

# FEDERAL ACQUISITION CIRCULAR

July 1, 2009

Number 2005-34

Federal Acquisition Circular (FAC) 2005-34 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-34 are effective July 1, 2009, except for Item III, which is effective July 31, 2009.

Note: The looseleaf updated replacement pages are effective July 15, 2009.

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**FAC 2005-34 LIST OF SUBJECTS**

<u>Item</u>	<u>Title</u>	<u>Page</u>
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II	Prohibition on Contracting with Inverted Domestic Corporations (Interim)	i
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## FAC 2005-34 SUMMARY OF ITEMS

Federal Acquisition Circular (FAC) 2005-34 amends the Federal Acquisition Regulation (FAR) as specified below:

### **Item I—Contractor Performance Information (FAR Case 2006-022)**

This final rule amends the FAR to revise the contractor performance information process. The FAR revisions include changes to FAR Parts 2, 8, 9, 13, 17, 36, 42, and 53. The purpose of this final rule is to ensure that the FAR clearly reflects the use of the Governmentwide performance information repository, Past Performance Information Retrieval System (PPIRS) at <http://www.ppirs.gov>; requires the evaluation of past performance for orders exceeding the simplified acquisition threshold placed against Federal Supply Schedule contracts, or under a task order or delivery order against a contract awarded by another Federal agency (*i.e.* Governmentwide acquisition contract or multi-agency contract); recommends past performance information for orders under single agency contracts; consolidates the collection of past performance guidance in Part 42; and, clarifies that the Agency shall identify those responsible for preparing interim and final evaluations.

**Replacement pages:** 2.1-11 and 2.11-12, Part 8 TOC pp. 8-1 and 8-2, 8.4-7 and 8.4-8, 9.1-3 and 9.1-4, 13.1-5 and 13.1-6, 17.2-1 and 17.2-2, 36.2-1 thru 36.2-4, 36.6-1 thru 36.6-6, 36.7-1 and 36.7-2, 42.15-1 and 42.15-2, Part 53 TOC pp. 53-1 thru 53-4, 53.2-3 and 53.2-4, and 53.3-117 thru 53.3-120.

### **Item II—Prohibition on Contracting with Inverted Domestic Corporations (FAR Case 2008-009) (Interim)**

This interim rule implements Section 743 of Division D of the Omnibus Appropriations Act, 2009 (Public Law 111-8), which prohibits the award of contracts using appropriated funds to any foreign incorporated entity that is treated as an inverted domestic corporation or to any subsidiary of one. The interim rule addresses solicitations issued after the date of publication using funds appropriated in Fiscal Years 2006, 2007, and 2008, as well.

**Replacement pages:** 4.12-1 and 4.12-2, Part 9 TOC pp. 9-1 and 9-2, 9.1-1 and 9.1-2, 9.1-5 and 9.1-6, Part 52 TOC pp. 52-1 and 52-2, 52.2-17 thru 52.2-20.2, 52.2-29 and 52.2-30, and 52.2-34.1 and 52.2-34.2.

**Item III—Role of Interagency Committee on Debarment and Suspension (FAR Case 2008-028)**

This final rule amends Federal Acquisition Regulation Subpart 9.4 to clarify the role of the Interagency Committee on Debarment and Suspension when more than one agency has an interest in the debarment or suspension of a contractor. Among other responsibilities, the Interagency Committee on Debarment and Suspension is authorized to resolve issues regarding the agency that will have lead responsibility in initiating a suspension or debarment proceeding. The Committee will also coordinate actions among interested agencies with respect to such action. This rule is facilitated as a result of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, Section 873(a)(1) and (2).

**Replacement pages:** 9.4-1 and 9.4-2.

**Looseleaf updated replacement pages**

Due to FAC 2005-34 changes, we are replacing pages that were previously issued with FAC 2005-33.

**Replacement pages:** 53.2-3 and 53.2-4.

## FAC 2005-34 FILING INSTRUCTIONS

**NOTE:** The FAR is segmented by subparts. The FAR page numbers reflect FAR Subparts. For example, "4.12-1" is page one of Subpart 4.12.

### Remove Pages

2.1-11 and 2.11-12

4.12-1 and 4.12-2

Part 8 TOC

pp. 8-1 and 8-2  
8.4-7 and 8.4-8

Part 9 TOC

pp. 9-1 and 9-2  
9.1-1 thru 9.1-6

13.1-5 and 13.1-6

17.2-1 and 17.2-2

36.2-1 thru 36.2-4

36.6-1 thru 36.6-6

36.7-1 and 36.7-2

42.15-1 and 42.15-2

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52.2-29 and 52.2-30  
52.2-34.1 and 52.2-34.2

Part 53 TOC

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53.2-3 and 53.2-4

53.3-117 thru 53.3-120

### Insert Pages

2.1-11 and 2.11-12

4.12-1 and 4.12-2

Part 8 TOC

pp. 8-1 and 8-2  
8.4-7 and 8.4-8

Part 9 TOC

pp. 9-1 and 9-2  
9.1-1 thru 9.1-6

13.1-5 and 13.1-6

17.2-1 and 17.2-2

36.2-1 thru 36.2-4

36.6-1 thru 36.6-6

36.7-1 and 36.7-2

42.15-1 and 42.15-2

Part 52 TOC

pp. 52-1 and 52-2  
52.2-17 thru 52.2-20.2  
52.2-29 and 52.2-30  
52.2-34.1 and 52.2-34.2

Part 53 TOC

pp. 53-1 thru 53-4  
53.2-3 and 53.2-4

53.3-117 thru 53.3-120

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“Partial termination” means the termination of a part, but not all, of the work that has not been completed and accepted under a contract.

“Past performance” means an offeror’s or contractor’s performance on active and physically completed contracts (see [4.804-4](#)).

“Performance-based acquisition (PBA)” means an acquisition structured around the results to be achieved as opposed to the manner by which the work is to be performed.

“Performance Work Statement (PWS)” means a statement of work for performance-based acquisitions that describes the required results in clear, specific and objective terms with measurable outcomes.

“Personal property” means property of any kind or interest in it except real property, records of the Federal Government, and naval vessels of the following categories:

- (1) Battleships;
- (2) Cruisers;
- (3) Aircraft carriers;
- (4) Destroyers; and
- (5) Submarines.

“Personal services contract” means a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, Government employees (see [37.104](#)).

“Plant clearance officer” means an authorized representative of the contracting officer, appointed in accordance with agency procedures, responsible for screening, redistributing, and disposing of contractor inventory from a contractor’s plant or work site. The term “Contractor’s plant” includes, but is not limited to, Government-owned contractor-operated plants and Federal installations as may be required under the scope of the contract.

“Pollution prevention” means any practice that—

- (1)(i) Reduces the amount of any hazardous substance, pollutant, or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment, or disposal; and
- (ii) Reduces the hazards to public health and the environment associated with the release of such substances, pollutants, and contaminants;
- (2) Reduces or eliminates the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources; or
- (3) Protects natural resources by conservation.

“Power of attorney” means the authority given one person or corporation to act for and obligate another, as specified in the instrument creating the power; in corporate suretyship, an instrument under seal that appoints an attorney-in-fact to act in behalf of a surety company in signing bonds (see also “attorney-in-fact” at [28.001](#)).

“Preaward survey” means an evaluation of a prospective contractor’s capability to perform a proposed contract.

“Preponderance of the evidence” means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

“Pricing” means the process of establishing a reasonable amount or amounts to be paid for supplies or services.

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions).

“Procurement” (see “acquisition”).

“Procuring activity” means a component of an executive agency having a significant acquisition function and designated as such by the head of the agency. Unless agency regulations specify otherwise, the term “procuring activity” is synonymous with “contracting activity.”

“Projected average loss” means the estimated long-term average loss per period for periods of comparable exposure to risk of loss.

“Proper invoice” means an invoice that meets the minimum standards specified in [32.905\(b\)](#).

“Purchase order,” when issued by the Government, means an offer by the Government to buy supplies or services, including construction and research and development, upon specified terms and conditions, using simplified acquisition procedures.

“Qualification requirement” means a Government requirement for testing or other quality assurance demonstration that must be completed before award of a contract.

“Qualified products list (QPL)” means a list of products that have been examined, tested, and have satisfied all applicable qualification requirements.

“Receiving report” means written evidence that indicates Government acceptance of supplies delivered or services performed (see [Subpart 46.6](#)). Receiving reports must meet the requirements of [32.905\(c\)](#).

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. For use in [Subpart 11.3](#) for paper and paper products, see the definition at [11.301](#).

“Registered in the CCR database” means that—

- (1) The contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and
- (2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record “Active”. The contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

“Renewable energy” means energy produced by solar, wind, geothermal, and biomass power.

“Renewable energy technology” means—

(1) Technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities; or

(2) The use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

“Residual value” means the proceeds, less removal and disposal costs, if any, realized upon disposition of a tangible capital asset. It usually is measured by the net proceeds from the sale or other disposition of the asset, or its fair value if the asset is traded in on another asset. The estimated residual value is a current forecast of the residual value.

“Responsible audit agency” means the agency that is responsible for performing all required contract audit services at a business unit.

“Responsible prospective contractor” means a contractor that meets the standards in [9.104](#).

“Scrap” means personal property that has no value except its basic metallic, mineral, or organic content.

“Segment” means one of two or more divisions, product departments, plants, or other subdivisions of an organization reporting directly to a home office, usually identified with responsibility for profit and/or producing a product or service. The term includes—

(1) Government-owned contractor-operated (GOCO) facilities; and

(2) Joint ventures and subsidiaries (domestic and foreign) in which the organization has—

(i) A majority ownership; or

(ii) Less than a majority ownership, but over which it exercises control.

“Self-insurance” means the assumption or retention of the risk of loss by the contractor, whether voluntarily or involuntarily. Self-insurance includes the deductible portion of purchased insurance.

“Senior procurement executive” means the individual appointed pursuant to section 16(3) of the Office of Federal Procurement Policy Act ([41 U.S.C. 414\(3\)](#)) who is responsible for management direction of the acquisition system of the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency.

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in [38 U.S.C. 101\(2\)](#), with a disability that is service-connected, as defined in [38 U.S.C. 101\(16\)](#).

“Shall” means the imperative.

“Shipment” means freight transported or to be transported.

“Shop drawings” means drawings submitted by the construction contractor or a subcontractor at any tier or required under a construction contract, showing in detail either or both of the following:

(1) The proposed fabrication and assembly of structural elements.

(2) The installation (*i.e.*, form, fit, and attachment details) of materials or equipment.

“Should” means an expected course of action or policy that is to be followed unless inappropriate for a particular circumstance.

“Signature” or “signed” means the discrete, verifiable symbol of an individual that, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic symbols.

“Simplified acquisition procedures” means the methods prescribed in [Part 13](#) for making purchases of supplies or services.

“Simplified acquisition threshold” means \$100,000, except for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack ([41 U.S.C. 428a](#)), the term means—

(1) \$250,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(2) \$1 million for any contract to be awarded and performed, or purchase to be made, outside the United States.

“Single, Governmentwide point of entry,” means the one point of entry to be designated by the Administrator of OFPP that will allow the private sector to electronically access procurement opportunities Governmentwide.

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR part 121 (see [19.102](#)). Such a concern is “not dominant in its field of operation” when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration must be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents,

## Subpart 4.12—Representations and Certifications

### 4.1200 Scope.

This subpart prescribes policies and procedures for requiring submission and maintenance of representations and certifications via the Online Representations and Certifications Application (ORCA) to—

(a) Eliminate the administrative burden for contractors of submitting the same information to various contracting offices; and

(b) Establish a common source for this information to procurement offices across the Government.

### 4.1201 Policy.

(a) Prospective contractors shall complete electronic annual representations and certifications at <http://orca.bpn.gov> in conjunction with required registration in the Central Contractor Registration (CCR) database (see FAR 4.1102).

(b)(1) Prospective contractors shall update the representations and certifications submitted to ORCA as necessary, but at least annually, to ensure they are kept current, accurate, and complete. The representations and certifications are effective until one year from date of submission or update to ORCA.

(2) When any of the conditions in paragraph (b) of the clause at [52.219-28](#), Post-Award Small Business Program Rerepresentation, apply, contractors that represented they were small businesses prior to award of a contract must update the representations and certifications in ORCA as directed by the clause. Contractors that represented they were other than small businesses prior to award of a contract may update the representations and certifications in ORCA as directed by the clause, if their size status has changed since contract award.

(c) Data in ORCA is archived and is electronically retrievable. Therefore, when a prospective contractor has completed representations and certifications electronically via ORCA, the contracting officer must reference the date of ORCA verification in the contract file, or include a paper copy of the electronically-submitted representations and certifications in the file. Either of these actions satisfies contract file documentation requirements of [4.803\(a\)\(11\)](#). However, if an offeror identifies changes to ORCA data pursuant to the FAR provisions at [52.204-8\(d\)](#) or [52.212-3\(b\)](#), the contracting officer must include a copy of the changes in the contract file.

### 4.1202 Solicitation provision and contract clause.

Except for commercial item solicitations issued under FAR [Part 12](#), insert in solicitations the provision at [52.204-8](#), Annual Representations and Certifications. The contracting officer shall check the applicable provisions at [52.204-8\(c\)\(2\)](#). When the clause at [52.204-7](#), Central Con-

tractor Registration, is included in the solicitation, do not include the following representations and certifications:

(a) [52.203-2](#), Certificate of Independent Price Determination.

(b) [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

(c) [52.204-3](#), Taxpayer Identification.

(d) [52.204-5](#), Women-Owned Business (Other Than Small Business).

(e) [52.209-5](#), Certification Regarding Responsibility Matters.

(f) [52.209-2](#), Prohibition on Contracting with Inverted Domestic Corporations-Representation.

(g) [52.214-14](#), Place of Performance—Sealed Bidding.

(h) [52.215-6](#), Place of Performance.

(i) [52.219-1](#), Small Business Program Representations (Basic & Alternate I).

(j) [52.219-2](#), Equal Low Bids.

(k) [52.219-19](#), Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.

(l) [52.219-21](#), Small Business Size Representation for Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program.

(m) [52.219-22](#), Small Disadvantaged Business Status (Basic & Alternate I).

(n) [52.222-18](#), Certification Regarding Knowledge of Child Labor for Listed End Products.

(o) [52.222-22](#), Previous Contracts and Compliance Reports.

(p) [52.222-25](#), Affirmative Action Compliance.

(q) [52.222-38](#), Compliance with Veterans' Employment Reporting Requirements.

(r) [52.222-48](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.

(s) [52.222-52](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.

(t) [52.223-1](#), Biobased Product Certification.

(u) [52.223-4](#), Recovered Material Certification.

(v) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Items (Alternate I only).

(w) [52.223-13](#), Certification of Toxic Chemical Release Reporting.

(x) [52.225-2](#), Buy American Act Certificate.

(y) [52.225-4](#), Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate (Basic, Alternate I & II).

(z) [52.225-6](#), Trade Agreements Certificate.

(aa) [52.225-20](#), Prohibition on Conducting Restricted Business Operations in Sudan—Certification.

(bb) [52.226-2](#), Historically Black College or University and Minority Institution Representation.

(cc) [52.227-6](#), Royalty Information (Basic & Alternate I).

(dd) [52.227-15](#), Representation of Limited Rights Data and Restricted Computer Software.

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**PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES**

*Sec.*

- 8.000 Scope of part.
- 8.001 General.
- 8.002 Priorities for use of Government supply sources.
- 8.003 Use of other Government supply sources.
- 8.004 Contract clause.

**Subpart 8.1—Excess Personal Property**

- 8.101 [Reserved]
- 8.102 Policy.
- 8.103 Information on available excess personal property.
- 8.104 Obtaining nonreportable property.

**Subpart 8.2—[Reserved]**

**Subpart 8.3—[Reserved]**

**Subpart 8.4—Federal Supply Schedules**

- 8.401 Definitions.
- 8.402 General.
- 8.403 Applicability.
- 8.404 Use of Federal Supply Schedules.
- 8.405 Ordering procedures for Federal Supply Schedules.
- 8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.
- 8.405-2 Ordering procedures for services requiring a statement of work.
- 8.405-3 Blanket purchase agreements (BPAs).
- 8.405-4 Price reductions.
- 8.405-5 Small business.
- 8.405-6 Limited sources justification and approval.
- 8.405-7 Payment.
- 8.406 Ordering activity responsibilities.
- 8.406-1 Order placement.
- 8.406-2 Inspection and acceptance.
- 8.406-3 Remedies for nonconformance.
- 8.406-4 Termination for cause.
- 8.406-5 Termination for the Government’s convenience.
- 8.406-6 Disputes.
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- 8.500 Scope of subpart.
- 8.501 Definitions.
- 8.502 Policy.
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**Subpart 8.6—Acquisition from Federal Prison Industries, Inc.**

- 8.601 General.

- 8.602 Policy.
- 8.603 Purchase priorities.
- 8.604 Waivers.
- 8.605 Exceptions.
- 8.606 Evaluating FPI performance.
- 8.607 Performance as a subcontractor.
- 8.608 Protection of classified and sensitive information.

**Subpart 8.7—Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled**

- 8.700 Scope of subpart.
- 8.701 Definitions.
- 8.702 General.
- 8.703 Procurement List.
- 8.704 Purchase priorities.
- 8.705 Procedures.
- 8.705-1 General.
- 8.705-2 Direct-order process.
- 8.705-3 Allocation process.
- 8.705-4 Compliance with orders.
- 8.706 Purchase exceptions.
- 8.707 Prices.
- 8.708 Shipping.
- 8.709 Payments.
- 8.710 Quality of merchandise.
- 8.711 Quality complaints.
- 8.712 Specification changes.
- 8.713 Optional acquisition of supplies and services.
- 8.714 Communications with the central nonprofit agencies and the Committee.
- 8.715 Replacement commodities.
- 8.716 Change-of-name and successor in interest procedures.

**Subpart 8.8—Acquisition of Printing and Related Supplies**

- 8.800 Scope of subpart.
- 8.801 Definitions.
- 8.802 Policy.

