(I)(F)	Yes	DASA and for the U.S. Army Corps of Engineers, the HCA USACE, without power to further delegate
25	Buy Authority - determine Construction Material of a particular domestic construction material is inconsistent with public interest	25.202(a)(1)	Agency Head	Yes	No limitation	No additional Guidance	-	-	-	5125.202(1)	(S)(A)(I)(F)	Retain	-
25	Buy Authority - determine Construction Material that is not mined, produced, or manufactured in the US in sufficient and reasonably available quantities of a satisfactory quality	25.202(a)(2)	HCA	Yes	No limitation	225.202(A) a Level (see Above 225.103(ii)(A))	Yes	No	No	5125.202(2)	(S)	No	-

25	Buy American Construction Materials	Determining that construction material is not mined, produced, or manufactured in the US in sufficient and reasonably available quantities of a satisfactory quality	25.202(a)	HCA	Yes	No limitation (see 225.103(b)(ii)(B))	225.202(a) CO Yes	No limitation (2)	5125.202(a) CO No	Yes	No without further delegation	-
25	Buy American Construction Materials	Determining that construction material is not mined, produced, or manufactured in the US in sufficient and reasonably available quantities of a satisfactory quality	25.202(a)	HCA	Yes	No limitation (see 225.103(b)(ii)(C))	225.202(a) CO Yes or Immediate Deputy	No limitation (2)	5125.202(a) CO Yes	Yes	No lower than SCO	

25	Buy American - Construction Materials offered price of the cost of any foreign construction material proposed for exception from the requirements of the Buy American Act based on unreasonable cost of domestic materials	5125.204(H)	Head of Agency	Yes	No	No	-	-	-	5125.204(H)(5)(A)(I)(ii)	Yes	DASA and for the U.S. Army Corps of Engineers, the HCA USACE, without power to further delegate
25	World Trade Organization Procurement Agreement and Free Trade Agreement purchasing activity in support of US forces stationed abroad	225.403(ii)(A)	(H)(CA)	Yes	No	limitation(ii)(A)	5125.403(H)(CA)	Yes	No lower than SCO			

25	<p>American Recovery and Reinvestment Act-- Buy American Statute- Construction materials</p> <p>Determination for (1)(i)</p> <p>25.603(a)</p> <p>HCA</p> <p>Yes</p> <p>No limitation</p> <p>No additional Guidance</p> <p>-</p> <p>-</p> <p>-</p> <p>5125.603(1)(i)</p> <p>HCA</p> <p>Yes</p> <p>No lower than SCO</p>
25	<p>American Recovery and Reinvestment Act-- Buy American Statute- Construction materials</p> <p>Determination for (1)(iii)</p> <p>25.603(a)</p> <p>Agency Head</p> <p>Yes</p> <p>No limitation</p> <p>No additional Guidance</p> <p>-</p> <p>-</p> <p>-</p> <p>5125.603(1)(iii)</p> <p>NSA (AD) Yes</p> <p>HCA, with authority to delegate to No lower than SCO</p>

25	American Recovery and Reinvestment Act-- Buy American Statute- to a Construction materials	Determine that application of the Buy American statute to a particular unmanufactured construction material would be impracticable	25.603(a)(2)	Agency Head	Yes	No	No	-	-	-	5125.603(2)	ASA(AI)Yes	HCA, with authority to delegate to No lower than SCO
25	End Use Certificates	Authority to sign EUCs for non-PEO managed items.	-	-	-	225.802-DoDI 2040.03	DoD Component Heads	Yes	No	Lower than GO/SES	5125.802-2	ASA(AI)Yes	DASA(P), without power to further delegate
25	End Use Certificates	Authority to sign EUCs for PEO managed items.	-	-	-	225.802-DoDI 2040.03	DoD Component Heads	Yes	No	Lower than GO/SES	ASA(AI)Yes	ASA(AI)Yes	PEOs/ DPEOs

25	<p>Contract Determination - - - with that Canadian data Contract other Contracting Procedure certified cost/ pricing data from Canadian Commercial Corporation are needed in order to determine that price is fair and reasonable in circumstances other than those in 225.870-4(c) (2)(i)</p>	225.870-4(c) (2)(ii)	Yes	No lower than 2 levels above KO	5125.870-4(c) (2)(ii) Lower Than 2 Levels Above KO	No	-
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25	<p>Contract Determination with that Canadian Contractor's Contracting Procedure interest of the Government to make award to offeror who does not comply with requirement to submit other than certified cost or pricing data</p>	-	-	-	225.8704-5	(5)	ICA	Yes	No	5125.8704-5	(A)	Yes	No	Lower than 2 levels above KO
25	<p>Foreign Waiver Acquisition Right to Examine Records</p>	25.1001-	(2)(iii)	Lead Agency	Yes	No	No	-	-	-	5125.1001-	(A)	Retain	-

25	<p>Authorization - - -</p> <p>Acts, that</p> <p>Appropriation</p> <p>Acts, grown,</p> <p>and reprocessed,</p> <p>Other reused,</p> <p>Statutory</p> <p>Restrictions</p> <p>on in the</p> <p>Foreign United</p> <p>Acquisition States</p> <p>cannot</p> <p>be</p> <p>acquired</p> <p>as and</p> <p>when</p> <p>needed</p> <p>in a</p> <p>satisfactory</p> <p>quality</p> <p>and</p> <p>sufficient</p> <p>quantity</p> <p>at U.S.</p> <p>market</p> <p>prices</p>	<p>225.7002 Secretary</p> <p>No</p> <p>of the</p> <p>Army</p>	<p>5125.7002 Secretary</p> <p>No</p> <p>(1)(ii) of the</p> <p>(1) Army</p>
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25	<p>Restriction on Acquisition of Specialty Metals--or Exceptions in the United States cannot be acquired as and when needed at a fair and reasonable price in a satisfactory quality, a sufficient quantity, and the required form (i.e., a domestic nonavailability determination that apply to only 1 contract).</p>	-	-	-	<p>225.7003 Secretary (5)(i) of the Military Department</p>	-	<p>5225.7003 Secretary (5)(i) of the Army</p>	-
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25	<p>Restrictions on that Acquisitions of Specialty Metals--or Exceptions in the United States cannot be acquired as and when needed at a fair and reasonable price in a satisfactory quality, a sufficient quantity, and the required form (i.e., a domestic nonavailability determination for more than 1 contract).</p>	-	-	-	225.7001-5(D)(AT&L)(5)(ii)	US(D)(AT&L) -	5225.7003-5(i)(1)	US(D)(AT&L) -		
25	<p>Waiver of Restrictions of 10 U.S.C. 2534</p> <p>Waiver of restrictions on certain foreign purchases on a case-by-case basis</p>	-	-	-	225.7008(2)	16(A) Yes	No limitation	5125.7008(2)	16(A) Yes	No lower than SCO

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25	Authorization on Appropriation Acts, for and supercomputer Other Statutory Restrictions on Foreign Acquisition.	Waiver	-	-	-	-	225.70182CDEF	Yes	No limitation	5125.7082CDEF	No	-
25	Restriction on to Acquisition of individual Certain nonavailability Magnets and Tungsten	Determination	-	-	-	-	225.70181C(A)(1)	Yes	No limitation	HCA	Retain	-
25	Requirement to Use of Firm-Fixed-Price Contracts for FMS.	Waiver	-	-	-	-	225.73084(b)	Yes	No Limitation	5125.7304C(b)	Retain	-
25	Enhance Authority to Acquire Products or Services from Afghanistan	Determination	-	-	-	-	225.77011C(A)(2)(i)	Yes	No limitation	5125.77011C(A)(2)(i)	Yes	No lower than SCO

25	<p>Enhanced Determination - - - Authority to use to enhanced Acquire authority Products for or individual Services acquisition from of Afghanistan products Determination Requirements with a value of \$100M or more from Afghanistan</p>	<p>225.7703-2(b) No - - (2)(ii)</p>	<p>AAE No -</p>
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25	<p>Prohibition Authority on to Providing terminate Funds or to the void Enemy contracts and and to Authorization of future Additional awards Access directly to or Records indirectly to any person that is actively opposing United States or coalition forces involved in a contingency operation in which members of the armed forces are actively engaged in hostilities.</p>	-	-	-	<p>225.779 HCA No (Class Deviation 2015- O0016)</p>	HCA No	-	-	HCA No	-
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25	<p>Enhanced Determination - - - authority to use to enhanced acquire authority products for or individual services acquisition of of Djibouti products in or support services of with a DoD value operations in \$93M Djibouti or more, or a class of acquisitions, from Djibouti</p>	<p>225.779810(A) No - - (1)(ii) (Class Deviation 2016- O0005)</p>	<p>HCA No -</p>
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25	<p>Authority Determination - - - to to use acquire authority products for and individual services acquisition (including construction from or Afghanistan or (including from construction) countries with a along value a of major \$93M route or of more, supply or a to class Afghanistan, Determinations, Requirements Afghanistan or a country along a major route of supply to Afghanistan</p>	<p>225.779912(A) (1)(ii) (Class Deviation 2016- O0004)</p>	<p>225.779912(A) No - -</p>	<p>HCA No -</p>	
27	<p>Patent Obtain 27.201-2 Agency Yes and approval Head Copyright Infringement Liability specific - US Contract patents Clauses from the patent indemnity clause</p>	<p>No No - Limitation Additional Guidance</p>	<p>- - -</p>	<p>5127.20 AS(A) ALI</p>	<p>Commander, U.S. Army Legal Services Agency; Exception: the Commander for AMC and designees that have patent counsel</p>

27	Patent Grant Rights a Under Government Contracts - Contractin Clauses subject inventions pursuant to a specified treaty or agreement	27.303(b)(3) Agency Head Yes	No	227.303(a)(ii)(B) Agency Head Yes	No	5127.303(b)(3)	(A)(I)	Retain -
27	Patent Rights Under Government Contracts - Contractin Clauses to retain title to any subject invention will better promote the policy and objectives of USC 35, chapter 18.	27.303(e)(1)(ii) Agency Head Yes	No	No - Additional Guidance	-	5127.303(a)(1)(ii)	(A)(I)	HCA, without power to further delegate

27	Patent Rights Under Government Contracts - national Contract Clauses to sublicense foreign governments or international organizations pursuant to any existing or further agreement or treaty.	Determine if it would be in the national interests to sublicense foreign governments or international organizations pursuant to any existing or further agreement or treaty.	27.303(e)(4)(ii)	Agency Head	Yes	No	No	-	-	-	5127.303(4)(ii)	ASA(AIR)	Retain	-
27	Licensing Background Patent Rights to Third Parties	Allowing Government to License Third Parties of inventions when contracting with a small business firm or nonprofit organization	27.306(a)	Agency Head	No	-	No	-	-	-	-	ASA(AIN)	Retain	-

27	<p>Government notification right that to the review, person verify, asserting challenge the and restriction validate that asserted urgent restrictions.</p> <p>compelling circumstances do not permit the Government to continue to respect the asserted restriction.</p>	<p>- - -</p> <p>227.7103 Agency No (6)(iii) Head (See DFARS 252.227-7037(g) (2))</p>	<p>-</p> <p>5127.7103A(1)(i) (6)(iii)</p>	<p>-</p>
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27	<p>Conformity Authorization - - - Acceptance and withhold Warrant payments of (or Technical exercise Data such other remedies an agency head considers appropriate) during any period if the contractor does not meet the requirements of the contract pertaining to the delivery of technical data.</p>	<p>227.7103-14(a) (2) Agency Head</p>	<p>Yes No limitation(2)</p>	<p>5127.7103-14(a)(1)(i)</p>	<p>No Lower Than the KO</p>
27	<p>Government Notification - - - right that to that review, urgent verify, or challenge compelling and circumstances validate do not asserted permit restrictions. Government to continue to respect the asserted restriction</p>	<p>227.7203-13(c) (1) Agency Head (See DFARS 252.227-7019(g) (3))</p>	<p>No -</p>	<p>5127.7203-13(c)(1)</p>	<p>-</p>

28	Bid Guarantees	Classifiers may be authorized for bid guarantees	28.101-1(A)	Agency Head	Yes	No limitation	No additional Guidance	-	-	-	5128.101-1(A)	Yes	HCA, with authority to delegate to No lower than SCO
28	Other Types of Bonds	Approval to use other types of bonds in connection with acquiring particular supplies or services	28.105-2(A)	HCA	Yes	No limitation	228.105-	-	-	-	5128.105-2(A)	Yes	No lower than CoCO
28	Substitution of Surety Bonds	Approval of new surety bond covering all or some obligations on a bond previously approved	28.106-2(A)	HCA	Yes	No limitation	No additional Guidance	-	-	-	5128.106-2(A)	Yes	No lower than CoCO
28	Furnishing of information on Surety Bonds	Copies of payment bonds, provided for contracts, shall be furnished to any person who makes a request	28.106-6(A)	Agency Head	Yes	No limitation	No additional Guidance	-	-	-	5128.106-6(A)	Yes	HCA, with authority to delegate to No lower than SCO

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28	Exclusion of Individual Sureties acting as a surety on bonds	Excluding individual from	28.203-5	Agency Head	Yes	No limitation	No additional Guidance	-	-	-	5128.203-5	AS(A) (AE) (ES)	Suspension and Debarment Official, without power to further delegate
28	Overseas Workers Compensation and Hazard Insurance	Waiver of applicability of the Defense Base Act to any contract, subcontract, work location or classification of employees	28.305(d)	Agency Head	Yes	No Limitation	No additional Guidance	-	-	-	5128.305(d)	AS(A) (AE) (ES)	DASA(P), without power to further delegate
28	Solicitation Provisions and Contract Clauses on Liability Insurance Under Cost-Reimbursement Contracts	Waiver of requirement to use clause at FAR 52.228-7	28.311-1	-	-	-	228.311 HICA	Yes	No limitation	-	5128.311 HICA	Yes	No lower than CoCO
28	Insurance Additional Clauses allow contractor to buy insurance for war-hazard losses	Decision not to allow	-	-	-	-	228.370(a)(2) HICA	Yes	No limitation	-	5128.370(a)(2) HICA	Yes	No lower than SCO

29	Federal Process - Excise Taxes to the Bureau of Alcohol, tobacco, and Firearms for permits to procure alcohol free of tax pursuant to guidance at Title 27 Code of Federal Regulations, Section 22.172 Application and permit	-	-	-	-	-	-	-	5129.2015(A)(1)(c)	HCA, with authority to delegate to No lower than SCO
29	Application of State and Local Taxes to Government Contractors and Subcontractors Designation of Prime and Subcontractors as agents of the Government	303(a)	Agency Head	Yes	No Limitation	No additional Guidance	-	-	5129.303(A)(1)(c)	DASA(P), without power to further delegate
30	Waiver of CAS A waiver to CAS for a particular contract or subcontract	30.201-5(a)	Agency head	Yes	not below the senior contract policymaking level	230.201-5(c)	Agency head	Yes	5130.2015(A)(1)(c)	DASA(P), without power to further delegate

30	CAS Program of a Requirements - Disclosure Requirements without obtaining submission of the required disclosure statement	201002-6(A)	Agency No Head	-	No	-	-	-	5130.202-6(A)(1)	-	-	-
31	Interest Waive and Other Financial Costs of FAR part 31 for Government contracts awarded in conjunction with conveyance of a utility system under 10 U.S.C 2688	31	-	-	-	231.100 HICA (Class Deviation 2011-O0006)	Yes	No limitation	-	HCA	Retain	No delegation for deviation
31	Individual Deviations of Cost Principles and procedures.	31.101	Agency head	Yes	No limitation	201.402 DPC	No	-	-	DPC	No	-

31	<p>Compensation for Personal Services - Severance Pay</p> <p>Permission to waive all limitations</p> <p>31.205-6(f) of Agency</p>	Head	Yes	No	No	-	-	-	5131.205-6	AS(6)ALDs	<p>HCA, with authority to delegate to No Lower than SCO</p>
31	<p>Compensation for Personal Services</p> <p>Establish one or more narrowly targeted exceptions for employee compensation limits for scientists, engineers, or other specialists upon a determination that such exceptions are needed to ensure that the executive agency has continued access to needed skills and capabilities.</p> <p>31.205-6(g)(iii) of Agency head</p>	Agency head	Yes	No	No	-	-	-	5131.205-6(4)(iii)	AS(4)(iii)ALDs	<p>HCA, with authority to delegate to No lower than the SCO</p>