**Subpart 8.9—[Reserved]**

**Subpart 8.10—[Reserved]**

**Subpart 8.11—Leasing of Motor Vehicles**

- 8.1100 Scope of subpart.
- 8.1101 Definitions.
- 8.1102 Presolicitation requirements.
- 8.1103 Contract requirements.
- 8.1104 Contract clauses.

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**8.406-2 Inspection and acceptance.**

(a) *Supplies.* (1) Consignees shall inspect supplies at destination except when—

(i) The schedule contract indicates that mandatory source inspection is required by the schedule contracting agency; or

(ii) A schedule item is covered by a product description, and the ordering activity determines that the schedule contracting agency's inspection assistance is needed (based on the ordering volume, the complexity of the supplies, or the past performance of the supplier).

(2) When the schedule contracting agency performs the inspection, the ordering activity will provide two copies of the order specifying source inspection to the schedule contracting agency. The schedule contracting agency will notify the ordering activity of acceptance or rejection of the supplies.

(3) Material inspected at source by the schedule contracting agency, and determined to conform with the product description of the schedule, shall not be reinspected for the same purpose. The consignee shall limit inspection to kind, count, and condition on receipt.

(4) Unless otherwise provided in the schedule contract, acceptance is conclusive, except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

(b) *Services.* The ordering activity has the right to inspect all services in accordance with the contract requirements and as called for by the order. The ordering activity shall perform inspections and tests as specified in the order's quality assurance surveillance plan in a manner that will not unduly delay the work.

**8.406-3 Remedies for nonconformance.**

(a) If a contractor delivers a supply or service, but it does not conform to the order requirements, the ordering activity shall take appropriate action in accordance with the inspection and acceptance clause of the contract, as supplemented by the order.

(b) If the contractor fails to perform an order, or take appropriate corrective action, the ordering activity may terminate the order for cause or modify the order to establish a new delivery date (after obtaining consideration, as appropriate). Ordering activities shall follow the procedures at [8.406-4](#) when terminating an order for cause.

**8.406-4 Termination for cause.**

(a)(1) An ordering activity contracting officer may terminate individual orders for cause. Termination for cause shall comply with FAR [12.403](#), and may include charging the contractor with excess costs resulting from repurchase.

(2) The schedule contracting office shall be notified of all instances where an ordering activity contracting officer has terminated for cause an individual order to a Federal Supply Schedule contractor, or if fraud is suspected.

(b) If the contractor asserts that the failure was excusable, the ordering activity contracting officer shall follow the procedures at [8.406-6](#), as appropriate.

(c) If the contractor is charged excess costs, the following apply:

(1) Any repurchase shall be made at as low a price as reasonable, considering the quality required by the Government, delivery requirement, and administrative expenses. Copies of all repurchase orders, except the copy furnished to the contractor or any other commercial concern, shall include the notation:

Repurchase against the account of \_\_\_\_\_ [insert contractor's name] under Order \_\_\_\_\_ [insert number] under Contract \_\_\_\_\_ [insert number].

(2) When excess costs are anticipated, the ordering activity may withhold funds due the contractor as offset security. Ordering activities shall minimize excess costs to be charged against the contractor and collect or set-off any excess costs owed.

(3) If an ordering activity is unable to collect excess repurchase costs, it shall notify the schedule contracting office after final payment to the contractor.

(i) The notice shall include the following information about the terminated order:

(A) Name and address of the contractor.

(B) Schedule, contract, and order number.

(C) National stock or special item number(s), and a brief description of the item(s).

(D) Cost of schedule items involved.

(E) Excess costs to be collected.

(F) Other pertinent data.

(ii) The notice shall also include the following information about the purchase contract:

(A) Name and address of the contractor.

(B) Item repurchase cost.

(C) Repurchase order number and date of payment.

(D) Contract number, if any.

(E) Other pertinent data.

(d) Only the schedule contracting officer may modify the contract to terminate for cause any, or all, supplies or services covered by the schedule contract. If the schedule contracting officer has terminated any supplies or services covered by the schedule contract, no further orders may be placed for those items. Orders placed prior to termination for cause shall be fulfilled by the contractor, unless terminated for the convenience of the Government by the ordering activity contracting officer.

**8.406-5 Termination for the Government's convenience.**

(a) An ordering activity contracting officer may terminate individual orders for the Government's convenience. Termination for the Government's convenience shall follow the procedures at [8.406-6](#).

nations for the Government’s convenience shall comply with FAR [12.403](#).

(b) Before terminating orders for the Government’s convenience, the ordering activity contracting officer shall endeavor to enter into a “no cost” settlement agreement with the contractor.

(c) Only the schedule contracting officer may modify the schedule contract to terminate any, or all, supplies or services covered by the schedule contract for the Government’s convenience.

#### **8.406-6 Disputes.**

(a) *Disputes pertaining to the performance of orders under a schedule contract.* (1) Under the Disputes clause of the schedule contract, the ordering activity contracting officer may—

(i) Issue final decisions on disputes arising from performance of the order (but see paragraph (b) of this section); or

(ii) Refer the dispute to the schedule contracting officer.

(2) The ordering activity contracting officer shall notify the schedule contracting officer promptly of any final decision.

(b) *Disputes pertaining to the terms and conditions of schedule contracts.* The ordering activity contracting officer shall refer all disputes that relate to the contract terms and conditions to the schedule contracting officer for resolution under the Disputes clause of the contract and notify the schedule contractor of the referral.

(c) *Appeals.* Contractors may appeal final decisions to either the Board of Contract Appeals servicing the agency that issued the final decision or the U.S. Court of Federal Claims.

(d) *Alternative dispute resolution.* The contracting officer should use the alternative dispute resolution (ADR) procedures, to the maximum extent practicable (see [33.204](#) and [33.214](#)).

#### **8.406-7 Contractor Performance Evaluation.**

Ordering activities must prepare an evaluation of contractor performance for each order that exceeds the simplified acquisition threshold in accordance with [42.1502\(c\)](#).



**PART 9—CONTRACTOR QUALIFICATIONS**

Sec.

9.000	Scope of part.		
	<b>Subpart 9.1—Responsible Prospective Contractors</b>		<b>Subpart 9.3—First Article Testing and Approval</b>
9.100	Scope of subpart.	9.301	Definition.
9.101	Definition.	9.302	General.
9.102	Applicability.	9.303	Use.
9.103	Policy.	9.304	Exceptions.
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**9.000 Scope of part.**

This part prescribes policies, standards, and procedures pertaining to prospective contractors' responsibility; debarment, suspension, and ineligibility; qualified products; first article testing and approval; contractor team arrangements; defense production pools and research and development pools; and organizational conflicts of interest.

## Subpart 9.1—Responsible Prospective Contractors

**9.100 Scope of subpart.**

This subpart prescribes policies, standards, and procedures for determining whether prospective contractors and subcontractors are responsible.

**9.101 Definition.**

“Surveying activity,” as used in this subpart, means the cognizant contract administration office or, if there is no such office, another organization designated by the agency to conduct preaward surveys.

**9.102 Applicability.**

(a) This subpart applies to all proposed contracts with any prospective contractor that is located—

- (1) In the United States or its outlying areas; or
- (2) Elsewhere, unless application of the subpart would be inconsistent with the laws or customs where the contractor is located.

(b) This subpart does not apply to proposed contracts with—

- (1) Foreign, State, or local governments;
- (2) Other U.S. Government agencies or their instrumentalities; or
- (3) Agencies for the blind or other severely handicapped (see [Subpart 8.7](#)).

**9.103 Policy.**

(a) Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only.

(b) No purchase or award shall be made unless the contracting officer makes an affirmative determination of responsibility. In the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility. If the prospective contractor is a small business concern, the contracting officer shall comply with [Subpart 19.6](#), Certificates of Competency and Determinations of Responsibility. (If Section 8(a) of the Small Business Act ([15 U.S.C. 637](#)) applies, see [Subpart 19.8](#).)

(c) The award of a contract to a supplier based on lowest evaluated price alone can be false economy if there is subsequent default, late deliveries, or other unsatisfactory perfor-

mance resulting in additional contractual or administrative costs. While it is important that Government purchases be made at the lowest price, this does not require an award to a supplier solely because that supplier submits the lowest offer. A prospective contractor must affirmatively demonstrate its responsibility, including, when necessary, the responsibility of its proposed subcontractors.

**9.104 Standards.****9.104-1 General standards.**

To be determined responsible, a prospective contractor must—

(a) Have adequate financial resources to perform the contract, or the ability to obtain them (see [9.104-3\(a\)](#));

(b) Be able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing commercial and governmental business commitments;

(c) Have a satisfactory performance record (see [9.104-3\(b\)](#) and [Subpart 42.15](#)). A prospective contractor shall not be determined responsible or nonresponsible solely on the basis of a lack of relevant performance history, except as provided in [9.104-2](#);

(d) Have a satisfactory record of integrity and business ethics (for example, see [Subpart 42.15](#)).

(e) Have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them (including, as appropriate, such elements as production control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or services to be performed by the prospective contractor and subcontractors). (See [9.104-3\(a\)](#).)

(f) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them (see [9.104-3\(a\)](#)); and

(g) Be otherwise qualified and eligible to receive an award under applicable laws and regulations (see also inverted domestic corporation prohibition at FAR [9.108](#)).

**9.104-2 Special standards.**

(a) When it is necessary for a particular acquisition or class of acquisitions, the contracting officer shall develop, with the assistance of appropriate specialists, special standards of responsibility. Special standards may be particularly desirable when experience has demonstrated that unusual expertise or specialized facilities are needed for adequate contract performance. The special standards shall be set forth in the solicitation (and so identified) and shall apply to all offerors.

(b) Contracting officers shall award contracts for subsistence only to those prospective contractors that meet the general standards in [9.104-1](#) and are approved in accordance with agency sanitation standards and procedures.

**9.104-3 Application of standards.**

(a) *Ability to obtain resources.* Except to the extent that a prospective contractor has sufficient resources or proposes to perform the contract by subcontracting, the contracting officer shall require acceptable evidence of the prospective contractor's ability to obtain required resources (see [9.104-1](#)(a), (e), and (f)). Acceptable evidence normally consists of a commitment or explicit arrangement, that will be in existence at the time of contract award, to rent, purchase, or otherwise acquire the needed facilities, equipment, other resources, or personnel. Consideration of a prime contractor's compliance with limitations on subcontracting shall take into account the time period covered by the contract base period or quantities plus option periods or quantities, if such options are considered when evaluating offers for award.

(b) *Satisfactory performance record.* A prospective contractor that is or recently has been seriously deficient in contract performance shall be presumed to be nonresponsible, unless the contracting officer determines that the circumstances were properly beyond the contractor's control, or that the contractor has taken appropriate corrective action. Past failure to apply sufficient tenacity and perseverance to perform acceptably is strong evidence of nonresponsibility. Failure to meet the quality requirements of the contract is a significant factor to consider in determining satisfactory performance. The contracting officer shall consider the number of contracts involved and the extent of deficient performance in each contract when making this determination. If the pending contract requires a subcontracting plan pursuant to [Subpart 19.7](#), The Small Business Subcontracting Program, the contracting officer shall also consider the prospective contractor's compliance with subcontracting plans under recent contracts.

(c) *Affiliated concerns.* Affiliated concerns (see "Concern" in [19.001](#) and "Affiliates" in [19.101](#)) are normally considered separate entities in determining whether the concern that is to perform the contract meets the applicable standards for responsibility. However, the contracting officer shall consider the affiliate's past performance and integrity when they may adversely affect the prospective contractor's responsibility.

(d) *Small business concerns.* (1) If a small business concern's offer that would otherwise be accepted is to be rejected because of a determination of nonresponsibility, the contracting officer shall refer the matter to the Small Business Administration, which will decide whether or not to issue a Certificate of Competency (see [Subpart 19.6](#)).

(2) A small business that is unable to comply with the limitations on subcontracting at [52.219-14](#) may be considered nonresponsible.

**9.104-4 Subcontractor responsibility.**

(a) Generally, prospective prime contractors are responsible for determining the responsibility of their prospective sub-

contractors (but see [9.405](#) and [9.405-2](#) regarding debarred, ineligible, or suspended firms). Determinations of prospective subcontractor responsibility may affect the Government's determination of the prospective prime contractor's responsibility. A prospective contractor may be required to provide written evidence of a proposed subcontractor's responsibility.

(b) When it is in the Government's interest to do so, the contracting officer may directly determine a prospective subcontractor's responsibility (e.g., when the prospective contract involves medical supplies, urgent requirements, or substantial subcontracting). In this case, the same standards used to determine a prime contractor's responsibility shall be used by the Government to determine subcontractor responsibility.

**9.104-5 Certification regarding responsibility matters.**

(a) When an offeror provides an affirmative response in paragraph (a)(1) of the provision at [52.209-5](#), Certification Regarding Responsibility Matters, or paragraph (h) of provision [52.212-3](#), the contracting officer shall—

(1) Promptly, upon receipt of offers, request such additional information from the offeror as the offeror deems necessary in order to demonstrate the offeror's responsibility to the contracting officer (but see [9.405](#)); and

(2) Notify, prior to proceeding with award, in accordance with agency procedures (see [9.406-3](#)(a) and [9.407-3](#)(a)), the agency official responsible for initiating debarment or suspension action, where an offeror indicates the existence of an indictment, charge, conviction, or civil judgment, or Federal tax delinquency in an amount that exceeds \$3,000.

(b) Offerors who do not furnish the certification or such information as may be requested by the contracting officer shall be given an opportunity to remedy the deficiency. Failure to furnish the certification or such information may render the offeror nonresponsible.

**9.104-6 Solicitation provision.**

The contracting officer shall insert the provision at [52.209-5](#), Certification Regarding Responsibility Matters, in solicitations where the contract value is expected to exceed the simplified acquisition threshold.

**9.105 Procedures****9.105-1 Obtaining information.**

(a) Before making a determination of responsibility, the contracting officer shall possess or obtain information sufficient to be satisfied that a prospective contractor currently meets the applicable standards in [9.104](#).

(b)(1) Generally, the contracting officer shall obtain information regarding the responsibility of prospective contractors, including requesting preaward surveys when necessary

(see [9.106](#)), promptly after a bid opening or receipt of offers. However, in negotiated contracting, especially when research and development is involved, the contracting officer may obtain this information before issuing the request for proposals. Requests for information shall ordinarily be limited to information concerning—

- (i) The low bidder; or
- (ii) Those offerors in range for award.

(2) Preaward surveys shall be managed and conducted by the surveying activity.

(i) If the surveying activity is a contract administration office—

(A) That office shall advise the contracting officer on prospective contractors' financial competence and credit needs; and

(B) The administrative contracting officer shall obtain from the auditor any information required concerning the adequacy of prospective contractors' accounting systems and these systems' suitability for use in administering the proposed type of contract.

(ii) If the surveying activity is not a contract administration office, the contracting officer shall obtain from the auditor any information required concerning prospective contractors' financial competence and credit needs, the adequacy of their accounting systems, and these systems' suitability for use in administering the proposed type of contract.

(3) Information on financial resources and performance capability shall be obtained or updated on as current a basis as is feasible up to the date of award.

(c) In making the determination of responsibility (see [9.104-1\(c\)](#)), the contracting officer shall consider relevant past performance information (see [Subpart 42.15](#)). In addition to the Governmentwide performance information repository, Past Performance Information Retrieval System (PPIRS) (at [www.ppirs.gov](http://www.ppirs.gov)), the contracting officer should use the following sources of information to support such determinations:

(1) The Excluded Parties List System maintained in accordance with [Subpart 9.4](#).

(2) Records and experience data, including verifiable knowledge of personnel within the contracting office, audit offices, contract administration offices, and other contracting offices.

(3) The prospective contractor-including bid or proposal information (including the certification at [52.209-5](#) or [52.212-3\(h\)](#) (see [9.104-5](#))), questionnaire replies, financial data, information on production equipment, and personnel information.

(4) Commercial sources of supplier information of a type offered to buyers in the private sector.

(5) Preaward survey reports (see [9.106](#)).

(6) Other sources such as publications; suppliers, subcontractors, and customers of the prospective contractor;

financial institutions; Government agencies; and business and trade associations.

(d) Contracting offices and cognizant contract administration offices that become aware of circumstances casting doubt on a contractor's ability to perform contracts successfully shall promptly exchange relevant information.

#### 9.105-2 Determinations and documentation.

(a) *Determinations.* (1) The contracting officer's signing of a contract constitutes a determination that the prospective contractor is responsible with respect to that contract. When an offer on which an award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, the contracting officer shall make, sign, and place in the contract file a determination of nonresponsibility, which shall state the basis for the determination.

(2) If the contracting officer determines and documents that a responsive small business lacks certain elements of responsibility, the contracting officer shall comply with the procedures in [Subpart 19.6](#). When a certificate of competency is issued for a small business concern (see [Subpart 19.6](#)), the contracting officer may accept the factors covered by the certificate without further inquiry.

(b) *Support documentation.* Documents and reports supporting a determination of responsibility or nonresponsibility, including any preaward survey reports and any applicable Certificate of Competency, must be included in the contract file.

#### 9.105-3 Disclosure of preaward information.

(a) Except as provided in [Subpart 24.2](#), Freedom of Information Act, information (including the preaward survey report) accumulated for purposes of determining the responsibility of a prospective contractor shall not be released or disclosed outside the Government.

(b) The contracting officer may discuss preaward survey information with the prospective contractor before determining responsibility. After award, the contracting officer or, if it is appropriate, the head of the surveying activity or a designee may discuss the findings of the preaward survey with the company surveyed.

(c) Preaward survey information may contain proprietary or source selection information and should be marked with the appropriate legend and protected accordingly (see [3.104-4](#)).

#### 9.106 Preaward surveys.

##### 9.106-1 Conditions for preaward surveys.

(a) A preaward survey is normally required only when the information on hand or readily available to the contracting officer, including information from commercial sources, is not sufficient to make a determination regarding responsibil-

ity. In addition, if the contemplated contract will have a fixed price at or below the simplified acquisition threshold or will involve the acquisition of commercial items (see [Part 12](#)), the contracting officer should not request a preaward survey unless circumstances justify its cost.