32	Contract Reduction and Suspensions of Contactor Payments upon finding Fraud	32.006-1(a)	Agency Head	Yes	Not below the Level IV of Executive Schedule [10 U.S.C. 2307(i)(9)]	No additional Guidance	-	-	-	5132.006-1(a)	ASA(A)IES	HCA if they meet the criteria of Level IV SES, without power to further delegate
32	Contract Payments shorter payment periods based on contracting pricing or administrative considerations. Cannot be period shorter than 7 days or longer than 30 days.	32.007(3)(4)	Agency head	Yes	No limitation	No additional Guidance	-	-	-	5132.007(3) and (4)	ASA(A)IES	HCA, with authority to delegate to 1 level above KO
32	Unusual Contract Financing arrangements that deviate from arrangements in FAR 32.1	32.114	Agency head	Yes	No limitation	201.402(D)(vi)	Director, No DPC	No	No	5132.114	Director, No DPC	-

32	Commercial Item Purchase Financing - commercial Statutory Authority may be under such terms and conditions that are appropriate or customary in the commercial marketplace	Determination 32.201	Head of Agency	Yes	No Limitation	No additional Guidance	-	-	-	5132.201(A)(1)(i)	Yes	No Lower Than the KO
32	Commercial Item Purchase Financing contract financing, of any contract financing arrangement not in accord with agency regs or FAR 32.202	Approval 32.202-1(c)	IC/A	Yes	No limitation	201.402(D)(vi) DPC	Director, No	No limitation	5132.202-1(c)	Director, No	-	-
32	Advance Payment for Non-Commercial Items that statutory requirements standards for advance payment are met and in the public interest	Determination 32.402(A)(1)(iii)	Agency Head	Yes	No Limitation	No additional Guidance	-	-	-	5132.402(A)(1)(iii)	Yes	Retain -

32	Advance Determination that (1)(iii) Head of Agency Yes	22.402(c)	No	No	-	-	-	5132.402(c)	Secretary of the Army	No	-
	Payments for Non-Commercial Items that statutory requirements standards for advance payment are met and facilitates the national defense		Limitation	additional Guidance				(1)(iii) (B)			
32	Advance Authorization of (1)(iii) Head of Agency Yes	22.407(d)	No	No	-	-	-	5132.407(d)	ASA (AID)	Yes	HCA, with authority to delegate to No Lower Than SCO
	Payments for Non-Commercial Items without interest under certain types of contracts		Limitation	additional Guidance							
32	Unusual Progress of Payments contractor's request for unusual progress payments	22.501-2(c)	Yes	No	DFARS Director PGI DPC 232.501-2	No	-	-	DPC	No	-

32	Contract Funding - Contractor Crossing Fiscal Years	Entering into a contract an option for severable services for a period that begins in one fiscal year and ends in the next fiscal year	32.703-31(d)	Head of Executive Agency	Yes	No Limitation	232.703-31(d)	No	-	-	KO	No	-
32	Assignment of Claims	Determine to include a no-setoff commitment	32.803(d)	Head of Agency	Yes	No Limitation	232.803-40	No in accordance with FAR 32.803(d)	-	5132.803-8(A)	(AIF) Retain	-	-
32	Prompt Payment Applicability	Determination that conditions exist that limit normal business ops	-	-	-	-	232.901(ii)	HCA Yes	No limitation	5132.901(ii)	HCA	Yes	No lower than the SCO
32	Prompt Payment Applicability	Subsequent determinations that operational area becomes more stable or less stable	-	-	-	-	232.901(ii)	HCA Yes	No limitation	5132.901(ii)	HCA	Yes	No lower than the SCO

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32	Prompt Establishment of Payment Policies Responsibilities procedures for prompt payment	5132.903(a)	Agency Head	Yes	No Limitation	No additional Guidance	-	-	-	5132.903(a)	(S)(A)(AL)(E)	DASA(P), without power to further delegate, for policy and procedures; Execution may be addressed in AFARS
32	Making Determinations to make invoice payments earlier than 7 days prior to the due date	5132.906(a)	Agency Head	Yes	No Limitation	No additional Guidance	-	-	-	5132.906(a)	(S)(A)(AL)(E)	HCA, with authority to delegate to No lower than the SCO
32	Electronic Authorization of Funds Transfer Mechanisms for domestic and nondomestic EFT	5132.1106	Agency Head	Yes	No Limitation	No additional Guidance	-	-	-	5132.1106	(S)(A)(AL)(E)	HCA, without power to further delegate

33	Protests Make determinations when a solicitation, proposed award, or award does not comply with the requirements of law or regulation	33.102(b)	Agency Head	Yes	No limitation	No additional Guidance	-	-	-	5133.102(A)(1)(i)	HCA	Yes	HCA, with authority to delegate to No lower than SCO, the Chief of the Supporting Legal Office or the Official Designated as the Independent Review Authority IAW FAR 33.103(d)(4)
33	Protests to agency Procedures for Independent Reviews by Interested Parties	33.103(d)	Level above KO	Yes	No limitation	No additional Guidance	-	-	-	5133.103(4)(iii)	HCA	Yes	No lower than CoCO
33	Protests to GAO before award	33.104(b)	HICA	No	-	No additional Guidance	-	-	-	5133.104(b)	HCA	No	-
33	Protests to GAO after award	33.104(c)	HICA	No	-	No additional Guidance	-	-	-	5133.104(c)	HCA	No	-

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33	Protests Reporting to GAO the agency's failure to fully implement GAO's recommendations regarding a solicitation or contract award	33.104(g)	HICA	Yes	No limitation	No additional Guidance	-	-	-	5133.104(g)	HICA	Yes	No lower than SCO; Exception for USACE Chief Counsel
33	Applicability of Disputes that the application of the Disputes statute to the contract with an international organization or a subsidiary body of that organization, would not be in the public interest.	33.203(b)(2)	Agency head	Yes	No limitation	No additional Guidance	-	-	-	5133.203(b)(2)	ASA (AID)	Yes	DASA(P), without power to further delegate
33	Contract approval officer's duties upon appeal. Fund for cases at or below \$1M	33.212	ASB (M&C)	-	-	-	-	-	-	5133.212	ASB (M&C)	-	DASA-FO, without power to further delegate

33	Obligation to approve the continued performance of the alternate paragraph in the clause at FAR 233-1	23.213	-	-	-	-	-	-	-	5133.213	HCA	Yes	No lower than SCO; Exception for USACE; No lower than CoCO; Deviation Required
33	Disputes and Appeals Contract Clauses is necessary pending resolution of claims arising under or related to the contract	Determination 23.215(a)	-	-	23.215	HCA	Yes	No limitation	5133.213	HCA	Yes	No lower than CoCO	
33	Grant and Cooperation Agreement Claims Disputes and Appeals	Designation of significant appeal authority	-	-	-	-	-	-	-	5133.900	HCA	No	-

34	Acquisition Determination of that Major the Weapon information Systems submitted as pursuant Commercial Items DFARS 234.7002(d) (1) and (d)(2) [Relevant Information] is not sufficient to determine the reasonableness of price	- - -	234.7002(4)	HCA	Yes	No	limitation(4)	5134.7002(4)	HCA	Yes	No Lower than CoCO
35	Government Application Property and Title of policies regarding title to equipment to contracts with nonprofit institutions of higher education and nonprofits who conduct scientific research	35.014(b) Agency Head Yes	No limitation	No additional Guidance	-	-	-	5135.014(5)	ASA(ALT)	Yes	DASA(P), without power to further delegate