(b) When a cognizant contract administration office becomes aware of a prospective award to a contractor about which unfavorable information exists and no preaward survey has been requested, it shall promptly obtain and transmit details to the contracting officer.

(c) Before beginning a preaward survey, the surveying activity shall ascertain whether the prospective contractor is debarred, suspended, or ineligible (see [Subpart 9.4](#)). If the prospective contractor is debarred, suspended, or ineligible, the surveying activity shall advise the contracting officer promptly and not proceed with the preaward survey unless specifically requested to do so by the contracting officer.

#### 9.106-2 Requests for preaward surveys.

The contracting officer's request to the surveying activity (Preaward Survey of Prospective Contractor (General), [SF 1403](#)) shall—

(a) Identify additional factors about which information is needed;

(b) Include the complete solicitation package (unless it has previously been furnished), and any information indicating prior unsatisfactory performance by the prospective contractor;

(c) State whether the contracting office will participate in the survey;

(d) Specify the date by which the report is required. This date should be consistent with the scope of the survey requested and normally shall allow at least 7 working days to conduct the survey; and

(e) When appropriate, limit the scope of the survey.

#### 9.106-3 Interagency preaward surveys.

When the contracting office and the surveying activity are in different agencies, the procedures of this section [9.106](#) and [Subpart 42.1](#) shall be followed along with the regulations of the agency in which the surveying activity is located, except that reasonable special requests by the contracting office shall be accommodated.

#### 9.106-4 Reports.

(a) The surveying activity shall complete the applicable parts of [SF 1403](#), Preaward Survey of Prospective Contractor (General); [SF 1404](#), Preaward Survey of Prospective Contractor—Technical; [SF 1405](#), Preaward Survey of Prospective Contractor—Production; [SF 1406](#), Preaward Survey of Prospective Contractor—Quality Assurance; [SF 1407](#), Preaward Survey of Prospective Contractor—Financial Capability; and [SF 1408](#), Preaward Survey of Prospective Contractor—

Accounting System; and provide a narrative discussion sufficient to support both the evaluation ratings and the recommendations.

(b) When the contractor surveyed is a small business that has received preferential treatment on an ongoing contract under Section 8(a) of the Small Business Act ([15 U.S.C. 637](#)) or has received a Certificate of Competency during the last 12 months, the surveying activity shall consult the appropriate Small Business Administration field office before making an affirmative recommendation regarding the contractor's responsibility or nonresponsibility.

(c) When a preaward survey discloses previous unsatisfactory performance, the surveying activity shall specify the extent to which the prospective contractor plans, or has taken, corrective action. Lack of evidence that past failure to meet contractual requirements was the prospective contractor's fault does not necessarily indicate satisfactory performance. The narrative shall report any persistent pattern of need for costly and burdensome Government assistance (e.g., engineering, inspection, or testing) provided in the Government's interest but not contractually required.

(d) When the surveying activity possesses information that supports a recommendation of complete award without an on-site survey and no special areas for investigation have been requested, the surveying activity may provide a short-form preaward survey report. The short-form report shall consist solely of the Preaward Survey of Prospective Contractor (General), [SF 1403](#). Sections III and IV of this form shall be completed and block 21 shall be checked to show that the report is a short-form preaward report.

#### 9.107 Surveys of nonprofit agencies participating in the AbilityOne Program under the Javits-Wagner-O'Day Act.

(a) The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee), as authorized by [41 U.S.C. 46-48c](#), determines what supplies and services Federal agencies are required to purchase from AbilityOne participating nonprofit agencies serving people who are blind or have other severe disabilities (see [Subpart 8.7](#)). The Committee is required to find an AbilityOne participating nonprofit agency capable of furnishing the supplies or services before the nonprofit agency can be designated as a mandatory source under the AbilityOne Program. The Committee may request a contracting office to assist in assessing the capabilities of a nonprofit agency.

(b) The contracting office, upon request from the Committee, shall request a capability survey from the activity responsible for performing preaward surveys, or notify the Committee that the AbilityOne participating nonprofit agency is capable, with supporting rationale, and that the survey is waived. The capability survey will focus on the technical and production capabilities and applicable preaward survey ele-



ments to furnish specific supplies or services being considered for addition to the Procurement List.

(c) The contracting office shall use the [Standard Form 1403](#) to request a capability survey of organizations employing people who are blind or have other severe disabilities.

(d) The contracting office shall furnish a copy of the completed survey, or notice that the AbilityOne participating non-profit agency is capable and the survey is waived, to the Executive Director, Committee for Purchase From People Who Are Blind or Severely Disabled.

### **9.108 Prohibition on contracting with inverted domestic corporations.**

#### **9.108-1 Definition.**

“Inverted domestic corporation,” as used in this section, means a foreign incorporated entity which is treated as an inverted domestic corporation under [6 U.S.C. 395\(b\)](#), *i.e.*, a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in [6 U.S.C. 395\(b\)](#), applied in accordance with the rules and definitions of [6 U.S.C. 395\(c\)](#).

#### **9.108-2 Relationship with the Internal Revenue Code and Treasury regulations.**

(a) Inverted domestic corporations are covered not only in the Department of Homeland Security statute at [6 U.S.C. 395](#), but also are similarly covered in the Internal Revenue Code at [26 U.S.C. 7874](#). A foreign corporation is treated as an inverted domestic corporation for U.S. Federal income tax purposes, rather than as a foreign corporation, if—

(1) At least 80 percent (80%) of the stock is now held by former shareholders of the domestic corporation or partners of the domestic partnership; and

(2) The foreign entity plus companies connected to it by 50 percent (50%) or more ownership do not have substantial business activities in the foreign country.

(b) A foreign corporation that is treated as an inverted domestic corporation for U.S. Federal income tax purposes, is also treated as one for purposes of this section.

(c) A foreign entity that escapes the tax consequence of [26 U.S.C. 7874](#) only because the inversion transactions were completed on or before the March 4, 2003, date in section 7874, is nevertheless treated as an inverted domestic corporation for purposes of [6 U.S.C. 395](#) (which does not have a limiting date) and therefore also for purposes of this section.

#### **9.108-3 Prohibition.**

(a) Section 743 of Division D of the FY 2009 Omnibus Appropriations Act (Public Law 111-8) prohibits the use of 2009 appropriated funds for contracting with any foreign incorporated entity that is treated as an inverted domestic corporation, or with a subsidiary of such a corporation. The same restriction was also contained in the Fiscal Year 2006 through 2008 appropriations acts. In order to be eligible for contract award when using Fiscal Year 2006 through Fiscal Year 2009 funds, an offeror must represent that it is not an inverted domestic corporation or subsidiary. Any offeror that cannot so represent is ineligible for award of a contract using such appropriated funds.

(b) Contracting officers should rigorously examine circumstances known to them that would lead a reasonable business person to question the contractor self-certification and, after consultation with legal counsel, take appropriate action where that questionable self-certification cannot be verified.

#### **9.108-4 Waiver.**

Any agency head may waive the requirement of subsection [9.108-3](#) for a specific contract if the agency head determines in writing that the waiver is required in the interest of national security, documents the determination, and reports it to the Congress.

#### **9.108-5 Solicitation provision.**

When using funds appropriated in Fiscal Year 2006 through Fiscal Year 2009, the contracting officer shall include the provision at [52.209-2](#), Prohibition on Contracting with Inverted Domestic Corporations-Representation, in each solicitation issued after July 1, 2009 for the acquisition of products or services (see FAR [52.212-3](#) for solicitations issued under [Part 12](#) ), unless waived in accordance with FAR [9.108-4](#).

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burdensome fashion. Formal evaluation plans and establishing a competitive range, conducting discussions, and scoring quotations or offers are not required. Contracting offices may conduct comparative evaluations of offers. Evaluation of other factors, such as past performance—

(i) Does not require the creation or existence of a formal data base; and

(ii) May be based on one or more of the following:

(A) The contracting officer's knowledge of and previous experience with the supply or service being acquired;

(B) Customer surveys, and past performance questionnaire replies;

(C) The Governmentwide Past Performance Information Retrieval System (PPIRS) at [www.ppirs.gov](http://www.ppirs.gov); or

(D) Any other reasonable basis.

(4) For acquisitions conducted using a method that permits electronic response to the solicitation, the contracting officer may—

(i) After preliminary consideration of all quotations or offers, identify from all quotations or offers received one that is suitable to the user, such as the lowest priced brand name product, and quickly screen all lower priced quotations or offers based on readily discernible value indicators, such as past performance, warranty conditions, and maintenance availability; or

(ii) Where an evaluation is based only on price and past performance, make an award based on whether the lowest priced of the quotations or offers having the highest past performance rating possible represents the best value when compared to any lower priced quotation or offer.

### 13.106-3 Award and documentation.

(a) *Basis for award.* Before making award, the contracting officer must determine that the proposed price is fair and reasonable.

(1) Whenever possible, base price reasonableness on competitive quotations or offers.

(2) If only one response is received, include a statement of price reasonableness in the contract file. The contracting officer may base the statement on—

(i) Market research;

(ii) Comparison of the proposed price with prices found reasonable on previous purchases;

(iii) Current price lists, catalogs, or advertisements. However, inclusion of a price in a price list, catalog, or advertisement does not, in and of itself, establish fairness and reasonableness of the price;

(iv) A comparison with similar items in a related industry;

(v) The contracting officer's personal knowledge of the item being purchased;

(vi) Comparison to an independent Government estimate; or

(vii) Any other reasonable basis.

(3) Occasionally an item can be obtained only from a supplier that quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantity required. In these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation or offer and ask it to confirm or alter its requirement. The file shall be documented to support the final action taken.

(b) *File documentation and retention.* Keep documentation to a minimum. Purchasing offices shall retain data supporting purchases (paper or electronic) to the minimum extent and duration necessary for management review purposes (see [Subpart 4.8](#)). The following illustrate the extent to which quotation or offer information should be recorded:

(1) *Oral solicitations.* The contracting office should establish and maintain records of oral price quotations in order to reflect clearly the propriety of placing the order at the price paid with the supplier concerned. In most cases, this will consist merely of showing the names of the suppliers contacted and the prices and other terms and conditions quoted by each.

(2) *Written solicitations* (see [2.101](#)). For acquisitions not exceeding the simplified acquisition threshold, limit written records of solicitations or offers to notes or abstracts to show prices, delivery, references to printed price lists used, the supplier or suppliers contacted, and other pertinent data.

(3) *Special situations.* Include additional statements—

(i) Explaining the absence of competition (see [13.106-1](#) for brand name purchases) if only one source is solicited and the acquisition does not exceed the simplified acquisition threshold (does not apply to an acquisition of utility services available from only one source); or

(ii) Supporting the award decision if other than price-related factors were considered in selecting the supplier.

(c) *Notification.* For acquisitions that do not exceed the simplified acquisition threshold and for which automatic notification is not provided through an electronic commerce method that employs widespread electronic public notice, notification to unsuccessful suppliers shall be given only if requested or required by [5.301](#).

(d) *Request for information.* If a supplier requests information on an award that was based on factors other than price alone, a brief explanation of the basis for the contract award decision shall be provided (see [15.503\(b\)\(2\)](#)).

(e) *Taxpayer Identification Number.* If an oral solicitation is used, the contracting officer shall ensure that the copy of the award document sent to the payment office is annotated with the contractor's Taxpayer Identification Number (TIN) and type of organization (see [4.203](#)), unless this information will be obtained from some other source (e.g., centralized database). The contracting officer shall disclose to the contractor that the TIN may be used by the Government to collect and report on any delinquent amounts arising out of the contractor's relationship with the Government ([31 U.S.C. 7701\(c\)\(3\)](#)).

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## Subpart 17.2—Options

### 17.200 Scope of subpart.

This subpart prescribes policies and procedures for the use of option solicitation provisions and contract clauses. Except as provided in agency regulations, this subpart does not apply to contracts for (a) services involving the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property; (b) architect-engineer services; and (c) research and development services. However, it does not preclude the use of options in those contracts.

### 17.201 [Reserved]

### 17.202 Use of options.

(a) Subject to the limitations of paragraphs (b) and (c) of this section, for both sealed bidding and contracting by negotiation, the contracting officer may include options in contracts when it is in the Government's interest. When using sealed bidding, the contracting officer shall make a written determination that there is a reasonable likelihood that the options will be exercised before including the provision at [52.217-5](#), Evaluation of Options, in the solicitation. (See [17.207\(f\)](#) with regard to the exercise of options.)

(b) Inclusion of an option is normally not in the Government's interest when, in the judgment of the contracting officer—

(1) The foreseeable requirements involve—

(i) Minimum economic quantities (*i.e.*, quantities large enough to permit the recovery of startup costs and the production of the required supplies at a reasonable price); and

(ii) Delivery requirements far enough into the future to permit competitive acquisition, production, and delivery.

(2) An indefinite quantity or requirements contract would be more appropriate than a contract with options. However, this does not preclude the use of an indefinite quantity contract or requirements contract with options.

(c) The contracting officer shall not employ options if—

(1) The contractor will incur undue risks; *e.g.*, the price or availability of necessary materials or labor is not reasonably foreseeable;

(2) Market prices for the supplies or services involved are likely to change substantially; or

(3) The option represents known firm requirements for which funds are available unless—

(i) The basic quantity is a learning or testing quantity; and

(ii) Competition for the option is impracticable once the initial contract is awarded.

(d) In recognition of—

(1) The Government's need in certain service contracts for continuity of operations; and

(2) The potential cost of disrupted support, options may be included in service contracts if there is an anticipated need for a similar service beyond the first contract period.

### 17.203 Solicitations.

(a) Solicitations shall include appropriate option provisions and clauses when resulting contracts will provide for the exercise of options (see [17.208](#)).

(b) Solicitations containing option provisions shall state the basis of evaluation, either exclusive or inclusive of the option and, when appropriate, shall inform offerors that it is anticipated that the Government may exercise the option at time of award.

(c) Solicitations normally should allow option quantities to be offered without limitation as to price, and there shall be no limitation as to price if the option quantity is to be considered in the evaluation for award (see [17.206](#)).

(d) Solicitations that allow the offer of options at unit prices which differ from the unit prices for the basic requirement shall state that offerors may offer varying prices for options, depending on the quantities actually ordered and the dates when ordered.

(e) If it is anticipated that the Government may exercise an option at the time of award and if the condition specified in paragraph (d) of this section applies, solicitations shall specify the price at which the Government will evaluate the option (highest option price offered or option price for specified requirements).

(f) Solicitations may, in unusual circumstances, require that options be offered at prices no higher than those for the initial requirement; *e.g.*, when—

(1) The option cannot be evaluated under [17.206](#); or

(2) Future competition for the option is impracticable.

(g) Solicitations that require the offering of an option at prices no higher than those for the initial requirement shall—

(1) Specify that the Government will accept an offer containing an option price higher than the base price only if the acceptance does not prejudice any other offeror; and

(2) Limit option quantities for additional supplies to not more than 50 percent of the initial quantity of the same contract line item. In unusual circumstances, an authorized person at a level above the contracting officer may approve a greater percentage of quantity.

(h) Include the value of options in determining if the acquisition will exceed the World Trade Organization Government Procurement Agreement or Free Trade Agreement thresholds.

### 17.204 Contracts.

(a) The contract shall specify limits on the purchase of additional supplies or services, or the overall duration of the term of the contract, including any extension.

(b) The contract shall state the period within which the option may be exercised.

(c) The period shall be set so as to provide the contractor adequate lead time to ensure continuous production.

(d) The period may extend beyond the contract completion date for service contracts. This is necessary for situations when exercise of the option would result in the obligation of funds that are not available in the fiscal year in which the contract would otherwise be completed.

(e) Unless otherwise approved in accordance with agency procedures, the total of the basic and option periods shall not exceed 5 years in the case of services, and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies. These limitations do not apply to information technology contracts. However, statutes applicable to various classes of contracts, for example, the Service Contract Act (see [22.1002-1](#)), may place additional restrictions on the length of contracts.

(f) Contracts may express options for increased quantities of supplies or services in terms of—

- (1) Percentage of specific line items,
- (2) Increase in specific line items; or
- (3) Additional numbered line items identified as the option.

(g) Contracts may express extensions of the term of the contract as an amended completion date or as additional time for performance; *e.g.*, days, weeks, or months.

#### 17.205 Documentation.

(a) The contracting officer shall justify in writing the quantities or the term under option, the notification period for exercising the option, and any limitation on option price under [17.203\(g\)](#); and shall include the justification document in the contract file.

(b) Any justifications and approvals and any determination and findings required by [Part 6](#) shall specify both the basic requirement and the increase permitted by the option.

#### 17.206 Evaluation.

(a) In awarding the basic contract, the contracting officer shall, except as provided in paragraph (b) of this section, evaluate offers for any option quantities or periods contained in a solicitation when it has been determined prior to soliciting offers that the Government is likely to exercise the options. (See [17.208](#).)

(b) The contracting officer need not evaluate offers for any option quantities when it is determined that evaluation would not be in the best interests of the Government and this determination is approved at a level above the contracting officer. An example of a circumstance that may support a determination not to evaluate offers for option quantities is when there is a reasonable certainty that funds will be unavailable to permit exercise of the option.

#### 17.207 Exercise of options.

(a) When exercising an option, the contracting officer shall provide written notice to the contractor within the time period specified in the contract.

(b) When the contract provides for economic price adjustment and the contractor requests a revision of the price, the contracting officer shall determine the effect of the adjustment on prices under the option before the option is exercised.

(c) The contracting officer may exercise options only after determining that—

- (1) Funds are available;
- (2) The requirement covered by the option fulfills an existing Government need;
- (3) The exercise of the option is the most advantageous method of fulfilling the Government's need, price and other factors (see paragraphs (d) and (e) of this section) considered;
- (4) The option was synopsisized in accordance with [Part 5](#) unless exempted by [5.202\(a\)\(11\)](#) or other appropriate exemptions in [5.202](#); and
- (5) The contractor is not listed on the Excluded Parties List System (EPLS) (see FAR [9.405-1](#)).