35	Special Determination requirements for the research facilities and development and equipment contracts are necessary for the performance of the contract	235.014	Secretary of the Military Department Concerned	Yes	No Limitation	No additional Guidance	-	-	-	-	Secretary of the Army	No	-
35	Special Approval Use for Allowance for use Research allowance Facilities for Acquired research by facilities Educational Institutions	-	-	-	235.015	HC(A)	Yes	No limitation	5135.014	HC(c)	Yes	No lower than SCO	
35	Special Consent- Use to put Allowance for research for facility Research to Facilities significant Acquired use by other Educational Institutions that which justified the special use allowance	-	-	-	235.015	HC(A) (3)(ii)	Yes	No limitation (3)(ii)	5135.014	HC(d)	Yes	No lower than SCO	

36	<p>Concurrent Approval Performance of Firm-Fixed Price and Other Types of Construction Contracts or adjustment features concurrently, at same work site, with FFP, lump sum or unit price contracts</p>	36.208	HCA	Yes	No limitation	No additional Guidance	-	-	-	5136.208	HCA	Yes	No lower than CoCo
36	<p>Construction Prohibits Contracts with Architect-Engineer Firms of a project to the firm that designed the project or its subsidiaries or affiliates, except with the approval.</p>	36.209	Agency head	Yes	No limitation	No additional Guidance	-	-	-	5136.209	ASA(AI)	Yes	HCA, with authority to delegate to No lower than SCO

36	Special Waiving Procedures for Sealed Bidding Construction Contract Presolicitation Notices is expected to exceed SAT	36.213-210(A)	Yes	No	No	-	-	-	5136.213-210(A)	Yes	No lower than CoCO
36	Expedite Construction Contract requires approval to expedite the completion date of a contract funded by Military Construction Appropriations Act, if there are additional costs	236.270(A)	-	-	-	-	Agency No head	-	5136.270(A)	Secretary of the Army	-
36	Construction and Architect Engineer Contract Prequalification of Sources Sources	236.272(B)	-	-	-	236.272(B)	Yes	No limitation	5136.272(B)	Yes	No lower than CoCO

36	Construction and Architecture -- Engineering Contracts	Criteria 36.301(3)(vi) of tow-phase design-build procedures	(H) Lead Contracting Activity	Yes	No Limitation	No additional Guidance	-	-	-	5136.303(3)(vi)	(H)CA	Retain	-	
36	Two-Phase Design-Build Selection Procedure	Approval of determination that more than 5 offerors will be selected to submit phase-two proposals for acquisitions greater than \$4.5M		-	-	-	236.303(4)	(H)CA	Yes	No Lower Than the Senior Contracting Official	-	HCA	Yes	No Lower than the SCO
36	Construction and Architecture Engineering Contracts	Approval of use of separate bid item for mobilization and prep work		-	-	-	236.570(2)	(H)CA	Yes	No limitation	5136.570(2)	(H)CA	Yes	No lower than CoCO

36	<p>Selection of Firms for Architectural Engineers Contracts</p> <p>Permits of use of design competition; authorizes final selection decision; and requires review of the selection report under a short selection process for contracts not expected to exceed the simplified acquisition threshold and approval or return to the chairperson of the evaluation board for appropriate revision.</p>	<p>Agency Yes</p> <p>No</p> <p>No</p> <p>-</p> <p>-</p> <p>-</p> <p>limitation</p> <p>additional Guidance</p>	<p>5136.602-4(a)</p> <p>5136.602-4(a)</p> <p>5136.602-5(b)</p> <p>(2)</p>	<p>HCA, with authority to delegate to No lower than CoCO Exception for USACE: HCA, with authority to delegate to the Center/Director/District Commander, with authority to re-delegate to the Center/District Chief Of Engineering, the CoCO, or other appropriate officials Not Below the level of the CoCO.</p>
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36	Design Determination Within Funding Limitations insert use at 52.236-22 Design within Funding Limitations	36.609-11(C)	Yes	No limitation	No additional Guidance	-	-	-	5136.60911(C)(1)	Yes	No lower than CoCo
37	Personal Services Contracts for experts and consultants authorized by 10 U.S.C. 129b	-	-	-	237.104(lb)(i)	Yes	No	5137.10411(C)(i)	Yes	No lower than SCO	
37	Personal Services Contract for Personal services contracts for health care are authorized by 10 U.S.C. 1091	-	-	-	237.104(lb)(ii)(C)(2)	Yes	No	5137.10411(C)(ii)(C)(2)	Yes	No Lower Than SCO; Exception for MEDCOM No Lower than the CoCo	
37	Personal Services Contract of personal services contract in accordance with 10 USC 129b(d)	-	-	-	237.104(lb)(iii)(A)(2)	Yes	No	5137.10411(C)(iii)(A)(2)	Yes	No lower than SCO	

37	Severance Payments with Foreign National	Permits waiver of FAR 31.205-6(g) (6) cost allowability limitations on severance payments to foreign nationals	37.113-1	Agency head	Yes	No	No	-	-	-	5137.113-1	AS(A) ALDs	Yes	HCA, with authority to delegate to No lower than SCO
37	Approval of Contracts and Task Orders for Services	Approval of contract or task order that is not performance-based (at or below \$100M)	-	-	-	-	DFARS 237.170-2(a)(1)	Official designated by the Department or Agency	Yes	No	5137.170-2	HC(A)	Yes	No Lower than SCO
37	Approval of Contracts and Task Orders for Services	Approval of contract or task order that is not performance-based (exceeding \$100M)	-	-	-	-	DFARS 237.170-2(a)(2)	SPE	Yes	No	5137.170-2	SP(a)	Yes	HCA, without power to further delegate

37	<p>Guidelines for Determining if sufficient personnel are available to evaluate/analyze proposals for advisory and assistance service procurements.</p>	<p>37.204 Agency Head Yes</p>	<p>No limitation No additional Guidance</p>	<p>- - -</p>	<p>5137.204</p>	<p>ASA(AI) Yes</p>	<p>HCA, with authority to delegate to No Lower than SCO</p>	
37	<p>Management Oversight of Service Contracts</p>	<p>37.503 Agency Head Yes</p>	<p>No limitation</p>	<p>237.503 Agency Head or Designee Yes</p>	<p>No limitation</p>	<p>5137.503</p>	<p>ASA(AI) Yes</p>	<p>Army Regulation 70-13, Management and Oversight of Service Contracts, chapter 2, implements the responsibilities set forth in FAR 37.503; and FAR 37.503(c) and DFARS 237.503 are implemented at AFARS 5107.503</p>

37	Management Oversight of Service of Contract Acquisition Strategies	Review - and approval of acquisition	-	-	-	DoDi 5000.74	-	-	-	5137.590AAE (category I) Acquisition of services with an estimated total value of \$1B or more, or more than \$300M in any one year.	Yes	DASA(P) or Senior Services Manager, without power to further delegate
37	Management Oversight of Service of Contract Acquisition Strategies	Review - and approval of acquisition	-	-	-	DoDi 5000.74 for acquisitions designated as special interest by the USD(AT&L)	USD(AT&L)	-	-	5137.590AAE (special interest) As designated by USD(A&S), ASA(ALT), DASA(P) or SSM.	Yes	ASA(ALT), DASA(P) or Senior Services Manager, without power to further delegate
37	Management Oversight of Service of Contract Acquisition Strategies	Review - and approval of acquisition	-	-	-	DoDi 5000.74	-	-	-	5137.590AAE (category II) Acquisition of services with an estimated total value of \$250M or more, but less than \$1B.	Yes	DASA(P) or Senior Services Manager, without power to further delegate

DOD FEDERAL ACQUISITION REGULATION SUPPLEMENT

37	Management Review - Oversight and approval of Service of Contract Acquisition Strategies	-	-	-	DoDi 5000.74	-	-	-	5137.590AAE (category III) Acquisition of services with an estimated total value of \$100M or more, but less than \$250M.	Yes	HCA, with authority to delegate to No Lower than SCO
37	Management Review - Oversight and approval of Service of Contract Acquisition Strategies	-	-	-	DoDi 5000.74	-	-	-	5137.590AAE (category IV) Acquisition of services with an estimated value of \$10M or more, but less than \$100M.	Yes	HCA, with authority to delegate to No Lower than CoCO

37	<p>Management Review - Oversight and approval of Service of Contract Acquisition Strategies</p>	-	-	-	DoDi - 5000.74	-	-	-	5137.590AAE (category V) Acquisition of services with an estimated total of simplified acquisition threshold, but less than \$10M.	Yes	HCA, with authority to delegate to No Lower than 1 Level Above KO
37	<p>Services at Installation Being acquired Closed--from Policy local gov't are in the best interests of DoD</p>	-	-	-	237.740HCA	Yes	No	No	5137.740HCA limitation	Yes	No lower than CoCO

DOD FEDERAL ACQUISITION REGULATION SUPPLEMENT

39	<p>Acquisition Determination - - - of that no Information commercial Technologies - are Policy suitable to meet the agency's needs for information technology products or services, as determined through the use of market research appropriate to the circumstances.</p>	239.101	(HCA)	Yes	No limitation	5139.10	(HCA)	Yes	No Lower than CoCO
39	<p>Telecommunications - - - Services of provision of the necessary property as GFP or acquisition as CAP if conditions at FAR 45.102(b) met</p>	239.7402 (4)	(b) Agency head	Yes	No limitation	5139.7402 (4)	(b) (A)(1)	Yes	HCA, without power to further delegate

42	Assignment of Contract Administration authority to issue orders under provisioning procedures and under BOAs	Approval of (2) delegation	HCA	Yes	No limitation	No additional Guidance	-	-	-	5142.202(2)	HCA	Yes	No lower than CoCo
42	Contract Administration Office Functions Monitor Contract Costs of Gov't monitoring of contractor policies, procedures, and practices for controlling costs where significant Gov't business exists	Specific- function to conduct formal program of	-	-	-	DFARS HCA PGI 242.302(a) (S-75) (c)(1) (i)(C)	Yes	No limitation	5142.302(6-75) (c)(1) (i)(C)	HCA	Yes	No lower than SCO	
42	Assignment of CACO need for CACO	Approval of (2) the need for CACO	Agency head	Yes	No limitation	No additional Guidance	-	-	-	5142.602(2)	SA (A) Yes	HCA, without power to further delegate	

DOD FEDERAL ACQUISITION REGULATION SUPPLEMENT

42	Indirect Waive Cost the Rates-- Certification Waiver requirement of when Certification the interest of the US or written determination is made available to public	42.703-2	Agency head	Yes	No	No	-	-	-	5142.703-2	ASA(AIT)	Yes	HCA, with authority to delegate to No lower than SCO
42	Voluntary Approval Refundsto solicit voluntary refunds	-	-	-	-	PGI HCA	242.7100(4)	Yes	No	5142.7100(4)	ASA(AIT)	Yes	No lower than SCO
43	Exception Waive to the Limitations on in Change 243.204-70-2, Orders 243.204-70-3 and 243.204-70-4 for unpriced orders necessary to support contingency or humanitarian or peacekeeping operations	-	-	-	-	243.204-70-5	Agency head	Yes	No	5143.204-5	ASA(AIT)	Yes	HCA, without power to further delegate

43	<p>Allowable Profit - Change Orders</p> <p>Ensure profit allowed reflects reduced cost risk due to substantial portion of the work complete before definitization</p>	-	-	-	-	243.204 HICA	Yes	No limitation	5143.204 HICA	Yes	No lower than 1 level above KO
45	<p>Government Property that non-severable installation / construction of Gov't property on contractor-owned real property is necessary and in Government's interest</p>	-	-	-	-	45.102 HICA	Yes	No limitation	5145.102 HICA	Yes	No lower than SCO

DOD FEDERAL ACQUISITION REGULATION SUPPLEMENT

45	<p>Government Property to GFP ID for items used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack</p>	-	-	-	245.102-4 Agency head (ii)(B)	Yes	No	5145.102-2 (ii)(B)	X(A)(1)(i)	HCA, with authority to delegate to No Lower Than SCO
45	<p>Government Property Policy to determine exception to requirement for contractor to tag, label, or mark items (IUID) acquired from a small business or commercial item</p>	-	-	-	245.102-4 Component Acquisition Executive for ACAT I program (ii)(C) (1)(i)	Yes	No	5145.102-2 (ii)(C) (1)(i)	X(A)	Responsible Program Executive Officer

45	Government Determine Property Policy to requirement for contractor to tag, label, or mark items (IUID) acquired from a small business or commercial item	-	-	-	245.102(i)(C)(1)(ii)	HCA for non-ACAT I programs	Yes	No limitation	5145.102(i)(C)(1)(ii)	HCA	Yes	No lower than SCO	
45	Use and Rental of Government Property Approval of contractor use of Gov't property for commercial use expected to exceed 25% of total use of Gov't and commercial work performed	45.301(f)	HCA	Yes	No limitation	No additional Guidance	-	-	-	5145.301(f)	HCA	Yes	No lower than SCO
48	Value Engineering Policies class of contracts from inclusion of value engineering provisions	48.102(a)	Agency head	Yes	No limitation	No additional Guidance	-	-	-	5148.102(a)	HCA (A)	Yes	HCA, with authority to delegate to No lower than SCO

DOD FEDERAL ACQUISITION REGULATION SUPPLEMENT

48	Value Determination Engineering. Sharing cost of Arrangements & tracking savings will exceed benefits (sharing collateral savings)	48.104-3(HCA)	Yes	No limitation	No additional Guidance	-	-	-	5148.104-3(HCA)	Yes	No lower than CoCO
48	Value Exemption Engineering-- Clauses contract for (or a Supply class or of Service contracts) Contracts from the requirements of this Part 48	48.201(a)(6)	Agency Head Yes	No limitation	No additional Guidance	-	-	-	5148.201(a)(6)	Yes	HCA, with authority to delegate to No lower than SCO
48	Value Determination Engineering-- Clauses Collateral for savings Supply computation or not Service cost- Contracts effective.	48.201(d)	HCA Yes	No limitation	No additional Guidance	-	-	-	5148.201(d)	Yes	1 level above KO

48	Value Determination Engineering--Clauses benefits for Construction Contract of FAR clause 52.248-3 Alt 1 exceeds the cost of computing and tracking collateral savings	48.202	HCA	Yes	No limitation	No additional Guidance	-	-	-	5148.202	HCA	Yes	No lower than CoCO
49	Special Termination Costs use of clause at 252.249-7000, Special Termination Costs, in an incrementally funded contract		-	-	-	249.501-Agency head	Agency Yes	No limitation	5149.501-A	50(A) Yes	HCA, with authority to delegate to No lower than the CoCO		
50	Delegation of Authority and Limitation on Exercise of Authority of and to indemnify against hazardous nuclear risks, including extension of such indemnification to subcontracts	50.102-8	Secretary of Agency Concerned	No	-	250.102-8	Secretary of the Military Department	No	-	5150.102-8	Secretary of the Army	No	-

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APPENDIX - HH TABLE OF CONTENTS

Sec.

Policy and PWS Language
Common and Data Services

CLIN SLIN Descriptions

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Policy and PWS Language

Subject Area	Policy	Policy Reference Source (AR, DFARS, AFARS, DOD, etc.)	PWS language	Building Blocks				Contract Actions			CDRL
				1a) Migrating to the Cloud	1b) New SW Development in the Cloud	2) Follow-on contracts related to common services and management	3) Cloud Hosting, use of Enterprise solutions	New Contracts	Orders Against Existing Contracts	Existing Contracts	
Cloud	All commercial cloud usage must be reported into the Army Portfolio Management System (APMS) per data EXORD 009-20	EXORD 009-20	N/A								