(d) The contracting officer, after considering price and other factors, shall make the determination on the basis of one of the following:

(1) A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option. If it is anticipated that the best price available is the option price or that this is the more advantageous offer, the contracting officer should not use this method of testing the market.

(2) An informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the more advantageous offer.

(3) The time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable or the more advantageous offer. The contracting officer shall take into consideration such factors as market stability and comparison of the time since award with the usual duration of contracts for such supplies or services.

(e) The determination of other factors under paragraph (c)(3) of this section—

(1) Should take into account the Government's need for continuity of operations and potential costs of disrupting operations; and

(2) May consider the effect on small business.

(f) Before exercising an option, the contracting officer shall make a written determination for the contract file that exercise is in accordance with the terms of the option, the requirements of this section, and [Part 6](#). To satisfy requirements of [Part 6](#) regarding full and open competition, the option must have been evaluated as part of the initial competition and be exercisable at an amount specified in or reasonably determinable from the terms of the basic contract, *e.g.*—

- (1) A specific dollar amount;

### Subpart 36.2—Special Aspects of Contracting for Construction

#### 36.201 Evaluation of contractor performance.

See [42.1502\(e\)](#) for the requirements for preparing past performance evaluations for construction contracts.

#### 36.202 Specifications.

(a) Construction specifications shall conform to the requirements in [Part 11](#) of this regulation.

(b) Whenever possible, contracting officers shall ensure that references in specifications are to widely recognized standards or specifications promulgated by governments, industries, or technical societies.

(c) When “brand name or equal” descriptions are necessary, specifications must clearly identify and describe the particular physical, functional, or other characteristics of the brand-name items which are considered essential to satisfying the requirement.

(d) In accordance with Executive Order 13202 of February 17, 2001, Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally Funded Construction Projects, as amended on April 6, 2001—

(1) The Government, or any construction manager acting on behalf of the Government, must not—

(i) Require or prohibit offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations (as defined in [42 U.S.C. 2000e\(d\)](#)) on the same or other related construction projects; or

(ii) Otherwise discriminate against offerors, contractors, or subcontractors for becoming, refusing to become, or remaining signatories or otherwise adhering to agreements with one or more labor organizations, on the same or other related construction projects.

(2) Nothing in this paragraph prohibits offerors, contractors, or subcontractors from voluntarily entering into project labor agreements.

(3) The head of the agency may exempt a construction project from this policy if the agency head finds that, as of February 17, 2001—

(i) The agency or a construction manager acting on behalf of the Government had issued or was a party to bid specifications, project agreements, agreements with one or more labor organizations, or other controlling documents with respect to that particular project, which contained any of the requirements or prohibitions in paragraph (d)(1) of this section; and

(ii) One or more construction contracts subject to such requirements or prohibitions had been awarded.

(4) The head of the agency may exempt a particular project, contract, or subcontract from this policy upon a finding that special circumstances require an exemption in order

to avert an imminent threat to public health or safety, or to serve the national security. A finding of “special circumstances” may not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are nonsignatories to, or otherwise do not adhere to, agreements with one or more labor organizations, or concerning employees on the project who are not members of or affiliated with a labor organization.

#### 36.203 Government estimate of construction costs.

(a) An independent Government estimate of construction costs shall be prepared and furnished to the contracting officer at the earliest practicable time for each proposed contract and for each contract modification anticipated to exceed the simplified acquisition threshold. The contracting officer may require an estimate when the cost of required work is not anticipated to exceed the simplified acquisition threshold. The estimate shall be prepared in as much detail as though the Government were competing for award.

(b) When two-step sealed bidding is used, the independent Government estimate shall be prepared when the contract requirements are definitized.

(c) Access to information concerning the Government estimate shall be limited to Government personnel whose official duties require knowledge of the estimate. An exception to this rule may be made during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the Government estimate, but only to the extent deemed necessary to arrive at a fair and reasonable price. The overall amount of the Government’s estimate shall not be disclosed except as permitted by agency regulations.

#### 36.204 Disclosure of the magnitude of construction projects.

Advance notices and solicitations shall state the magnitude of the requirement in terms of physical characteristics and estimated price range. In no event shall the statement of magnitude disclose the Government’s estimate. Therefore, the estimated price should be described in terms of one of the following price ranges:

- (a) Less than \$25,000.
- (b) Between \$25,000 and \$100,000.
- (c) Between \$100,000 and \$250,000.
- (d) Between \$250,000 and \$500,000.
- (e) Between \$500,000 and \$1,000,000.
- (f) Between \$1,000,000 and \$5,000,000.
- (g) Between \$5,000,000 and \$10,000,000.
- (h) More than \$10,000,000.

#### 36.205 Statutory cost limitations.

(a) Contracts for construction shall not be awarded at a cost to the Government—



(1) In excess of statutory cost limitations, unless applicable limitations can be and are waived in writing for the particular contract; or

(2) Which, with allowances for Government-imposed contingencies and overhead, exceeds the statutory authorization.

(b) Solicitations containing one or more items subject to statutory cost limitations shall state—

(1) The applicable cost limitation for each affected item in a separate schedule;

(2) That an offer which does not contain separately-priced schedules will not be considered; and

(3) That the price on each schedule shall include an approximate apportionment of all estimated direct costs, allocable indirect costs, and profit.

(c) The Government shall reject an offer if its prices exceed applicable statutory limitations, unless laws or agency procedures provide pertinent exemptions. However, if it is in the Government's interest, the contracting officer may include a provision in the solicitation which permits the award of separate contracts for individual items whose prices are within or subject to applicable statutory limitations.

(d) The Government shall also reject an offer if its prices are within statutory limitations only because it is materially unbalanced. An offer is unbalanced if its prices are significantly less than cost for some work, and overstated for other work.

### **36.206 Liquidated damages.**

The contracting officer must evaluate the need for liquidated damages in a construction contract in accordance with [11.502](#) and agency regulations.

### **36.207 Pricing fixed-price construction contracts.**

(a) Generally, firm-fixed-price contracts shall be used to acquire construction. They may be priced—

(1) On a lump-sum basis (when a lump sum is paid for the total work or defined parts of the work),

(2) On a unit-price basis (when a unit price is paid for a specified quantity of work units), or

(3) Using a combination of the two methods.

(b) Lump-sum pricing shall be used in preference to unit pricing except when—

(1) Large quantities of work such as grading, paving, building outside utilities, or site preparation are involved;

(2) Quantities of work, such as excavation, cannot be estimated with sufficient confidence to permit a lump-sum offer without a substantial contingency;

(3) Estimated quantities of work required may change significantly during construction; or

(4) Offerors would have to expend unusual effort to develop adequate estimates.

(c) Fixed-price contracts with economic price adjustment may be used if such a provision is customary in contracts for the type of work being acquired, or when omission of an adjustment provision would preclude a significant number of firms from submitting offers or would result in offerors including unwarranted contingencies in proposed prices.

### **36.208 Concurrent performance of firm-fixed-price and other types of construction contracts.**

In view of potential labor and administrative problems, cost-plus-fixed-fee, price-incentive, or other types of contracts with cost variation or cost adjustment features shall not be permitted concurrently, at the same work site, with firm-fixed-price, lump sum, or unit price contracts except with the prior approval of the head of the contracting activity.

### **36.209 Construction contracts with architect-engineer firms.**

No contract for the construction of a project shall be awarded to the firm that designed the project or its subsidiaries or affiliates, except with the approval of the head of the agency or authorized representative.

### **36.210 Inspection of site and examination of data.**

The contracting officer should make appropriate arrangements for prospective offerors to inspect the work site and to have the opportunity to examine data available to the Government which may provide information concerning the performance of the work, such as boring samples, original boring logs, and records and plans of previous construction. The data should be assembled in one place and made available for examination. The solicitation should notify offerors of the time and place for the site inspection and data examination. If it is not feasible for offerors to inspect the site or examine the data on their own, the solicitation should also designate an individual who will show the site or data to the offerors. Significant site information and the data should be made available to all offerors in the same manner, including information regarding any utilities to be furnished during construction. A record should be kept of the identity and affiliation of all offerors' representatives who inspect the site or examine the data.

### **36.211 Distribution of advance notices and solicitations.**

Advance notices and solicitations should be distributed to reach as many prospective offerors as practicable. Contracting officers may send notices and solicitations to organizations that maintain, without charge to the public, display rooms for the benefit of prospective offerors, subcontractors, and material suppliers. If requested by such organizations, this may be done for all or a stated class of construction projects on an annual or semiannual basis. Contracting officers may deter-

mine the geographical extent of distribution of advance notices and solicitations on a case-by-case basis.

### 36.212 Preconstruction orientation.

(a) The contracting officer will inform the successful offeror of significant matters of interest, including—

(1) Statutory matters such as labor standards ([Subpart 22.4](#)), and subcontracting plan requirements ([Subpart 19.7](#)); and

(2) Other matters of significant interest, including who has authority to decide matters such as contractual, administrative (e.g., security, safety, and fire and environmental protection), and construction responsibilities.

(b) As appropriate, the contracting officer may issue an explanatory letter or conduct a preconstruction conference.

(c) If a preconstruction conference is to be held, the contracting officer shall—

(1) Conduct the conference prior to the start of construction at the work site;

(2) Notify the successful offeror of the date, time, and location of the conference (see [36.522](#)); and

(3) Inform the successful offeror of the proposed agenda and any need for attendance by subcontractors.

### 36.213 Special procedures for sealed bidding in construction contracting.

#### 36.213-1 General.

Contracting officers shall follow the procedures for sealed bidding in [Part 14](#), as modified and supplemented by the requirements in this subpart.

#### 36.213-2 Presolicitation notices.

(a) Unless the requirement is waived by the head of the contracting activity or a designee, the contracting officer shall issue presolicitation notices on any construction requirement when the proposed contract is expected to exceed the simplified acquisition threshold. Presolicitation notices may also be used when the proposed contract is not expected to exceed the simplified acquisition threshold. These notices shall be issued sufficiently in advance of the invitation for bids to stimulate the interest of the greatest number of prospective bidders.

(b) Presolicitation notices must—

(1) Describe the proposed work in sufficient detail to disclose the nature and volume of work (in terms of physical characteristics and estimated price range) (see [36.204](#));

(2) State the location of the work;

(3) Include tentative dates for issuing invitations, opening bids, and completing contract performance;

(4) State where plans will be available for inspection without charge;

(5) Specify a date by which requests for the invitation for bids should be submitted;

(6) State whether award is restricted to small businesses;

(7) Specify any amount to be charged for solicitation documents; and

(8) Be publicized through the Governmentwide point of entry in accordance with [5.204](#).

### 36.213-3 Invitations for bids.

(a) Invitations for bids for construction shall allow sufficient time for bid preparation (*i.e.*, the period of time between the date invitations are distributed and the date set for opening of bids) (but see [5.203](#) and [14.202-1](#)) to allow bidders an adequate opportunity to prepare and submit their bids, giving due regard to the construction season and the time necessary for bidders to inspect the site, obtain subcontract bids, examine data concerning the work, and prepare estimates based on plans and specifications.

(b) Invitations for bids shall be prepared in accordance with [Subpart 14.2](#) and this section using the forms prescribed in [Part 53](#).

(c) Contracting officers should assure that each invitation for bids includes the following information, when applicable: The appropriate wage determination of the Secretary of Labor (see [Subpart 22.4](#)), or, if the invitation for bids must be issued before the wage determination is received, a notice that the schedule of minimum wage rates to be paid under the contract will be issued as an amendment to the invitation for bids before the opening date for bids (see [14.208](#) and [Subpart 22.4](#)).

(1) The Performance of Work by the Contractor clause (see [36.501](#) and [52.236-1](#)).

(2) The magnitude of the proposed construction project (see [36.204](#)).

(3) The period of performance (see [Subpart 11.4](#)).

(4) Arrangements made for bidders to inspect the site and examine the data concerning performance of the work (see [36.210](#)).

(5) Information concerning any facilities, such as utilities, office space, and warehouse space, to be furnished during construction.

(6) Information concerning the prebid conference (see [14.207](#)).

(7) Any special qualifications or experience requirements that will be considered in determining the responsibility of bidders (see [Subpart 9.1](#)).

(8) Any special instructions concerning bids, alternate bids, and award.

(9) Any instructions concerning reporting requirements.

(d) The contracting officer shall send invitations for bids to prospective bidders who requested them in response to the presolicitation notice, and should send them to other prospective bidders upon their specific request (see [5.102\(a\)](#)).

**36.213-4 Notice of award.**

When a notice of award is issued, it shall be done in writing or electronically, shall contain information required by [14.408](#), and shall—

- (a) Identify the invitation for bids;
- (b) Identify the contractor's bid;
- (c) State the award price;
- (d) Advise the contractor that any required payment and performance bonds must be promptly executed and returned to the contracting officer;
- (e) Specify the date of commencement of work, or advise that a notice to proceed will be issued.

**36.214 Special procedures for price negotiation in construction contracting.**

(a) Agencies shall follow the policies and procedures in [Part 15](#) when negotiating prices for construction.

(b) The contracting officer shall evaluate proposals and associated cost or pricing data or information other than cost or pricing data and shall compare them to the Government estimate.

(1) When submission of cost or pricing data is not required (see [15.403-1](#) and [15.403-2](#)), and any element of proposed cost differs significantly from the Government estimate, the contracting officer should request the offeror to

submit cost information concerning that element (*e.g.*, wage rates or fringe benefits, significant materials, equipment allowances, and subcontractor costs).

(2) When a proposed price is significantly lower than the Government estimate, the contracting officer shall make sure both the offeror and the Government estimator completely understand the scope of the work. If negotiations reveal errors in the Government estimate, the estimate shall be corrected and the changes shall be documented in the contract file.

(c) When appropriate, additional pricing tools may be used. For example, proposed prices may be compared to current prices for similar types of work, adjusted for differences in the work site and the specifications. Also, rough yardsticks may be developed and used, such as cost per cubic foot for structures, cost per linear foot for utilities, and cost per cubic yard for excavation or concrete.

**36.215 Special procedure for cost-reimbursement contracts for construction.**

Contracting officers may use a cost-reimbursement contract to acquire construction only when its use is consistent with [Subpart 16.3](#) and [Part 15](#) (see [15.404-4](#)(c)(4)(i) for fee limitation on cost-reimbursement contracts).



## Subpart 36.6—Architect-Engineer Services

### 36.600 Scope of subpart.

This subpart prescribes policies and procedures applicable to the acquisition of architect-engineer services, including orders for architect-engineer services under multi-agency contracts (see [16.505\(a\)\(8\)](#)).

### 36.601 Policy.

#### 36.601-1 Public announcement.

The Government shall publicly announce all requirements for architect-engineer services and negotiate contracts for these services based on the demonstrated competence and qualifications of prospective contractors to perform the services at fair and reasonable prices. (See [40 U.S.C. 1101 et seq.](#))

#### 36.601-2 Competition.

Acquisition of architect-engineer services in accordance with the procedures in this subpart will constitute a competitive procedure. (See [6.102\(d\)\(1\)](#).)

#### 36.601-3 Applicable contracting procedures.

(a)(1) For facility design contracts, the statement of work shall require that the architect-engineer specify, in the construction design specifications, use of the maximum practicable amount of recovered materials consistent with the performance requirements, availability, price reasonableness, and cost-effectiveness. Where appropriate, the statement of work also shall require the architect-engineer to consider energy conservation, pollution prevention, and waste reduction to the maximum extent practicable in developing the construction design specifications.

(2) Facility design solicitations and contracts that include the specification of energy-consuming products must comply with the requirements at [Subpart 23.2](#).

(b) Sources for contracts for architect-engineer services shall be selected in accordance with the procedures in this subpart rather than the solicitation or source selection procedures prescribed in [Parts 13, 14, and 15](#) of this regulation.

(c) When the contract statement of work includes both architect-engineer services and other services, the contracting officer shall follow the procedures in this subpart if the statement of work, substantially or to a dominant extent, specifies performance or approval by a registered or licensed architect or engineer. If the statement of work does not specify such performance or approval, the contracting officer shall follow the procedures in [Parts 13, 14, or 15](#).

(d) Other than “incidental services” as specified in the definition of architect-engineer services in [2.101](#) and in [36.601-4\(a\)\(3\)](#), services that do not require performance by a registered or licensed architect or engineer, notwithstanding

the fact that architect-engineers also may perform those services, should be acquired pursuant to [Parts 13, 14, and 15](#).

#### 36.601-4 Implementation.

(a) Contracting officers should consider the following services to be “architect-engineer services” subject to the procedures of this subpart:

(1) Professional services of an architectural or engineering nature, as defined by applicable State law, which the State law requires to be performed or approved by a registered architect or engineer.

(2) Professional services of an architectural or engineering nature associated with design or construction of real property.

(3) Other professional services of an architectural or engineering nature or services incidental thereto (including studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals and other related services) that logically or justifiably require performance by registered architects or engineers or their employees.

(4) Professional surveying and mapping services of an architectural or engineering nature. Surveying is considered to be an architectural and engineering service and shall be procured pursuant to section [36.601](#) from registered surveyors or architects and engineers. Mapping associated with the research, planning, development, design, construction, or alteration of real property is considered to be an architectural and engineering service and is to be procured pursuant to section [36.601](#). However, mapping services that are not connected to traditionally understood or accepted architectural and engineering activities, are not incidental to such architectural and engineering activities or have not in themselves traditionally been considered architectural and engineering services shall be procured pursuant to provisions in [Parts 13, 14, and 15](#).

(b) Contracting officers may award contracts for architect-engineer services to any firm permitted by law to practice the professions of architecture or engineering.

### 36.602 Selection of firms for architect-engineer contracts.

#### 36.602-1 Selection criteria.

(a) Agencies shall evaluate each potential contractor in terms of its—

(1) Professional qualifications necessary for satisfactory performance of required services;

(2) Specialized experience and technical competence in the type of work required, including, where appropriate, expe-

rience in energy conservation, pollution prevention, waste reduction, and the use of recovered materials;

(3) Capacity to accomplish the work in the required time;

(4) Past performance on contracts with Government agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules;

(5) Location in the general geographical area of the project and knowledge of the locality of the project; provided, that application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project; and

(6) Acceptability under other appropriate evaluation criteria.

(b) When the use of design competition is approved by the agency head or a designee, agencies may evaluate firms on the basis of their conceptual design of the project. Design competition may be used when—

(1) Unique situations exist involving prestige projects, such as the design of memorials and structures of unusual national significance;

(2) Sufficient time is available for the production and evaluation of conceptual designs; and

(3) The design competition, with its costs, will substantially benefit the project.

(c) Hold discussions with at least three of the most highly qualified firms regarding concepts, the relative utility of alternative methods and feasible ways to prescribe the use of recovered materials and achieve waste reduction and energy-efficiency in facility design (see [Part 23](#)).

### 36.602-2 Evaluation boards.

(a) When acquiring architect-engineer services, an agency shall provide for one or more permanent or ad hoc architect-engineer evaluation boards (which may include preselection boards when authorized by agency regulations) to be composed of members who, collectively, have experience in architecture, engineering, construction, and Government and related acquisition matters. Members shall be appointed from among highly qualified professional employees of the agency or other agencies, and if authorized by agency procedure, private practitioners of architecture, engineering, or related professions. One Government member of each board shall be designated as the chairperson.

(b) No firm shall be eligible for award of an architect-engineer contract during the period in which any of its principals or associates are participating as members of the awarding agency's evaluation board.

### 36.602-3 Evaluation board functions.

Under the general direction of the head of the contracting activity, an evaluation board shall perform the following functions:

(a) Review the current data files on eligible firms and responses to a public notice concerning the particular project (see [36.603](#)).

(b) Evaluate the firms in accordance with the criteria in [36.602-1](#).

(c) Hold discussions with at least three of the most highly qualified firms regarding concepts and the relative utility of alternative methods of furnishing the required services.

(d) Prepare a selection report for the agency head or other designated selection authority recommending, in order of preference, at least three firms that are considered to be the most highly qualified to perform the required services. The report shall include a description of the discussions and evaluation conducted by the board to allow the selection authority to review the considerations upon which the recommendations are based.

### 36.602-4 Selection authority.

(a) The final selection decision shall be made by the agency head or a designated selection authority.

(b) The selection authority shall review the recommendations of the evaluation board and shall, with the advice of appropriate technical and staff representatives, make the final selection. This final selection shall be a listing, in order of preference, of the firms considered most highly qualified to perform the work. If the firm listed as the most preferred is not the firm recommended as the most highly qualified by the evaluation board, the selection authority shall provide for the contract file a written explanation of the reason for the preference. All firms on the final selection list are considered "selected firms" with which the contracting officer may negotiate in accordance with [36.606](#).

(c) The selection authority shall not add firms to the selection report. If the firms recommended in the report are not deemed to be qualified or the report is considered inadequate for any reason, the selection authority shall record the reasons and return the report through channels to the evaluation board for appropriate revision.

(d) The board shall be promptly informed of the final selection.

### 36.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

When authorized by the agency, either or both of the short processes described in this subsection may be used to select firms for contracts not expected to exceed the simplified acquisition threshold. Otherwise, the procedures prescribed in [36.602-3](#) and [36.602-4](#) shall be followed.

(a) *Selection by the board.* The board shall review and evaluate architect-engineer firms in accordance with [36.602-3](#), except that the selection report shall serve as the final selection list and shall be provided directly to the contracting officer. The report shall serve as an authorization for the con-

tracting officer to commence negotiations in accordance with [36.606](#).

(b) *Selection by the chairperson of the board.* When the board decides that formal action by the board is not necessary in connection with a particular selection, the following procedures shall be followed:

(1) The chairperson of the board shall perform the functions required in [36.602-3](#).

(2) The agency head or designated selection authority shall review the report and approve it or return it to the chairperson for appropriate revision.

(3) Upon receipt of an approved report, the chairperson of the board shall furnish the contracting officer a copy of the report which will serve as an authorization for the contracting officer to commence negotiations in accordance with [36.606](#).

### 36.603 Collecting data on and appraising firms qualifications.

(a) *Establishing offices.* Agencies shall maintain offices or permanent evaluation boards, or arrange to use the offices or boards of other agencies, to receive and maintain data on firms wishing to be considered for Government contracts. Each office or board shall be assigned a jurisdiction by its parent agency, making it responsible for a geographical region or area, or a specialized type of construction.

(b) *Qualifications data.* To be considered for architect-engineer contracts, a firm must file with the appropriate office or board the [Standard Form 330](#), “Architect-Engineer Qualifications,” Part II, and when applicable, [SF 330](#), Part I.

(c) *Data files and the classification of firms.* Under the direction of the parent agency, offices or permanent evaluation boards shall maintain an architect-engineer qualifications data file. These offices or boards shall review the [SF 330](#) filed, and shall classify each firm with respect to—

- (1) Location;
- (2) Specialized experience;
- (3) Professional capabilities; and

(4) Capacity, with respect to the scope of work that can be undertaken. A firm’s ability and experience in computer-assisted design should be considered, when appropriate.

(d) *Currency of files.* Any office or board maintaining qualifications data files shall review and update each file at least once a year. This process should include:

(1) Encouraging firms to submit annually an updated statement of qualifications and performance data on a [SF 330](#), Part II.

(2) Reviewing the [SF 330](#), Part II, and, if necessary, updating the firm’s classification (see [36.603\(c\)](#)).

(3) Recording any contract awards made to the firm in the past year.

(4) Assuring that the file contains a copy of each pertinent performance evaluation (see [42.1502\(f\)](#)).

(5) Discarding any material that has not been updated within the past three years, if it is no longer pertinent, see [42.1502\(f\)](#).

(6) Posting the date of the review in the file.

(e) *Use of data files.* Evaluation boards and other appropriate Government employees, including contracting officers, shall use data files on firms.

### 36.604 Performance evaluation.

See [42.1502\(f\)](#) for the requirements for preparing past performance evaluations for architect-engineer contracts.

### 36.605 Government cost estimate for architect-engineer work.

(a) An independent Government estimate of the cost of architect-engineer services shall be prepared and furnished to the contracting officer before commencing negotiations for each proposed contract or contract modification expected to exceed the simplified acquisition threshold. The estimate shall be prepared on the basis of a detailed analysis of the required work as though the Government were submitting a proposal.

(b) Access to information concerning the Government estimate shall be limited to Government personnel whose official duties require knowledge of the estimate. An exception to this rule may be made during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the Government estimate, but only to the extent deemed necessary to arrive at a fair and reasonable price. The overall amount of the Government’s estimate shall not be disclosed except as permitted by agency regulations.

### 36.606 Negotiations.

(a) Unless otherwise specified by the selection authority, the final selection authorizes the contracting officer to begin negotiations. Negotiations shall be conducted in accordance with [Part 15](#) of this chapter, beginning with the most preferred firm in the final selection (see [15.404-4\(c\)\(4\)\(i\)](#) on fee limitation).

(b) The contracting officer should ordinarily request a proposal from the firm, ensuring that the solicitation does not inadvertently preclude the firm from proposing the use of modern design methods.

(c) The contracting officer shall inform the firm that no construction contract may be awarded to the firm that designed the project, except as provided in [36.209](#).

(d) During negotiations, the contracting officer should seek advance agreement (see [31.109](#)) on any charges for computer-assisted design. When the firm’s proposal does not cover appropriate modern and cost-effective design methods (e.g., computer-assisted design), the contracting officer should discuss this topic with the firm.

(e) Because selection of firms is based upon qualifications, the extent of any subcontracting is an important negotiation topic. The clause prescribed at [44.204\(b\)](#), Subcontractors and Outside Associates and Consultants (Architect-Engineer Services) (see [52.244-4](#)), limits a firm's subcontracting to firms agreed upon during negotiations.

(f) If a mutually satisfactory contract cannot be negotiated, the contracting officer shall obtain a written final proposal revision from the firm, and notify the firm that negotiations have been terminated. The contracting officer shall then initiate negotiations with the next firm on the final selection list. This procedure shall be continued until a mutually satisfactory contract has been negotiated. If negotiations fail with all selected firms, the contracting officer shall refer the matter to the selection authority who, after consulting with the contracting officer as to why a contract cannot be negotiated, may direct the evaluation board to recommend additional firms in accordance with [36.602](#).

### 36.607 Release of information on firm selection.

(a) After final selection has taken place, the contracting officer may release information identifying only the architect-engineer firm with which a contract will be negotiated for certain work. The work should be described in any release only in general terms, unless information relating to the work is classified. If negotiations are terminated without awarding a contract to the highest rated firm, the contracting officer may release that information and state that negotiations will be undertaken with another (named) architect-engineer firm. When an award has been made, the contracting officer may release award information (see [5.401](#)).

(b) Debriefings of successful and unsuccessful firms will be held after final selection has taken place and will be conducted, to the extent practicable, in accordance with [15.503](#), [15.506\(b\)](#) through (f), [15.507\(c\)](#), and [15.506\(d\)\(2\)](#) through (d)(5). Note that [15.506\(d\)\(2\)](#) through (d)(5) do not apply to architect-engineer contracts.

### 36.608 Liability for Government costs resulting from design errors or deficiencies.

Architect-engineer contractors shall be responsible for the professional quality, technical accuracy, and coordination of all services required under their contracts. A firm may be liable for Government costs resulting from errors or deficiencies in designs furnished under its contract. Therefore, when a modification to a construction contract is required because of an error or deficiency in the services provided under an architect-engineer contract, the contracting officer (with the advice of technical personnel and legal counsel) shall consider the extent to which the architect-engineer contractor may be reasonably liable. The contracting officer shall enforce the liabil-

ity and issue a demand for payment of the amount due, if the recoverable cost will exceed the administrative cost involved or is otherwise in the Government's interest. The contracting officer shall include in the contract file a written statement of the reasons for the decision to recover or not to recover the costs from the firm.

### 36.609 Contract clauses.

#### 36.609-1 Design within funding limitations.

(a) The Government may require the architect-engineer contractor to design the project so that construction costs will not exceed a contractually specified dollar limit (funding limitation). If the price of construction proposed in response to a Government solicitation exceeds the construction funding limitation in the architect-engineer contract, the firm shall be solely responsible for redesigning the project within the funding limitation. These additional services shall be performed at no increase in the price of this contract. However, if the cost of proposed construction is affected by events beyond the firm's reasonable control (*e.g.*, if there is an increase in material costs which could not have been anticipated, or an undue delay by the Government in issuing a construction solicitation), the firm shall not be obligated to redesign at no cost to the Government. If a firm's design fails to meet the contractual limitation on construction cost and the Government determines that the firm should not redesign the project, a written statement of the reasons for that determination shall be placed in the contract file.

(b) The amount of the construction funding limitation (to be inserted in paragraph (c) of the clause at [52.236-22](#)) is to be established during negotiations between the contractor and the Government. This estimated construction contract price shall take into account any statutory or other limitations and exclude any allowances for Government supervision and overhead and any amounts set aside by the Government for contingencies. In negotiating the amount, the contracting officer should make available to the contractor the information upon which the Government has based its initial construction estimate and any subsequently acquired information that may affect the construction costs.

(c) The contracting officer shall insert the clause at [52.236-22](#), Design Within Funding Limitations, in fixed-price architect-engineer contracts except when—

(1) The head of the contracting activity or a designee determines in writing that cost limitations are secondary to performance considerations and additional project funding can be expected, if necessary;

(2) The design is for a standard structure and is not intended for a specific location; or

(3) There is little or no design effort involved.

**36.609-2 Redesign responsibility for design errors or deficiencies.**

(a) Under architect-engineer contracts, contractors shall be required to make necessary corrections at no cost to the Government when the designs, drawings, specifications, or other items or services furnished contain any errors, deficiencies, or inadequacies. If, in a given situation, the Government does not require a firm to correct such errors, the contracting officer shall include a written statement of the reasons for that decision in the contract file.

(b) The contracting officer shall insert the clause at [52.236-23](#), Responsibility of the Architect-Engineer Contractor, in fixed-price architect-engineer contracts.

**36.609-3 Work oversight in architect-engineer contracts.**

The contracting officer shall insert the clause at [52.236-24](#), Work Oversight in Architect-Engineer Contracts, in all architect-engineer contracts.

**36.609-4 Requirements for registration of designers.**

Insert the clause at [52.236-25](#), Requirements for Registration of Designers, in architect-engineer contracts, except that it may be omitted when the design will be performed—

(a) Outside the United States and its outlying areas; or

(b) In a State or outlying area of the United States that does not have registration requirements for the particular field involved.

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**Subpart 36.7—Standard and Optional Forms for Contracting for Construction, Architect-Engineer Services, and Dismantling, Demolition, or Removal of Improvements**

**36.700 Scope of subpart.**

This subpart sets forth requirements for the use of standard and optional forms, prescribed in [Part 53](#), for contracting for construction, architect-engineer services, or dismantling, demolition, or removal of improvements. These standard and optional forms are illustrated in [Part 53](#).

**36.701 Standard and optional forms for use in contracting for construction or dismantling, demolition, or removal of improvements.**

(a) [Standard Form 1442](#), Solicitation, Offer, and Award (Construction, Alteration, or Repair), shall be used to solicit and submit offers, and award construction or dismantling, demolition, or removal of improvements contracts expected to exceed the simplified acquisition thresholds, and may be used for contracts at or below the simplified acquisition threshold. In all sealed bid solicitations, or when the Government otherwise requires a noncancellable offer acceptance period, the contracting officer shall insert in the blank provided in Block 13D the number of calendar days that the offer must be available for acceptance after the date offers are due.

(b) [Optional Form 347](#), Order for Supplies or Services, may be used for construction or dismantling, demolition, or removal of improvements contracts that are at or below the simplified acquisition threshold; provided, that the contract-

ing officer includes the clauses required (see [Subpart 36.5](#)) in the simplified acquisitions (see [Part 13](#)).

(c) Contracting officers may use [Optional Form 1419](#), Abstract of Offers—Construction, and [Optional Form 1419A](#), Abstract of Offers—Construction, Continuation Sheet, or the automated equivalent, to record offers submitted in response to a sealed bid solicitation (see [14.403](#)) and may also use it to record offers submitted in response to negotiated solicitations.

**36.702 Forms for use in contracting for architect-engineer services.**

(a) Contracting officers must use [Standard Form 252](#), Architect-Engineer Contract, to award fixed-price contracts for architect-engineer services when the services will be performed in the United States or its outlying areas.

(b) The [SF 330](#), Architect-Engineer Qualifications, shall be used to evaluate firms before awarding a contract for architect-engineer services:

(1) Use the [SF 330](#), Part I—Contract-Specific Qualifications, to obtain information from an architect-engineer firm about its qualifications for a specific contract when the contract amount is expected to exceed the simplified acquisition threshold. Part I may be used when the contract amount is expected to be at or below the simplified acquisition threshold, if the contracting officer determines that its use is appropriate.

(2) Use the [SF 330](#), Part II—General Qualifications, to obtain information from an architect-engineer firm about its general professional qualifications.

\* \* \* \* \*

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## Subpart 42.15—Contractor Performance Information

### 42.1500 Scope of subpart.

This subpart provides policies and establishes responsibilities for recording and maintaining contractor performance information. This subpart does not apply to procedures used by agencies in determining fees under award or incentive fee contracts. However, the fee amount paid to contractors should be reflective of the contractor's performance and the past performance evaluation should closely parallel the fee determinations.

### 42.1501 General.

Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. It includes, for example, the contractor's record of conforming to contract requirements and to standards of good workmanship; the contractor's record of forecasting and controlling costs; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history of reasonable and cooperative behavior and commitment to customer satisfaction; the contractor's record of integrity and business ethics, and generally, the contractor's business-like concern for the interest of the customer.

### 42.1502 Policy.

(a) Past performance evaluations shall be prepared as specified in paragraphs (b) through (g) of this section at the time the work under the contract or order is completed. In addition, interim evaluations shall be prepared as specified by the agencies to provide current information for source selection purposes, for contracts or orders with a period of performance, including options, exceeding one year. These evaluations are generally for the entity, division, or unit that performed the contract or order. The content of the evaluations should be tailored to the size, content, and complexity of the contractual requirements.

(b) Except as provided in paragraphs (e), (f) and (h) of this section, agencies shall prepare an evaluation of contractor performance for each contract that exceeds the simplified acquisition threshold.

(c) Agencies shall prepare an evaluation of contractor performance for each order that exceeds the simplified acquisition threshold placed against a Federal Supply Schedule contract, or under a task order contract or a delivery order contract awarded by another agency (*i.e.* Governmentwide acquisition contract or multi-agency contract). This evaluation shall not consider the requirements under paragraph (g) of this section.

(d) For single-agency task order and delivery order contracts, the contracting officer may require performance eval-

uations for each order in excess of the simplified acquisition threshold when such evaluations would produce more useful past performance information for source selection officials than that contained in the overall contract evaluation (*e.g.*, when the scope of the basic contract is very broad and the nature of individual orders could be significantly different). This evaluation need not consider the requirements under paragraph (g) of this section unless the contracting officer deems it appropriate.

(e) Past performance evaluations shall be prepared for each construction contract of \$550,000 or more, and for each construction contract terminated for default regardless of contract value. Past performance evaluations may also be prepared for construction contracts below \$550,000.

(f) Past performance evaluations shall be prepared for each architect-engineer services contract of \$30,000 or more, and for each architect-engineer services contract that is terminated for default regardless of contract value. Past performance evaluations may also be prepared for architect-engineer services contracts below \$30,000.

(g) Past performance evaluations shall include an assessment of contractor performance against, and efforts to achieve, the goals identified in the small business subcontracting plan when the contract includes the clause at [52.219-9](#), Small Business Subcontracting Plan.

(h) Agencies shall not evaluate performance for contracts awarded under [Subpart 8.7](#).

### 42.1503 Procedures.

(a) Agency procedures for the past performance evaluation system shall generally provide for input to the evaluations from the technical office, contracting office and, where appropriate, end users of the product or service. Agency procedures shall identify those responsible for preparing interim and final evaluations. Those individuals identified may obtain information for the evaluation of performance from the program office, administrative contracting office, end users of the product or service, and any other technical or business advisor, as appropriate. Interim evaluations shall be prepared as required.