<p>Use of Enterprise Services</p>	<p>All Army systems/ applications developed in, migrated to and hosted in the commercial cloud will use cArmy Enterprise common services and data services. The Army will not duplicate common services or data services that are accredited in cArmy, to include the components of the DoD Secure Cloud Computing Architecture (SCCA). If a service is required that is not yet available in cArmy, the Application/ System Owner must work with the Enterprise</p>	<p>EXORD 009-20: 3.D.5.G.(U) DIRECT THE ENTERPRISE CLOUD MANAGEMENT OFFICE (ECMO) TO DEVELOP A PLAN TO CONSOLIDATE EXISTING CLOUD INSTANCES TO THE GREATEST POSSIBLE EXTENT AND WITHOUT SIGNIFICANT IMPACT TO ONGOING OPERATIONS TO GAIN VISIBILITY AND CONTROL OF ARMY CLOUD MIGRATION. NLT 01 JAN 2020.</p>	<p>The contractor must use cArmy Enterprise common services, FedRAMP services, and all DoD Secure Cloud Computing Architecture (SCCA) components when developing, migrating to and hosting Army systems/ applications in the commercial cloud. A list of the currently available common services is included in the next tab in this spreadsheet. In the future, a dynamic website will be available that will include up-to-date listing and description of available Enterprise services: www.cloud.army.mil</p>	<p>Required</p>	<p>Required</p>	<p>N/A</p>	<p>N/A</p>	<p>Yes</p>	<p>No</p>	<p>No</p>	<p>Migration Plan or Strategy to use the common services</p>
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<p>Use of Enterprise Services</p>	<p>Existing cloud common services will be consolidated into cArmy as is reasonable over time, per EXORD 009-20. As existing common service contract options expire, mission owners should work with the Enterprise Cloud Management Office (ECMO) to onboard their applications into cArmy and reduce the duplicity of services across the Army.</p>	<p>EXORD 009-20: 3.D.5.G. (U) DIRECT THE ENTERPRISE CLOUD MANAGEMENT OFFICE (ECMO) TO DEVELOP A PLAN TO CONSOLIDATE EXISTING CLOUD INSTANCES TO THE GREATEST POSSIBLE EXTENT, AND WITHOUT SIGNIFICANT IMPACT TO ONGOING OPERATIONS, TO GAIN VISIBILITY AND CONTROL OF ARMY CLOUD MIGRATIONS NLT 01 JAN 2020.</p>	<p></p>	<p>N/A</p>	<p>N/A</p>	<p>Required</p>	<p>N/A</p>	<p>Yes</p>	<p>No</p>	<p>No</p>	<p>Catalog or Inventory of common services utilized within the app.</p>
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<p>Modernization/Migration</p>	<p>Army will modernize applications applying Cloud Native Design Principles, which will prioritize the use of Software as a Service (SaaS) and Platform as a Service (PaaS) (to include container technology) over Infrastructure as a Service (IaaS) models to reduce toil and overhead of maintaining Information Technology (IT) systems. Use of IaaS will be by exception and at the approval of the Enterprise Cloud Management Office (ECMO). According</p>	<p>Army Cloud Plan</p>	<p>The contractor must modernize applications migrating to commercial cloud applying Cloud Native Design Principles and will prioritize use of Software as a Service (SaaS) and Platform as a Service (PaaS) over Infrastructure as a Service (IaaS).</p>	<p>Mandatory</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>	<p>Yes</p>	<p>No</p>	<p>No</p>	<p>System design document</p>
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<p>Modernization Migrations</p>	<p>Legacy systems undergoing modifications to adapt to a service-enabled architecture should design anti-corruption layers** to support the transitional period. Pre-bundled COTS products are excluded.</p>	<p>Army Cloud Plan</p>	<p>The contractor must ensure that legacy systems undergoing modifications to adapt to a service-enabled architecture will design anti-corruption layers to support the transitional period.</p>	<p>Required except pre-bundled COTS products</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>	<p>Yes</p>	<p>No</p>	<p>No</p>	<p>Architecture Drawing and Description of Solution</p>
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<p>Software Development</p>	<p>The Army will build to the highest abstraction of cloud services, where possible, to include SaaS, PaaS, Database Management as a Service, and so forth, in order to accelerate testing, accreditation and fielding to the Army. Use of IaaS will be by exception and at the approval of the Enterprise Cloud Management Office (ECMO).</p>	<p>Army Cloud Plan</p>	<p>The contractor must build to the highest abstraction of cloud services in order to meet functional, technical, performance and cost goals. These services include commercial SaaS, PaaS, Database Management as a Service, and so forth, in order to accelerate testing, accreditation and fielding to the Army.</p>	<p>N/A</p>	<p>Required</p>	<p>N/A</p>	<p>N/A</p>	<p>Yes</p>	<p>No</p>	<p>No</p>	<p>Architecture Drawing and Description of Solution</p>
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Software Development	All new software development must use modern software development methodologies (e.g., agile, DevSecOps) to support rapid delivery of standardized, reliable, integrated and secure mission capabilities.	Army Cloud Plan	The contractor must use modern software development methodologies (e.g., agile, DevSecOps) to support rapid delivery of standardized, reliable, integrated and secure mission capabilities.	Optional	Required	N/A	N/A	Yes	No	No	Software Development Plans
Software Development	All new software acquisition should use microservices architecture and automation where technically and economically feasible.	Army Cloud Plan	The contractor must use microservices architecture and automation where technically and economically feasible.	Optional	Required	N/A	N/A	Yes	No	No	Software Development Plan and Architecture

<p>Software Development</p>	<p>In order to create interoperable and accessible services, all interface information will be published in the Army Enterprise Data Services Catalog (EDSC).</p>	<p>Army Data Plan</p>	<p>The contractor must comply with publishing all application programming interface (API) information within the Enterprise Data Services Catalog (EDSC)</p>	<p>Required</p>	<p>Required</p>	<p>N/A</p>	<p>N/A</p>	<p>Yes</p>	<p>Yes</p>	<p>No</p>	<p>Plan and Schedule for publishing to EDSC</p>
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Security	Reference	Mandatory	The	Required	Required	N/A	N/A	Yes	Yes	No	
	<p>DoD Instruction 8580.1; each DoD information system is required to have an Information System Security Manager (ISSM) and must implement DoD Risk Management Framework (RMF) governed by DoD Instruction 8510.01, for DoD Information Technology (IT). All cloud instances will inherit RMF controls to the greatest extent allowable by the Authorizing Official.</p>	<p>Implementation of Army Data Standards Services Requirements Memo (10 April 2020), Principle DSR-1.2. Impact-level Guidance for Data Migrating to Army-approved cloud Environments (1 May 2020) 3. Authorization Guidance for IT Capabilities Migrating to Army-approved Cloud Environments. (1 May 2020)</p>	<p>Information factor must comply with implementation of the DoD Risk Management Framework (RMF) as governed by DoD Instruction 8510.01, for DoD Information Technology (IT).</p>								

<p>Security</p>	<p>All Army cloud instances will use Army Future Command (AFC)'s Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance and Reconnaissance Center (C5ISR) as their Cybersecurity Service Provider (CSSP). Exceptions can only be granted by the Army Cyber Command (ARCYBER) or the Chief Information Officer (CIO)/ G6.</p>	<p>New</p>	<p>The contractor must work with Army Future Command (AFC)'s Command, Control, Communications, Computers, Cyber, Intelligence, Surveillance and Reconnaissance Center (C5ISR) to establish Cyber Security Service Provider (CSSP) services (as required by DoDI 8530 and as described by the DISA Cloud Computing Security Requirements Guide) for Army applications hosted in commercial cloud.</p>	<p>Required</p>	<p>Required</p>	<p>Required</p>	<p>N/A</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>	
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<p>Data</p>	<p>All new and existing applications, systems, or services deemed non-legacy shall expose their data and functionality through service interfaces (for example, OpenAPI specification). (Mandatory Implementation of Army Data Standards Services Requirements Memo (10 April 2020), Principle DSR-6)</p>	<p>Mandatory Implementation of Army Data Standards Services Requirements Memo (10 April 2020)</p>	<p>The contractor must ensure that all new and existing applications, systems, or services deemed non-legacy shall expose their data and functionality through service interfaces (for example, OpenAPI specification).</p>	<p>Required</p>	<p>Required</p>	<p>N/A</p>	<p>N/A</p>	<p>Yes</p>	<p>No</p>	<p>No</p>	
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<p>Data</p>	<p>All service interfaces without exception, must be designed to be consumable from external sources and must plan and design to be able to expose the interface to developers. (Mandatory Implementation of Army Data Standards Services Requirements Memo (10 April 2020), Principle DSR-7)</p>	<p>Mandatory Implementation of Army Data Standards Services Requirements Memo (10 April 2020)</p>	<p>The contractor must ensure that all service interfaces, without exception, be designed to be consumable from external sources and must plan and design to be able to expose the interface to developers.</p>	<p>Required</p>	<p>Required</p>	<p>N/A</p>	<p>N/A</p>	<p>Yes</p>	<p>No</p>	<p>No</p>	
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<p>Data</p>	<p>Metadata about all Army data assets must be registered in the Army Enterprise Data Service Catalog (EDSC) and comply with Dublin Core Metadata Element Sets and International Organization Metadata Registries requirements. (Mandatory Implementation of Army Data Standards Services Requirements Memo (10 April 2020), Principle DSR-3.)</p>	<p>Mandatory Implementation of Army Data Standards Services Requirements Memo (10 April 2020)</p>	<p>The tax factor must ensure that all Army data assets are registered in the Army Enterprise Data Service Catalog (EDSC) and comply with Dublin Core Metadata Element Sets and International Organization Metadata Registries requirements.</p>	<p>Required</p>	<p>Required</p>	<p>N/A</p>	<p>N/A</p>	<p>Yes</p>	<p>No</p>	<p>No</p>	
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<p>Data</p>	<p>All Army data sources must be developed with built-in data exchange capabilities. Data mapping must also be implemented to increase efficiency and ease of use of data assets as they are being translated or transformed. At a minimum, programs and initiatives are required to comply with Global Force Management Data Initiative; International Standards for dates; Geopolitical Entities, Names and Codes, Common (GENC); Joint Consultation, Command and Control</p>	<p>Mandatory Implementation of Army Data Standards Services Requirement Memo (10 April 2020)</p>	<p>The contractor must ensure that All Army data sources are developed with built-in data exchange capabilities. Data mapping must also be implemented to increase efficiency and ease of use of data assets as they are being translated or transformed. At a minimum, programs and initiatives are required to comply with Global Force Management Data Initiative; International Standards for dates; Geopolitical Entities, Names and Codes, Common (GENC); Joint</p>	<p>Optional</p>	<p>Required</p>	<p>N/A</p>	<p>N/A</p>	<p>Yes</p>	<p>No</p>	<p>No</p>	
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Data	Data must be managed across its lifecycle and captured in a data management plan. (Mandatory Implementation of Army Data Standards Services Requirements Memo (10 April 2020), Principle DSR-5)	Mandatory Implementation of Army Data Standards Services Requirements Memo (10 April 2020),	N/A	Required	Required	N/A	N/A	Yes	Yes	No	Data Management Plan
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<p>Data</p>	<p>All custom software or customized COTS software written by the Army or developed with Army funding will be centrally controlled and made available to all DoD, IC and inter-agency partners within the approved Army source code repositories on the Unclassified, Secret, and Top Secret networks in accordance with Army Directive 2018-26 (Enabling Modernization Through the Management of Intellectual Property) (Mandatory Implementation of Army Data Standards Services</p>	<p>Mandatory Implementation of Army Data Standards Services Requirement Memo (10 April 2020),</p>	<p>The contractor must utilize government approved centralized source code repositories to store all government funded software development or customization of COTS products.</p>	<p>Required</p>	<p>Required</p>	<p>Required</p>	<p>N/A</p>	<p>Yes</p>	<p>No</p>	<p>No</p>	
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<p>Data</p>	<p>There will be no other form of Inter-Process communication allowed: no direct linking, no direct reads of another data store, no shared-memory model, and no back-doors whatsoever. The only Inter-Process communication allowed is intra-system data exchanges or service interface calls over the network. All other requests or methods require CIO approval (Mandatory Implementation of Army Data Standards Services Requirements Memo (10 April 2020),</p>	<p>Mandatory Implementation of Army Data Standards Services Requirements Memo (10 April 2020),</p>	<p>The contractor must ensure that there will be no other form of Inter-Process communication allowed: no direct linking, no direct reads of another data store, no shared-memory model, and no back-doors whatsoever. The only Inter-Process communication allowed is intra-system data exchanges or service interface calls over the network.</p>	<p>Optional</p>	<p>Mandatory</p>	<p>N/A</p>	<p>N/A</p>	<p>Yes</p>	<p>No</p>	<p>No</p>	<p></p>
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<p>CSP</p>	<p>Once available, procurement of all DoD Information Impact Level (IL) 6 and below Cloud Service Provider (CSP) Offerings will use the Army's Enterprise CSP Reseller contract. Exceptions to this policy include programs funded by Military Intelligence Program (MIP)/ National Intelligence Program (NIP) monies. Other exceptions can only be granted by the ECMO. As contract options expire, existing CSP service contracts will also be migrated to the Army's</p>	<p>New</p>	<p>All Cloud Service Offering (CSO) requirements up through DoD Information Impact Level (IL) 6 that are within scope of the Army Enterprise Cloud Contract Vehicle will be purchased off that vehicle.</p>	<p>Required, Once Available</p>	<p>Required, Once Available</p>	<p>Required, Once Available</p>	<p>Required, Once Available</p>	<p>Yes</p>	<p>No</p>	<p>No</p>	
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<p>CSP</p>	<p>For those CSP Services that exist outside of the Enterprise reseller contract today, the CSP owner must align and integrate their AWS/ Azure cloud instances to the cArmy Cost and Utilization Management Tool, to ensure ECMO can view all Army CSP resources and spend.</p>	<p>New</p>	<p>The contractor will register all cloud instances into the cArmy cost and utilization management tool with any CSP procurement. Cloud instances will be registered into cArmy's management tool within 15 business days of procurement.</p>	<p>Required</p>	<p>Required</p>	<p>Required</p>	<p>Required</p>	<p>Yes</p>	<p>No</p>	<p>No</p>	
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<p>Data</p>	<p>All data will reside physically within the legal jurisdiction of the United States. If the location of the data is not physically maintained within the legal jurisdiction of the United States, written determination from the Contracting Officer to authorize use of another location is required IAW DFARS 239.7602-2(b).</p>	<p>DFARS 239.7602-2(b).</p>	<p>The contractor must maintain all data within the legal jurisdiction of the United States IAW DFARS 239.7602-2(b).</p>	<p>Required</p>	<p>Required</p>	<p>Required</p>	<p>Required</p>	<p>Yes</p>	<p>No</p>	<p>No</p>	
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<p>Security Incident Planning</p>	<p>The Army must adhere to the DoD Cloud Computing Security Requirements Guide version 1 release 3 (or superseding versions or releases). IAWS DFARS 239.7604</p>	<p>DoD Cloud Computing Security Requirements Guide (DoD CC SRG) Version 1 Revision 3, Section 6.5.1, IAW DFARS 239.7604</p>	<p>The contractor must adhere to the DoD Cloud Computing Security Requirements Guide version 1 release 3 (or superseding versions or releases). In particular, contractors must provide security incident response plans. Updates to the plans are required on an annual basis or when a significant change occurs to the technical or operational environment.</p>	<p>Required</p>	<p>Required</p>	<p>Required</p>	<p>Required</p>	<p>Yes</p>	<p>No</p>	<p>No</p>	
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<p>Security</p>	<p>Contracts shall only be awarded to a cloud service provider that DISA granted a DoD Provisional Authorization (PA), at the level appropriate to the requirement, to deliver the relevant cloud computing model IAW with the DoD CC SRG.</p>	<p>DoD Cloud Computing Security Requirements Guide (CC SRG)</p>	<p>The Contractor will ensure that the cloud environment fully complies or exceeds the security requirements for level ___ in the DoD Cloud Security Model SRG. The Contractor will make the environment accessible for a DoD security team to evaluate the environment prior to the placement of any DoD data in the environment and allow for periodical security reviews of the environment during the performance of this contract.</p>	<p>Required</p>	<p>Required</p>	<p>Required</p>	<p>Required</p>	<p>Yes</p>	<p>No</p>	<p>No</p>	
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Security	Data must be encrypted at rest and in-transit	CNSSP 15, AR 25-2	The contractor shall ensure that all data-at-rest and data in-transit is encrypted utilizing NSA-approved encryption.	Required	Required	Required	Required	Yes	No	No	
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<p>Cost Management and Reporting</p>	<p>Cost Report (Cost Summary Data Report 1921, 1921-5) and CWBS Dictionary</p>	<p>EXORD 009-20</p>	<p>The Contractor shall ensure that all cloud-related costs/ price, which include but are not limited to: cost of modernization and migration of applications, Cloud Service Provider (CSP) costs, and cloud Operations and Maintenance (O&M) costs/ prices are clearly identified and available for government reporting purposes.</p>	<p>Required</p>	<p>Required</p>	<p>Required</p>	<p>Required</p>	<p>Yes</p>	<p>No</p>	<p>No</p>	<p>Cost/ price Report</p>
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Common and Data Services