(b) Agency evaluations of contractor performance prepared under this subpart shall be provided to the contractor as soon as practicable after completion of the evaluation. Contractors shall be given a minimum of 30 days to submit comments, rebutting statements, or additional information. Agencies shall provide for review at a level above the contracting officer to consider disagreements between the parties regarding the evaluation. The ultimate conclusion on the performance evaluation is a decision of the contracting agency. Copies of the evaluation, contractor response, and review comments, if any, shall be retained as part of the evaluation. These evaluations may be used to support future award decisions, and should therefore be marked "Source Selection

Information.” Evaluation of Federal Prison Industries (FPI) performance may be used to support a waiver request (see [8.604](#)) when FPI is a mandatory source in accordance with [Subpart 8.6](#). The completed evaluation shall not be released to other than Government personnel and the contractor whose performance is being evaluated during the period the information may be used to provide source selection information. Disclosure of such information could cause harm both to the commercial interest of the Government and to the competitive position of the contractor being evaluated as well as impede the efficiency of Government operations. Evaluations used in determining award or incentive fee payments may also be used to satisfy the requirements of this subpart. A copy of the annual or final past performance evaluation shall be provided to the contractor as soon as it is finalized.

(c) Agencies shall submit past performance reports electronically to the Past Performance Information Retrieval System (PPIRS) at [www.ppirs.gov](http://www.ppirs.gov). The process for submitting such reports to PPIRS shall be in accordance with agency procedures.

(d) Any past performance information systems used for maintaining contractor performance information and/or evaluations should include appropriate management and technical controls to ensure that only authorized personnel have access to the data.

(e) Agencies shall use the past performance information in PPIRS that is within three years (six for construction and architect-engineer contracts) of the completion of performance of the evaluated contract or order.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

*Sec.*

52.000	Scope of part.	52.205	[Reserved]
	<b>Subpart 52.1—Instructions for Using Provisions and Clauses</b>	52.206	[Reserved]
52.100	Scope of subpart.	52.207-1	Notice of Standard Competition.
52.101	Using Part 52.	52.207-2	Notice of Streamlined Competition.
52.102	Incorporating provisions and clauses.	52.207-3	Right of First Refusal of Employment.
52.103	Identification of provisions and clauses.	52.207-4	Economic Purchase Quantity—Supplies.
52.104	Procedures for modifying and completing provisions and clauses.	52.207-5	Option to Purchase Equipment.
52.105	Procedures for using alternates.	52.208-1	[Reserved]
52.106	[Reserved]	52.208-2	[Reserved]
52.107	Provisions and clauses prescribed in <a href="#">Subpart 52.1</a> .	52.208-3	[Reserved]
	<b>Subpart 52.2—Text of Provisions and Clauses</b>	52.208-4	Vehicle Lease Payments.
52.200	Scope of subpart.	52.208-5	Condition of Leased Vehicles.
52.201	[Reserved]	52.208-6	Marking of Leased Vehicles.
52.202-1	Definitions.	52.208-7	Tagging of Leased Vehicles.
52.203-1	[Reserved]	52.208-8	Required Sources for Helium and Helium Usage Data.
52.203-2	Certificate of Independent Price Determination.	52.208-9	Contractor Use of Mandatory Sources of Supply or Services.
52.203-3	Gratuities.	52.209-1	Qualification Requirements.
52.203-4	[Reserved]	52.209-2	Prohibition on Contracting with Inverted Domestic Corporations-Representation.
52.203-5	Covenant Against Contingent Fees.	52.209-3	First Article Approval—Contractor Testing.
52.203-6	Restrictions on Subcontractor Sales to the Government.	52.209-4	First Article Approval—Government Testing.
52.203-7	Anti-Kickback Procedures.	52.209-5	Certification Regarding Responsibility Matters.
52.203-8	Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.	52.209-6	Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
52.203-9	[Reserved]	52.210	[Reserved]
52.203-10	Price or Fee Adjustment for Illegal or Improper Activity.	52.211-1	Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29.
52.203-11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.	52.211-2	Availability of Specifications, Standards, and Data Item Descriptions Listed in the Acquisition Streamlining and Standardization Information System (ASSIST).
52.203-12	Limitation on Payments to Influence Certain Federal Transactions.	52.211-3	Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.
52.203-13	Contractor Code of Business Ethics and Conduct.	52.211-4	Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.
52.203-14	Display of Hotline Poster(s).	52.211-5	Material Requirements.
52.203-15	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009.	52.211-6	Brand Name or Equal.
52.204-1	Approval of Contract.	52.211-7	Alternatives to Government-Unique Standards.
52.204-2	Security Requirements.	52.211-8	Time of Delivery.
52.204-3	Taxpayer Identification.	52.211-9	Desired and Required Time of Delivery.
52.204-4	Printed or Copied Double-Sided on Recycled Paper.	52.211-10	Commencement, Prosecution, and Completion of Work.
52.204-5	Women-Owned Business (Other Than Small Business).	52.211-11	Liquidated Damages—Supplies, Services, or Research and Development.
52.204-6	Data Universal Numbering System (DUNS) Number.	52.211-12	Liquidated Damages—Construction.
52.204-7	Central Contractor Registration.		
52.204-8	Annual Representations and Certifications.		
52.204-9	Personal Identity Verification of Contractor Personnel.		
52.204-10	Reporting Subcontract Awards.		
52.204-11	American Recovery and Reinvestment Act—Reporting Requirements.		

- 52.211-13 Time Extensions.
- 52.211-14 Notice of Priority Rating for National Defense, Emergency Preparedness, and Energy Program Use.
- 52.211-15 Defense Priority and Allocation Requirements.
- 52.211-16 Variation in Quantity.
- 52.211-17 Delivery of Excess Quantities.
- 52.211-18 Variation in Estimated Quantity.
- 52.212-1 Instructions to Offerors—Commercial Items.
- 52.212-2 Evaluation—Commercial Items.
- 52.212-3 Offeror Representations and Certifications—Commercial Items.
- 52.212-4 Contract Terms and Conditions—Commercial Items.
- 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.
- 52.213-1 Fast Payment Procedure.
- 52.213-2 Invoices.
- 52.213-3 Notice to Supplier.
- 52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).
- 52.214-1 [Reserved]
- 52.214-2 [Reserved]
- 52.214-3 Amendments to Invitations for Bids.
- 52.214-4 False Statements in Bids.
- 52.214-5 Submission of Bids.
- 52.214-6 Explanation to Prospective Bidders.
- 52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.
- 52.214-8 [Reserved]
- 52.214-9 [Reserved]
- 52.214-10 Contract Award—Sealed Bidding.
- 52.214-11 [Reserved]
- 52.214-12 Preparation of Bids.
- 52.214-13 Telegraphic Bids.
- 52.214-14 Place of Performance—Sealed Bidding.
- 52.214-15 Period for Acceptance of Bids.
- 52.214-16 Minimum Bid Acceptance Period.
- 52.214-17 [Reserved]
- 52.214-18 Preparation of Bids—Construction.
- 52.214-19 Contract Award—Sealed Bidding—Construction.
- 52.214-20 Bid Samples.
- 52.214-21 Descriptive Literature.
- 52.214-22 Evaluation of Bids for Multiple Awards.
- 52.214-23 Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.
- 52.214-24 Multiple Technical Proposals.
- 52.214-25 Step Two of Two-Step Sealed Bidding.
- 52.214-26 Audit and Records—Sealed Bidding.
- 52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.
- 52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.
- 52.214-29 Order of Precedence—Sealed Bidding.
- 52.214-30 [Reserved]
- 52.214-31 Facsimile Bids.
- 52.214-32 [Reserved]
- 52.214-33 [Reserved]
- 52.214-34 Submission of Offers in the English Language.
- 52.214-35 Submission of Offers in U.S. Currency.
- 52.215-1 Instructions to Offerors—Competitive Acquisition.
- 52.215-2 Audit and Records—Negotiation.
- 52.215-3 Request for Information or Solicitation for Planning Purposes.
- 52.215-4 [Reserved]
- 52.215-5 Facsimile Proposals.
- 52.215-6 Place of Performance.
- 52.215-7 [Reserved]
- 52.215-8 Order of Precedence—Uniform Contract Format.
- 52.215-9 Changes or Additions to Make-or-Buy Program.
- 52.215-10 Price Reduction for Defective Cost or Pricing Data.
- 52.215-11 Price Reduction for Defective Cost or Pricing Data—Modifications.
- 52.215-12 Subcontractor Cost or Pricing Data.
- 52.215-13 Subcontractor Cost or Pricing Data—Modifications.
- 52.215-14 Integrity of Unit Prices.
- 52.215-15 Pension Adjustments and Asset Reversions.
- 52.215-16 Facilities Capital Cost of Money.
- 52.215-17 Waiver of Facilities Capital Cost of Money.
- 52.215-18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.
- 52.215-19 Notification of Ownership Changes.
- 52.215-20 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.
- 52.215-21 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.
- 52.216-1 Type of Contract.
- 52.216-2 Economic Price Adjustment—Standard Supplies.
- 52.216-3 Economic Price Adjustment—Semistandard Supplies.
- 52.216-4 Economic Price Adjustment—Labor and Material.
- 52.216-5 Price Redetermination—Prospective.
- 52.216-6 Price Redetermination—Retroactive.
- 52.216-7 Allowable Cost and Payment.
- 52.216-8 Fixed Fee.
- 52.216-9 Fixed Fee—Construction.
- 52.216-10 Incentive Fee.
- 52.216-11 Cost Contract—No Fee.

demonstrate their abilities to meet the standards specified for qualification.

(Name) \_\_\_\_\_

(Address) \_\_\_\_\_

(c) If an offeror, manufacturer, source, product or service covered by a qualification requirement has already met the standards specified, the relevant information noted below should be provided.

Offeror's Name \_\_\_\_\_

Manufacturer's Name \_\_\_\_\_

Source's Name \_\_\_\_\_

Item Name \_\_\_\_\_

Service Identification \_\_\_\_\_

Test Number \_\_\_\_\_  
(to the extent known)

(d) Even though a product or service subject to a qualification requirement is not itself an end item under this contract, the product, manufacturer, or source must nevertheless be qualified at the time of award of this contract. This is necessary whether the Contractor or a subcontractor will ultimately provide the product or service in question. If, after award, the Contracting Officer discovers that an applicable qualification requirement was not in fact met at the time of award, the Contracting Officer may either terminate this contract for default or allow performance to continue if adequate consideration is offered and the action is determined to be otherwise in the Government's best interests.

(e) If an offeror, manufacturer, source, product or service has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, the offeror must submit evidence of qualification prior to award of this contract. Unless determined to be in the Government's interest, award of this contract shall not be delayed to permit an offeror to submit evidence of qualification.

(f) Any change in location or ownership of the plant where a previously qualified product or service was manufactured or performed requires reevaluation of the qualification. Similarly, any change in location or ownership of a previously qualified manufacturer or source requires reevaluation of the qualification. The reevaluation must be accomplished before the date of award.

(End of clause)

**52.209-2 Prohibition on Contracting with Inverted Domestic Corporations-Representation.**

As prescribed in [9.108-5](#), insert the following provision:

PROHIBITION ON CONTRACTING WITH INVERTED DOMESTIC CORPORATIONS-REPRESENTATION (JUL 2009)

(a) *Definition.* "Inverted domestic corporation" means a foreign incorporated entity which is treated as an inverted domestic corporation under [6 U.S.C. 395\(b\)](#), *i.e.*, a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in [6 U.S.C. 395\(b\)](#), applied in accordance with the rules and definitions of [6 U.S.C. 395\(c\)](#).

(b) *Relation to Internal Revenue Code.* A foreign entity that is treated as an inverted domestic corporation for purposes of the Internal Revenue Code at [26 U.S.C. 7874](#) (or would be except that the inversion transactions were completed on or before March 4, 2003), is also an inverted domestic corporation for purposes of [6 U.S.C. 395](#) and for this solicitation provision (see FAR [9.108](#)).

(c) *Representation.* By submission of its offer, the offeror represents that it is not an inverted domestic corporation and is not a subsidiary of one.

(End of provision)

**52.209-3 First Article Approval—Contractor Testing.**

As prescribed in [9.308-1\(a\)](#) and (b), insert the following clause:

FIRST ARTICLE APPROVAL—CONTRACTOR TESTING  
(SEPT 1989)

[Contracting Officer shall insert details]

(a) The Contractor shall test \_\_\_\_\_ unit(s) of Lot/Item \_\_\_\_\_ as specified in this contract. At least \_\_\_\_\_ calendar days before the beginning of first article tests, the Contractor shall notify the Contracting Officer, in writing, of the time and location of the testing so that the Government may witness the tests.

(b) The Contractor shall submit the first article test report within \_\_\_\_\_ calendar days from the date of this contract to \_\_\_\_\_ [insert address of the Government activity to receive the report] marked "FIRST ARTICLE TEST REPORT: Contract No. \_\_\_\_\_, Lot/Item No. \_\_\_\_\_" Within \_\_\_\_\_ calendar days after the Government receives the test report, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.

(c) If the first article is disapproved, the Contractor, upon Government request, shall repeat any or all first article tests.



After each request for additional tests, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional tests following a disapproval. The Contractor shall then conduct the tests and deliver another report to the Government under the terms and conditions and within the time specified by the Government. The Government shall take action on this report within the time specified in paragraph (b) of this subsection. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule, or for any additional costs to the Government related to these tests.

(d) If the Contractor fails to deliver any first article report on time, or the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract.

(e) Unless otherwise provided in the contract, and if the approved first article is not consumed or destroyed in testing, the Contractor may deliver the approved first article as part of the contract quantity if it meets all contract requirements for acceptance.

(f) If the Government does not act within the time specified in paragraph (b) or (c) of this subsection, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government.

(h) The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the offeror/contractor and have been accepted by the Government. The offeror/contractor may request a waiver.

(End of clause)

*Alternate I (Jan 1997).* As prescribed in [9.308-1\(a\)\(2\)](#) and (b)(2), add the following paragraph (i) to the basic clause:

(i) The Contractor shall produce both the first article and the production quantity at the same facility.

*Alternate II (Sept 1989).* As prescribed in [9.308-1\(a\)\(3\)](#) and (b)(3), substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to

acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

#### **52.209-4 First Article Approval—Government Testing.**

As prescribed in [9.308-2\(a\)](#) and (b), insert the following clause:

#### FIRST ARTICLE APPROVAL—GOVERNMENT TESTING (SEPT 1989)

*[Contracting Officer shall insert details]*

(a) The Contractor shall deliver \_\_\_ unit(s) of Lot/Item \_\_\_ within \_\_\_ calendar days from the date of this contract to the Government at \_\_\_ *[insert name and address of the testing facility]* for first article tests. The shipping documentation shall contain this contract number and the Lot/Item identification. The characteristics that the first article must meet and the testing requirements are specified elsewhere in this contract.

(b) Within \_\_\_ calendar days after the Government receives the first article, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.

(c) If the first article is disapproved, the Contractor, upon Government request, shall submit an additional first article for testing. After each request, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional tests following a disapproval. The Contractor shall furnish any additional first article to the Government under the terms and conditions and within the time specified by the Government. The Government shall act on this first article within the time limit specified in paragraph (b) of this clause. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule or for any additional costs to the Government related to these tests.

(d) If the Contractor fails to deliver any first article on time, or the Contracting Officer disapproves any first article, the

Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract.

(e) Unless otherwise provided in the contract, the Contractor—

(1) May deliver the approved first article as a part of the contract quantity, provided it meets all contract requirements for acceptance and was not consumed or destroyed in testing; and

(2) Shall remove and dispose of any first article from the Government test facility at the Contractor's expense.

(f) If the Government does not act within the time specified in paragraph (b) or (c) of this clause, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the Changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) The Contractor is responsible for providing operating and maintenance instructions, spare parts support, and repair of the first article during any first article test.

(h) Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government.

(i) The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the Offeror/Contractor and have been accepted by the Government. The Offeror/Contractor may request a waiver.

(End of clause)

*Alternate I (Jan 1997).* As prescribed in [9.308-2\(a\)\(2\)](#) and (b)(2), add the following paragraph (j) to the basic clause:

(j) The Contractor shall produce both the first article and the production quantity at the same facility.

*Alternate II (Sept 1989).* As prescribed in [9.308-2\(a\)\(3\)](#) and (b)(3), substitute the following paragraph (h) for paragraph (h) of the basic clause:

(h) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

### 52.209-5 Certification Regarding Responsibility Matters.

As prescribed in [9.104-6](#), insert the following provision:

#### CERTIFICATION REGARDING RESPONSIBILITY MATTERS (DEC 2008)

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) Are  are not  presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have  have not , within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or sub-contract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(C) Are  are not  presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision;

(D) Have , have not , within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) *The tax liability is finally determined.*

The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) *Examples.*

(i) The taxpayer has received a statutory notice of deficiency, under I.R.C. § 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. § 6320 entitling the tax-



payer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. § 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(ii) The Offeror has  has not , within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principal," for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment; and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed

by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

#### **52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.**

As prescribed in [9.409](#)(b), insert the following clause:

PROTECTING THE GOVERNMENT'S INTEREST WHEN  
SUBCONTRACTING WITH CONTRACTORS DEBARRED,  
SUSPENDED, OR PROPOSED FOR DEBARMENT (SEPT 2006)

(a) The Government suspends or debar Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$30,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$30,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR [9.404](#) for information on the Excluded Parties List System). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being in the Excluded Parties List System.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in the Excluded Parties List System.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of clause)

#### **52.210 [Reserved]**

**52.211-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29.**

As prescribed in [11.204](#)(a), insert the following provision:

AVAILABILITY OF SPECIFICATIONS LISTED IN THE GSA INDEX OF FEDERAL SPECIFICATIONS, STANDARDS AND COMMERCIAL ITEM DESCRIPTIONS, FPMR PART 101-29 (AUG 1998)

(a) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to—

GSA Federal Supply Service  
Specifications Section, Suite 8100  
470 East L'Enfant Plaza, SW  
Washington, DC 20407

Telephone (202) 619-8925  
Facsimile (202) 619-8978.

(b) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (a) of this provision. Additional copies will be issued for a fee.

(End of provision)

**52.211-2 Availability of Specifications, Standards, and Data Item Descriptions Listed in the Acquisition Streamlining and Standardization Information System (ASSIST).**

As prescribed in [11.204](#)(b), insert the following provision:

AVAILABILITY OF SPECIFICATIONS, STANDARDS, AND DATA ITEM DESCRIPTIONS LISTED IN THE ACQUISITION STREAMLINING AND STANDARDIZATION INFORMATION SYSTEM (ASSIST) (JAN 2006)

(a) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites:

(1) ASSIST (<http://assist.daps.dla.mil>);

(2) Quick Search (<http://assist.daps.dla.mil/quicksearch>);

(3) ASSISTdocs.com (<http://assistdocs.com>).

(b) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by—

(1) Using the ASSIST Shopping Wizard (<http://assist.daps.dla.mil/wizard>);

(2) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or

(3) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

(End of provision)

**52.211-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.**

As prescribed in [11.204](#)(c), insert a provision substantially the same as the following:

AVAILABILITY OF SPECIFICATIONS NOT LISTED IN THE GSA INDEX OF FEDERAL SPECIFICATIONS, STANDARDS AND COMMERCIAL ITEM DESCRIPTIONS (JUNE 1988)

The specifications cited in this solicitation may be obtained from:

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(l) *Debriefing.* If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

- (1) The agency’s evaluation of the significant weak or deficient factors in the debriefed offeror’s offer.
- (2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.
- (3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.
- (4) A summary of the rationale for award;
- (5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.
- (6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

**52.212-2 Evaluation—Commercial Items.**

As prescribed in [12.301\(c\)](#), the Contracting Officer may insert a provision substantially as follows:

EVALUATION—COMMERCIAL ITEMS (JAN 1999)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

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*[Contracting Officer shall insert the significant evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR [15.304](#)); (iv) small disadvantaged business participation; and include them in the relative order of importance of the evaluation factors, such as in descending order of importance.]*

Technical and past performance, when combined, are \_\_\_\_\_ *[Contracting Officer state, in accordance with FAR [15.304](#), the relative importance of all other evaluation factors, when combined, when compared to price.]*

(b) *Options.* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer’s specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are

negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

**52.212-3 Offeror Representations and Certifications—Commercial Items.**

As prescribed in [12.301\(b\)\(2\)](#), insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—  
COMMERCIAL ITEMS (JUL 2009)

An offeror shall complete only paragraph (b) of this provision if the offeror has completed the annual representations and certifications electronically at <http://orca.bpn.gov>. If an offeror has not completed the annual representations and certifications electronically at the ORCA website, the offeror shall complete only paragraphs (c) through (m) of this provision.

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

“Emerging small business” means a small business concern whose size is no greater than 50 percent of the numerical size standard for the NAICS code designated.

“Forced or indentured child labor” means all work or service—

- (1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or
- (2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

“Inverted domestic corporation” means a foreign incorporated entity which is treated as an inverted domestic corporation under [6 U.S.C. 395\(b\)](#), *i.e.*, a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in [6 U.S.C. 395\(b\)](#), applied in accordance with the rules and definitions of [6 U.S.C. 395\(c\)](#).

“Manufactured end product” means any end product in Federal Supply Classes (FSC) 1000-9999, except—

- (1) FSC 5510, Lumber and Related Basic Wood Materials;
- (2) Federal Supply Group (FSG) 87, Agricultural Supplies;
- (3) FSG 88, Live Animals;
- (4) FSG 89, Food and Related Consumables;
- (5) FSC 9410, Crude Grades of Plant Materials;
- (6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) FSC 9610, Ores;
- (9) FSC 9620, Minerals, Natural and Synthetic; and
- (10) FSC 9630, Additive Metal Materials.

“Place of manufacture” means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

“Restricted business operations” means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person conducting the business can demonstrate—

- (1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;
- (2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;
- (3) Consist of providing goods or services to marginalized populations of Sudan;
- (4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;
- (5) Consist of providing goods or services that are used only to promote health or education; or
- (6) Have been voluntarily suspended.

“Service-disabled veteran-owned small business concern”—

- (1) Means a small business concern—
  - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
  - (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
- (2) Service-disabled veteran means a veteran, as defined in [38 U.S.C. 101\(2\)](#), with a disability that is service-connected, as defined in [38 U.S.C. 101\(16\)](#).

“Small business concern” means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

“Veteran-owned small business concern” means a small business concern—

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at [38 U.S.C. 101\(2\)](#)) or, in the

case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned business concern” means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) (1) *Annual Representations and Certifications*. Any changes provided by the offeror in paragraph (b)(2) of this provision do not automatically change the representations and certifications posted on the Online Representations and Certifications Application (ORCA) website.

(2) The offeror has completed the annual representations and certifications electronically via the ORCA website at <http://orca.bpn.gov>. After reviewing the ORCA database information, the offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR [4.1201](#)), except for paragraphs

*[Offeror to identify the applicable paragraphs at (c) through (n) of this provision that the offeror has completed for the purposes of this solicitation only, if any.]*

*These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.*

*Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.]*

(c) Offerors must complete the following representations when the resulting contract will be performed in the United States or its outlying areas. Check all that apply.

(1) *Small business concern*. The offeror represents as part of its offer that it  is,  is not a small business concern.

(2) *Veteran-owned small business concern*. *[Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents as part of its offer that it  is,  is not a veteran-owned small business concern.

(3) *Service-disabled veteran-owned small business concern*. *[Complete only if the offeror represented itself as a*



(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR [22.1003-4\(d\)\(2\)\(iii\)](#));

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

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Act wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

(l) *Taxpayer Identification Number (TIN)* ([26 U.S.C. 6109, 31 U.S.C. 7701](#)). (Not applicable if the offeror is required to provide this information to a central contractor registration database to be eligible for award.)

(1) All offerors must submit the information required in paragraphs (l)(3) through (l)(5) of this provision to comply with debt collection requirements of [31 U.S.C. 7701\(c\) and 3325\(d\)](#), reporting requirements of [26 U.S.C. 6041, 6041A, and 6050M](#), and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government ([31 U.S.C. 7701\(c\)\(3\)](#)). If the resulting contract is subject to the payment reporting requirements described in FAR [4.904](#), the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) *Taxpayer Identification Number (TIN)*.

- TIN: \_\_\_\_\_.
- TIN has been applied for.
- TIN is not required because:
- Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
- Offeror is an agency or instrumentality of a foreign government;

- Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization.*

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Government entity (Federal, State, or local);
- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other \_\_\_\_\_.

(5) *Common parent.*

- Offeror is not owned or controlled by a common parent;
- Name and TIN of common parent:  
Name \_\_\_\_\_.  
TIN \_\_\_\_\_.

(m) *Restricted business operations in Sudan.* By submission of its offer, the offeror certifies that it does not conduct any restricted business operations in Sudan.

(n) *Prohibition on Contracting with Inverted Domestic Corporations.* (1) *Relation to Internal Revenue Code.* A foreign entity that is treated as an inverted domestic corporation for purposes of the Internal Revenue Code at [26 U.S.C. 7874](#) (or would be except that the inversion transactions were completed on or before March 4, 2003), is also an inverted domestic corporation for purposes of [6 U.S.C. 395](#) and for this solicitation provision (see FAR [9.108](#)).

(2) *Representation.* By submission of its offer, the offeror represents that it is not an inverted domestic corporation and is not a subsidiary of one.

(End of provision)

*Alternate I (Apr 2002).* As prescribed in [12.301\(b\)\(2\)](#), add the following paragraph (c)(11) to the basic provision:

(11) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(4) or (c)(9) of this provision.)

[The offeror shall check the category in which its ownership falls]:

- \_\_\_ Black American.
- \_\_\_ Hispanic American.
- \_\_\_ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).
- \_\_\_ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

\_\_\_\_ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

\_\_\_\_ Individual/concern, other than one of the preceding.

*Alternate II (Oct 2000).* As prescribed in [12.301\(b\)\(2\)](#), add the following paragraph (c)(9)(iii) to the basic provision:

(iii) *Address.* The offeror represents that its address  is,  is not in a region for which a small disadvantaged business procurement mechanism is authorized and its address has not changed since its certification as a small disadvantaged business concern or submission of its application for certification. The list of authorized small disadvantaged business procurement mechanisms and regions is posted at <http://www.arnet.gov/References/sdbadjustments.htm>. The offeror shall use the list in effect on the date of this solicitation. “Address,” as used in this provision, means the address of the offeror as listed on the Small Business Administration’s register of small disadvantaged business concerns or the address on the completed application that the concern has submitted to the Small Business Administration or a Private Certifier in accordance with 13 CFR Part 124, subpart B. For joint ventures, “address” refers to the address of the small disadvantaged business concern that is participating in the joint venture.

#### 52.212-4 Contract Terms and Conditions—Commercial Items.

As prescribed in [12.301\(b\)\(3\)](#), insert the following clause:

##### CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (MAR 2009)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act ([31 U.S.C. 3727](#)). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended ([41 U.S.C. 601-613](#)). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.*(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.



**PART 53—FORMS**

<i>Sec.</i>			
53.000	Scope of part.	53.222	Application of labor laws to Government acquisitions (SF's 308, 1093, 1413, 1444, 1445, 1446, WH-347).
53.001	Definitions.		
	<b>Subpart 53.1—General</b>	53.223	[Reserved]
53.100	Scope of subpart.	53.224	[Reserved]
53.101	Requirements for use of forms.	53.225	[Reserved]
53.102	Current editions.	53.226	[Reserved]
53.103	Exceptions.	53.227	[Reserved]
53.104	Overprinting.	53.228	Bonds and insurance.
53.105	Computer generation.	53.229	Taxes (SF's 1094, 1094-A).
53.106	Special construction and printing.	53.230	[Reserved]
53.107	Obtaining forms.	53.231	[Reserved]
53.108	Recommendations concerning forms.	53.232	Contract financing (SF 1443).
53.109	Forms prescribed by other regulations.	53.233	[Reserved]
53.110	Continuation sheets.	53.234	[Reserved]
53.111	Contract clause.	53.235	Research and development contracting (SF 298).
	<b>Subpart 53.2—Prescription of Forms</b>	53.236	Construction and architect-engineer contracts.
53.200	Scope of subpart.	53.236-1	Construction.
53.201	Federal acquisition system.	53.236-2	Architect-engineer services (SF's 252 and 330).
53.201-1	Contracting authority and responsibilities (SF 1402).	53.237	[Reserved]
53.202	[Reserved]	53.238	[Reserved]
53.203	[Reserved]	53.239	[Reserved]
53.204	Administrative matters.	53.240	[Reserved]
53.204-1	Safeguarding classified information within industry (DD Form 254, DD Form 441).	53.241	[Reserved]
53.204-2	[Reserved]	53.242	Contract administration.
53.205	Publicizing contract actions.	53.242-1	Novation and change-of-name agreements (SF 30).
53.205-1	Paid advertisements.	53.243	Contract modifications (SF 30).
53.206	[Reserved]	53.244	[Reserved]
53.207	[Reserved]	53.245	Government property.
53.208	[Reserved]	53.246	[Reserved]
53.209	Contractor qualifications.	53.247	Transportation (U.S. Commercial Bill of Lading).
53.209-1	Responsible prospective contractors.	53.248	[Reserved]
53.210	[Reserved]	53.249	Termination of contracts.
53.211	[Reserved]	53.250	[Reserved]
53.212	Acquisition of commercial items.	53.251	Contractor use of Government supply sources (OF 347).
53.213	Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348).		
53.214	Sealed bidding.		
53.215	Contracting by negotiation.		
53.215-1	Solicitation and receipt of proposals.		
53.216	Types of contracts.		
53.216-1	Delivery orders and orders under basic ordering agreements (OF 347).		
53.217	[Reserved]		
53.218	[Reserved]		
53.219	Small business programs.		
53.220	[Reserved]		
53.221	[Reserved]		
			<b>Subpart 53.3—Illustration of Forms</b>
		53.300	Scope of subpart.
		53.301	Standard forms.
		53.302	Optional forms.
		53.303	Agency forms.
		53.301-18	SF 18, Request for Quotation.
		53.301-24	SF 24, Bid Bond.
		53.301-25	SF 25, Performance Bond.
		53.301-25-A	SF 25-A, Payment Bond.
		53.301-25-B	SF 25-B, Continuation Sheet (For SF's 24, 25, and 25-A).
		53.301-26	SF 26, Award/Contract.
		53.301-28	SF 28, Affidavit of Individual Surety.
		53.301-30	SF 30, Amendment of Solicitation/Modification of Contract.

53.301-33	SF 33, Solicitation, Offer and Award.	53.301-1405	SF 1405, Preaward Survey of Prospective Contractor—Production.
53.301-34	SF 34, Annual Bid Bond.	53.301-1406	SF 1406, Preaward Survey of Prospective Contractor—Quality Assurance.
53.301-35	SF 35, Annual Performance Bond.	53.301-1407	SF 1407, Preaward Survey of Prospective Contractor—Financial Capability.
53.301-44	SF 44, Purchase Order—Invoice—Voucher.	53.301-1408	SF 1408, Preaward Survey of Prospective Contractor—Accounting System.
53.301-120	SF 120, Report of Excess Personal Property.	53.301-1409	SF 1409, Abstract of Offers.
53.301-120-A	SF 120-A, Continuation Sheet (Report of Excess Personal Property).	53.301-1410	SF 1410, Abstract of Offers—Continuation.
53.301-126	SF 126, Report of Personal Property for Sale.	53.301-1413	SF 1413, Statement and Acknowledgment.
53.301-126-A	SF 126-A, Report of Personal Property for Sale (Continuation Sheet).	53.301-1414	SF 1414, Consent of Surety.
53.301-252	SF 252, Architect-Engineer Contract.	53.301-1415	SF 1415, Consent of Surety and Increase of Penalty.
53.301-273	SF 273, Reinsurance Agreement for a Miller Act Performance Bond.	53.301-1416	SF 1416, Payment Bond for Other Than Construction Contracts.
53.301-274	SF 274, Reinsurance Agreement for a Miller Act Payment Bond.	53.301-1418	SF 1418, Performance Bond for Other Than Construction Contracts.
53.301-275	SF 275, Reinsurance Agreement in Favor of the United States.	53.301-1420	SF 1420, Performance Evaluation—Construction Contracts.
53.301-298	SF 298, Report Documentation Page.	53.301-1421	SF 1421, Performance Evaluation (Architect-Engineer).
53.301-308	SF 308, Request for Wage Determination and Response to Request.	53.301-1423	SF 1423, Inventory Verification Survey.
53.301-330	Architect-Engineer Qualifications.	53.301-1424	SF 1424, Inventory Disposal Report.
53.301-1034	SF 1034, Public Voucher for Purchases and Services Other Than Personal.	53.301-1427	SF 1427, Inventory Schedule A—Continuation Sheet (Metals in Mill Product Form).
53.301-1034A	SF 1034A, Public Voucher for Purchases and Services Other Than Personal—Memorandum Copy.	53.301-1428	SF 1428, Inventory Schedule.
53.301-1035	SF 1035, Public Voucher for Purchases and Services Other Than Personal, Continuation Sheet.	53.301-1429	SF 1429, Inventory Schedule—Continuation Sheet.
53.301-1035A	SF 1035A, Public Voucher for Purchases and Services Other Than Personal—Memorandum, Continuation Sheet.	53.301-1435	SF 1435, Settlement Proposal (Inventory Basis).
53.301-1093	SF 1093, Schedule of Withholdings Under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act).	53.301-1436	SF 1436, Settlement Proposal (Total Cost Basis).
53.301-1094	SF 1094, U.S. Tax Exemption Form.	53.301-1437	SF 1437, Settlement Proposal for Cost-Reimbursement Type Contracts.
53.301-1094A	SF 1094A, Tax Exemption Forms Accountability Record.	53.301-1438	SF 1438, Settlement Proposal (Short Form).
53.301-1165	SF 1165, Receipt for Cash—Subvoucher.	53.301-1439	SF 1439, Schedule of Accounting Information.
53.301-1402	SF 1402, Certificate of Appointment.	53.301-1440	SF 1440, Application for Partial Payment.
53.301-1403	SF 1403, Preaward Survey of Prospective Contractor (General).	53.301-1442	SF 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair).
53.301-1404	SF 1404, Preaward Survey of Prospective Contractor—Technical.	53.301-1443	SF 1443, Contractor's Request for Progress Payment.



OF 90	Release of Lien on Real Property	OF 309	Amendment of Solicitation
OF 91	Release of Personal Property from Escrow	OF 312	Small Disadvantaged Business Participation Report
OF 307	Contract Award	OF 347	Order for Supplies or Services
OF 308	Solicitation and Offer—Negotiated Acquisition		

(g) [OF 309](#) (Rev. 9/97), *Amendment of Solicitation*. [OF 309](#) may be used to amend solicitations of negotiated contracts, as specified in [15.210](#)(b).

### 53.216 Types of contracts.

#### 53.216-1 Delivery orders and orders under basic ordering agreements (OF 347).

[OF 347](#), Order for Supplies or Services. [OF 347](#), prescribed in [53.213](#)(f) (or an approved agency form), may be used to place orders under indefinite delivery contracts and basic ordering agreements, as specified in [16.703](#)(d)(2)(i).

53.217 [Reserved]

53.218 [Reserved]

#### 53.219 Small business programs.

The following form may be used in reporting small disadvantaged business contracting data: [OF 312](#) (10/00), *Small Disadvantaged Business Participation Report*. (See [Subpart 19.12](#).)