	<p>Service Name</p>	<p>Service Description</p>
<p>1</p>	<p>Operating System Vulnerability Scanning</p>	<p>Operating System vulnerability scanning service (e.g., Assured Compliance Assessment Solution [ACAS])</p>

2	IP Address Management	Planning, tracking, and managing the Internet Protocol (IP) address space used in the cloud environment
3	Virtual Datacenter Security Stack (VDSS)	All VDSS components and services (e.g. Web Application Firewall, Reverse Proxy, etc.) listed in DISA cloud SRG and SCCA documents, and DoD enclave protection firewall
4	Key Management	PKI certificate signing, administration, and key management
5	Network Infrastructure Management and Monitoring	Monitor, manage, and alert on events related to network utilization and availability
6	DDos Protection Service	Protects applications in the cloud environment from Distributed Denial of Service (DDoS) attacks
7	DNS Hosting, Caching, Recursion	DNS lookup for cloud-based applications and hierarchical DNS management delegated to mission owners
8	PKI Cert Validation	Online Certificate Status Protocol (OCSP) responder to validate if PKI certificates are valid or revoked
9	Network Time	Cybersecurity mandated accurate time source for DoD systems hosted in the cloud
10	Patch Management	Patch repositories for common operating system patch files.
11	SMTP Relay	Simple Mail Transport Protocol (SMTP) based email relay
12	Enterprise Directory Services	Privileged administrative user and non-person entity Identity, Credential, and Access Management (ICAM) (e.g., Active Directory [AD], Lightweight Directory Access Protocol [LDAP])
13	Federated Access Management	User Identity, Credential, and Access Management (ICAM) (e.g., EAMS-A, SAML Services)
14	Secure File Transfer Service (SFTP)	Securely transfer large files to the cloud environment
15	Notification Services	Alerting and notification (e.g., Short Message Service [SMS])

16	Endpoint Monitoring	Protects computing endpoints from malware and other cyber security threats (e.g., Host Based Security Service [HBSS])
17	Remote Privileged Access	Secure administrative access from the Internet or DODIN to DoD servers in secure cloud enclaves.
18	Centralized Logging/Auditing	Consolidated aggregation point for receiving and storing logs from systems and applications in the cloud environment
19	Security Information and Event Management (SIEM) and Log Analytics	Identifies and categorizes security related incidents and events
20	Data Dissemination Service	Accelerates and consolidates data for transfer utilizing secure network tunnels.
21	Code Repository	Code repository for source code configuration management to support a software factory
22	STIG Compliant Virtual Server Templates	A library which stores DISA Security Technical Implementation Guide (STIG) compliant virtual machine template images
23	License/Software Management	Operating System (OS) level license management
24	Asset Management Services	Discover and track assets such as resources, licensed software, etc. within the cloud environment
25	Cross Domain Solution (CDS)	Automatically move appropriately vetted files between security classification levels
26	CSSP Services	Standardized tools & processes to meet cloud cyber security requirements; <i>primarily provided by C5ISR to cArmy tenants. Collaboration with cArmy cloud services ops team</i>
27	Continuous Integration / Continuous Delivery/Deployment (CI/CD) Tools	Tools to enable the CI/CD pipeline (e.g., tools similar to the capabilities provided in DI2E.net)
28	Enterprise Data Catalog and Service Registry	Data and service listing for data and service management and automated data processing
29	Container Platform	Enabling container runtime services (e.g., container orchestration)

30	Budget and Cost Management	Provides cloud cost and budget information to mission owners
31	Resource Management Portal	Portal to manage compute and store resources
* Note - This listing is current as of 1 May 2020. The number of services is expected to increase as the Army cloud environment matures.		

CLIN SLIN Descriptions

Cloud Migration, Hosting, and Managed Services Work Breakdown Structure Potential CLIN/SLIN) Descriptions (separately identified & priced) (aligned with PWS)
2.6.1 Cloud Migration Support
2.6.1.1 Migration Analysis: Price for assessment/detailed analysis of the required effort to migrate to cloud environment
2.6.1.2 Reengineering: Price for adjusting code or configuration to ensure Operating Systems and Applications can be supported in target Cloud environment. Includes effort to convert OS to target platform, re-establish interface capabilities, user portal connectivity and access, as well as effort virtualize application or data storage
2.6.1.2.1 Refactoring: Price for re-architecting and recoding portions of the application to be compatible with cloud native frameworks/functionality. Includes, for instance, virtualization and conversion to x86 (Optional Detail)
2.6.1.2.2 Re-platforming: Price for efforts associated with changes to system software and middleware to adhere to the cloud environment target platform without changing applications core functionality (Optional Detail)
2.6.1.2.3 Re-hosting: Price for moving from one hosted environment to another. Includes effort to adjust system API/ interfaces (Optional Detail)
2.6.1.3 Cybersecurity: Price for security/RMF to achieve cybersecurity compliance and ATO
2.6.1.4 Application or System Migration: Priced effort to move or install applications, systems or other components
2.6.1.5 Data Migration: Priced Effort to migrate/converge data/databases
2.6.1.6 Initial Provisioning/Configuration: Priced Effort to provision operating environments and configure platform management software
2.6.1.7 Cloud Access Point Fee: Priced Effort to establish Cloud Access Point connection to DISA Network (DoD Network Connectivity)
2.6.1.8 Test and Evaluation: Priced Effort to complete testing to ensure performance criteria can be met
2.6.2 Recurring Hosting
2.6.2.1 Hosting Infrastructure
2.6.2.1.1 Compute: Price for computing resources (vCPU/core, RAM) consumed by operating environments
2.6.2.1.2 Database: Price for database operating environments
2.6.2.1.3 Data Transfer (In/Out): Price data transfer in/out of the of the network or sent to the systems

2.6.2.1.4 Storage/Backup Storage: Price for cloud storage or back up storage
2.6.2.2 Software Licenses: Price for software licenses that are provided by the cloud provider. This can include, for example, Oracle licenses provided as a part of the cloud operating environment. This does not include, for example, application licenses provided by other vendors that are not part of the cloud offering
2.6.2.3 Cloud Management Licenses: Price for software products including middleware that monitor and manage cloud environment
2.6.2.4 Cloud Services
2.6.2.4.1 Application Management Services (AMS): Price for functional application support (SAP/Oracle applications)
2.6.2.4.2 Cloud Managed Support Services
2.6.2.4.2.1 Monitoring/Server Administration: Priced Effort to monitor and manage servers and operating system
2.6.2.4.2.2 Database Management/Administration: Priced Effort to monitor and manage application databases, database administration, and SAP HANA support
2.6.2.4.2.3 Security/Information Assurance: Priced Effort associated with ongoing information assurance, security compliance, and Risk Management Framework
2.6.2.4.2.4 Software Patching and Deployment: Priced Effort associated with implementing operating system software patches as well as database, middleware, and application patches; generally applicable under PaaS
2.6.2.4.2.5 Program Management: Price for project management and oversight. Also includes the preparation of management CDRLs
2.6.2.4.2.6 Training: Price to develop education/training materials or conduct training on cloud related principals and techniques
2.6.2.4.2.7 Transition: Price to develop a transition plan, support a transition to another MSP provider, or support a transition to another cloud or an on-premise solution
2.6.2.4.2.8 Continuous Improvement
2.6.2.4.2.8.1 Process Automation: Effort to develop and maintain tools and scripts used to improve deployment, elasticity, and cloud management
2.6.2.4.2.8.2 Architecture Reengineering: Effort, usually provided under managed services, to optimize cloud infrastructure