53.220 [Reserved]

53.221 [Reserved]

#### 53.222 Application of labor laws to Government acquisitions (SF's 308, 1093, 1413, 1444, 1445, 1446, WH-347).

The following forms are prescribed as stated below, for use in connection with the application of labor laws:

- (a) [Reserved]
- (b) [Reserved]
- (c) [SF 308](#) (DOL) (5/85 Ed.), *Request for Determination and Response to Request*. (See [22.404-3](#)(a) and (b).)
- (d) [SF 1093](#) (GAO) (10/71 Ed.), *Schedule of Withholdings under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act*. (See [22.406-9](#)(c)(1).)
- (e) [SF 1413](#) (Rev. 7/2005), *Statement and Acknowledgment*. [SF 1413](#) is prescribed for use in obtaining contractor acknowledgment of inclusion of required clauses in subcontracts, as specified in [22.406-5](#).
- (f) [SF 1444](#) (10/87 Ed.), *Request for Authorization of Additional Classification and Rate*. (See [22.406-3](#)(a) and [22.1019](#).)
- (g) [SF 1445](#) (Rev. 12/96), *Labor Standards Interview*. (See [22.406-7](#)(b).)
- (h) [SF 1446](#) (10/87 Ed.), *Labor Standards Investigation Summary Sheet*. (See [22.406-8](#)(d).)

(i) [Form WH-347](#) (DOL), *Payroll (For Contractor's Optional Use)*. (See [22.406-6](#)(a).)

53.223 [Reserved]

53.224 [Reserved]

53.225 [Reserved]

53.226 [Reserved]

53.227 [Reserved]

#### 53.228 Bonds and insurance.

The following standard forms are prescribed for use for bond and insurance requirements, as specified in [Part 28](#):

- (a) [SF 24](#) (Rev. 10/98) *Bid Bond*. (See [28.106-1](#).) [SF 24](#) is authorized for local reproduction.
- (b) [SF 25](#) (Rev. 5/96) *Performance Bond*. (See [28.106-1](#)(b).) [SF 25](#) is authorized for local reproduction.
- (c) [SF 25A](#) (Rev. 10/98) *Payment Bond*. (See [28.106-1](#)(c).) [SF 25A](#) is authorized for local reproduction.
- (d) [SF 25B](#) (Rev. 10/83), *Continuation Sheet* (For Standard Forms [24](#), [25](#), and [25A](#)). (See [28.106-1](#)(c).)
- (e) [SF 28](#) (Rev. 6/03) *Affidavit of Individual Surety*. (See [28.106-1](#)(e) and [28.203](#)(b).) [SF 28](#) is authorized for local reproduction.
- (f) [SF 34](#) (Rev. 1/90), *Annual Bid Bond*. (See [28.106-1](#)(f).) [SF 34](#) is authorized for local reproduction.
- (g) [SF 35](#) (Rev. 1/90), *Annual Performance Bond*. (See [28.106-1](#).) [SF 35](#) is authorized for local reproduction.
- (h) [SF 273](#) (Rev. 10/98) *Reinsurance Agreement for a Miller Act Performance Bond*. (See [28.106-1](#)(h) and [28.202-1](#)(a)(4).) [SF 273](#) is authorized for local reproduction.
- (i) [SF 274](#) (Rev. 10/98) *Reinsurance Agreement for a Miller Act Payment Bond*. (See [28.106-1](#)(i) and [28.202-1](#)(a)(4).) [SF 274](#) is authorized for local reproduction.
- (j) [SF 275](#) (Rev. 10/98) *Reinsurance Agreement in Favor of the United States*. (See [28.106-1](#)(j) and [28.202-1](#)(a)(4).) [SF 275](#) is authorized for local reproduction.
- (k) [SF 1414](#) (Rev. 10/93), *Consent of Surety*. [SF 1414](#) is authorized for local reproduction.
- (l) [SF 1415](#) (Rev. 7/93), *Consent of Surety and Increase of Penalty*. (See [28.106-1](#)(l).) [SF 1415](#) is authorized for local reproduction.
- (m) [SF 1416](#) (Rev. 10/98) *Payment Bond for Other than Construction Contracts*. (See [28.106-1](#)(m).) [SF 1416](#) is authorized for local reproduction.

(n) [SF 1418](#) (Rev. 2/99) *Performance Bond For Other Than Construction Contracts*. (See [28.106-1\(n\)](#).) [SF 1418](#) is authorized for local reproduction.

(o) [OF 90](#) (Rev. 1/90), *Release of Lien on Real Property*. (See [28.106-1\(o\)](#) and [28.203-5\(a\)](#).) [OF 90](#) is authorized for local reproduction.

(p) [OF 91](#) (1/90 Ed.), *Release of Personal Property from Escrow*. (See [28.106-1\(p\)](#) and [28.203-5\(a\)](#).) [OF 91](#) is authorized for local reproduction.

**53.229 Taxes (SF’s 1094, 1094-A).**

[SF 1094](#) (Rev. 12/96), *U.S. Tax Exemption Form, and SF 1094A* (Rev. 12/96), *Tax Exemption Forms Accountability Record*. SF’s [1094](#) and [1094A](#) are prescribed for use in establishing exemption from State or local taxes, as specified in [29.302\(b\)](#).

**53.230 [Reserved]**

**53.231 [Reserved]**

**53.232 Contract financing (SF 1443).**

[SF 1443](#) (10/82), *Contractor’s Request for Progress Payment*. [SF 1443](#) is prescribed for use in obtaining contractors’ requests for progress payments, as specified in [32.503-1](#).

**53.233 [Reserved]**

**53.234 [Reserved]**

**53.235 Research and development contracting (SF 298).**

[SF 298](#) (2/89), *Report Documentation Page*. [SF 298](#) is prescribed for use in submitting scientific and technical reports to contracting officers and to technical information libraries, as specified in [35.010](#).

**53.236 Construction and architect-engineer contracts.**

**53.236-1 Construction.**

The following forms are prescribed, as stated below, for use in contracting for construction, alteration, or repair, or dismantling, demolition, or removal of improvements.

- (a) [Reserved]
- (b) [Reserved]
- (c) [Reserved]

(d) [SF 1442](#) (4/85 Ed.), *Solicitation, Offer and Award (Construction, Alteration, or Repair)*. [SF 1442](#) is prescribed for use in soliciting offers and awarding contracts expected to exceed the simplified acquisition threshold for—

- (1) Construction, alteration, or repair; or
- (2) Dismantling, demolition, or removal of improvements (and may be used for contracts within the simplified acquisition threshold), as specified in [36.701\(a\)](#).

(e) [OF 347](#) (Rev. 3/2005), *Order for Supplies or Services*. [OF 347](#), prescribed in [53.213\(f\)](#) (or an approved agency form), may be used for contracts under the simplified acquisition threshold for—

- (1) Construction, alteration, or repair; or
- (2) Dismantling, demolition, or removal of improvements, as specified in [36.701\(b\)](#).

(f) [OF 1419](#) (11/88 Ed.), *Abstract of Offers—Construction, and OF 1419A* (11/88 Ed.), *Abstract of Offers—Construction, Continuation Sheet*. OF’s [1419](#) and [1419A](#) are prescribed for use in recording bids (and may be used for recording proposal information), as specified in [36.701\(c\)](#).

**53.236-2 Architect-engineer services (SF’s 252 and 330).**

The following forms are prescribed for use in contracting for architect-engineer and related services:

(a) [SF 252](#) (Rev. 10/83), *Architect-Engineer Contract*. [SF 252](#) is prescribed for use in awarding fixed-price contracts for architect-engineer services, as specified in [36.702\(a\)](#). Pending issuance of a new edition of the form, Block 8, Negotiation Authority, is deleted.

(b) [SF 330](#) (6/04), *Architect-Engineer Qualifications*. [SF 330](#) is prescribed for use in obtaining information from architect-engineer firms regarding their professional qualifications, as specified in [36.702\(b\)\(1\)](#) and (b)(2).

**53.237 [Reserved]**

**53.238 [Reserved]**

**53.239 [Reserved]**

**53.240 [Reserved]**

**53.241 [Reserved]**

# Standard Form 1420

[Standard Form 1420 has been removed.]





# Standard Form 1421

[Standard Form 1421 has been removed.]



**FAC 2005-34 (LOOSELEAF UPDATED REPLACEMENT PAGES) FILING INSTRUCTIONS**

**NOTE: The following replacement pages reflect FAC 2005-33 amendments. Please file these pages after filing all pages from FAC 2005-33. The effective date is July 15, 2009.**

Remove Pages

53.2-3 and 53.2-4

Insert Pages

53.2-3 and 53.2-4

**(BLANK PAGE)**

(g) [OF 309](#) (Rev. 9/97), *Amendment of Solicitation*. [OF 309](#) may be used to amend solicitations of negotiated contracts, as specified in [15.210\(b\)](#).

### 53.216 Types of contracts.

#### 53.216-1 Delivery orders and orders under basic ordering agreements (OF 347).

[OF 347](#), Order for Supplies or Services. [OF 347](#), prescribed in [53.213\(f\)](#) (or an approved agency form), may be used to place orders under indefinite delivery contracts and basic ordering agreements, as specified in [16.703\(d\)\(2\)\(i\)](#).

53.217 [Reserved]

53.218 [Reserved]

#### 53.219 Small business programs.

The following form may be used in reporting small disadvantaged business contracting data: [OF 312](#) (10/00), *Small Disadvantaged Business Participation Report*. (See [Subpart 19.12](#).)

53.220 [Reserved]

53.221 [Reserved]

#### 53.222 Application of labor laws to Government acquisitions (SF's 308, 1093, 1413, 1444, 1445, 1446, WH-347).

The following forms are prescribed as stated below, for use in connection with the application of labor laws:

(a) [Reserved]

(b) [Reserved]

(c) [SF 308](#) (DOL) (5/85 Ed.), *Request for Determination and Response to Request*. (See [22.404-3\(a\)](#) and (b).)

(d) [SF 1093](#) (GAO) (10/71 Ed.), *Schedule of Withholdings under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act*. (See [22.406-9\(c\)\(1\)](#).)

(e) [SF 1413](#) (Rev. 7/2005), *Statement and Acknowledgment*. [SF 1413](#) is prescribed for use in obtaining contractor acknowledgment of inclusion of required clauses in subcontracts, as specified in [22.406-5](#).

(f) [SF 1444](#) (10/87 Ed.), *Request for Authorization of Additional Classification and Rate*. (See [22.406-3\(a\)](#) and [22.1019](#).)

(g) [SF 1445](#) (Rev. 12/96), *Labor Standards Interview*. (See [22.406-7\(b\)](#).)

(h) [SF 1446](#) (10/87 Ed.), *Labor Standards Investigation Summary Sheet*. (See [22.406-8\(d\)](#).)

(i) [Form WH-347](#) (DOL), *Payroll (For Contractor's Optional Use)*. (See [22.406-6\(a\)](#).)

53.223 [Reserved]

53.224 [Reserved]

53.225 [Reserved]

53.226 [Reserved]

53.227 [Reserved]

#### 53.228 Bonds and insurance.

The following standard forms are prescribed for use for bond and insurance requirements, as specified in [Part 28](#):

(a) [SF 24](#) (Rev. 10/98) *Bid Bond*. (See [28.106-1](#).) [SF 24](#) is authorized for local reproduction.

(b) [SF 25](#) (Rev. 5/96) *Performance Bond*. (See [28.106-1\(b\)](#).) [SF 25](#) is authorized for local reproduction.

(c) [SF 25A](#) (Rev. 10/98) *Payment Bond*. (See [28.106-1\(c\)](#).) [SF 25A](#) is authorized for local reproduction.

(d) [SF 25B](#) (Rev. 10/83), *Continuation Sheet* (For Standard Forms [24](#), [25](#), and [25A](#)). (See [28.106-1\(c\)](#).)

(e) [SF 28](#) (Rev. 6/03) *Affidavit of Individual Surety*. (See [28.106-1\(e\)](#) and [28.203\(b\)](#).) [SF 28](#) is authorized for local reproduction.

(f) [SF 34](#) (Rev. 1/90), *Annual Bid Bond*. (See [28.106-1\(f\)](#).) [SF 34](#) is authorized for local reproduction.

(g) [SF 35](#) (Rev. 1/90), *Annual Performance Bond*. (See [28.106-1](#).) [SF 35](#) is authorized for local reproduction.

(h) [SF 273](#) (Rev. 10/98) *Reinsurance Agreement for a Miller Act Performance Bond*. (See [28.106-1\(h\)](#) and [28.202-1\(a\)\(4\)](#).) [SF 273](#) is authorized for local reproduction.

(i) [SF 274](#) (Rev. 10/98) *Reinsurance Agreement for a Miller Act Payment Bond*. (See [28.106-1\(i\)](#) and [28.202-1\(a\)\(4\)](#).) [SF 274](#) is authorized for local reproduction.

(j) [SF 275](#) (Rev. 10/98) *Reinsurance Agreement in Favor of the United States*. (See [28.106-1\(j\)](#) and [28.202-1\(a\)\(4\)](#).) [SF 275](#) is authorized for local reproduction.

(k) [SF 1414](#) (Rev. 10/93), *Consent of Surety*. [SF 1414](#) is authorized for local reproduction.

(l) [SF 1415](#) (Rev. 7/93), *Consent of Surety and Increase of Penalty*. (See [28.106-1\(l\)](#).) [SF 1415](#) is authorized for local reproduction.

(m) [SF 1416](#) (Rev. 10/98) *Payment Bond for Other than Construction Contracts*. (See [28.106-1\(m\)](#).) [SF 1416](#) is authorized for local reproduction.

(n) [SF 1418](#) (Rev. 2/99) *Performance Bond For Other Than Construction Contracts*. (See [28.106-1](#)(n).) [SF 1418](#) is authorized for local reproduction.

(o) [OF 90](#) (Rev. 1/90), *Release of Lien on Real Property*. (See [28.106-1](#)(o) and [28.203-5](#)(a).) [OF 90](#) is authorized for local reproduction.

(p) [OF 91](#) (1/90 Ed.), *Release of Personal Property from Escrow*. (See [28.106-1](#)(p) and [28.203-5](#)(a).) [OF 91](#) is authorized for local reproduction.

**53.229 Taxes (SF’s 1094, 1094-A).**

[SF 1094](#) (Rev. 12/96), *U.S. Tax Exemption Form, and SF 1094A* (Rev. 12/96), *Tax Exemption Forms Accountability Record*. SF’s [1094](#) and [1094A](#) are prescribed for use in establishing exemption from State or local taxes, as specified in [29.302](#)(b).

**53.230 [Reserved]**

**53.231 [Reserved]**

**53.232 Contract financing (SF 1443).**

[SF 1443](#) (7/09), *Contractor’s Request for Progress Payment*. [SF 1443](#) is prescribed for use in obtaining contractors’ requests for progress payments.

**53.233 [Reserved]**

**53.234 [Reserved]**

**53.235 Research and development contracting (SF 298).**

[SF 298](#) (2/89), *Report Documentation Page*. [SF 298](#) is prescribed for use in submitting scientific and technical reports to contracting officers and to technical information libraries, as specified in [35.010](#).

**53.236 Construction and architect-engineer contracts.**

**53.236-1 Construction.**

The following forms are prescribed, as stated below, for use in contracting for construction, alteration, or repair, or dismantling, demolition, or removal of improvements.

- (a) [Reserved]
- (b) [Reserved]
- (c) [Reserved]

(d) [SF 1442](#) (4/85 Ed.), *Solicitation, Offer and Award (Construction, Alteration, or Repair)*. [SF 1442](#) is prescribed for use in soliciting offers and awarding contracts expected to exceed the simplified acquisition threshold for—

- (1) Construction, alteration, or repair; or
- (2) Dismantling, demolition, or removal of improvements (and may be used for contracts within the simplified acquisition threshold), as specified in [36.701](#)(a).

(e) [OF 347](#) (Rev. 3/2005), *Order for Supplies or Services*. [OF 347](#), prescribed in [53.213](#)(f) (or an approved agency form), may be used for contracts under the simplified acquisition threshold for—

- (1) Construction, alteration, or repair; or
- (2) Dismantling, demolition, or removal of improvements, as specified in [36.701](#)(b).

(f) [OF 1419](#) (11/88 Ed.), *Abstract of Offers—Construction, and OF 1419A* (11/88 Ed.), *Abstract of Offers—Construction, Continuation Sheet*. OF’s [1419](#) and [1419A](#) are prescribed for use in recording bids (and may be used for recording proposal information), as specified in [36.701](#)(c).

**53.236-2 Architect-engineer services (SF’s 252 and 330).**

The following forms are prescribed for use in contracting for architect-engineer and related services:

(a) [SF 252](#) (Rev. 10/83), *Architect-Engineer Contract*. [SF 252](#) is prescribed for use in awarding fixed-price contracts for architect-engineer services, as specified in [36.702](#)(a). Pending issuance of a new edition of the form, Block 8, Negotiation Authority, is deleted.

(b) [SF 330](#) (6/04), *Architect-Engineer Qualifications*. [SF 330](#) is prescribed for use in obtaining information from architect-engineer firms regarding their professional qualifications, as specified in [36.702](#)(b)(1) and (b)(2).

**53.237 [Reserved]**

**53.238 [Reserved]**

**53.239 [Reserved]**

**53.240 [Reserved]**

**53.241 [Reserved]**



FAC 2005-34 FILING INSTRUCTIONS

NOTE: The following pages reflect FAR final rule amendments.  
Please do not file until their effective date of  
July 31, 2009.

Remove Pages

9.4-1 and 9.4-2

Insert Pages

9.4-1 and 9.4-2

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## Subpart 9.4—Debarment, Suspension, and Ineligibility

### 9.400 Scope of subpart.

(a) This subpart—

(1) Prescribes policies and procedures governing the debarment and suspension of contractors by agencies for the causes given in [9.406-2](#) and [9.407-2](#);

(2) Provides for the listing of contractors debarred, suspended, proposed for debarment, and declared ineligible (see the definition of “ineligible” in [2.101](#)); and

(3) Sets forth the consequences of this listing.

(b) Although this subpart does cover the listing of ineligible contractors ([9.404](#)) and the effect of this listing ([9.405\(b\)](#)), it does not prescribe policies and procedures governing declarations of ineligibility.

### 9.401 Applicability.

In accordance with Public Law 103-355, Section 2455 ([31 U.S.C. 6101](#), note), and Executive Order 12689, any debarment, suspension or other Governmentwide exclusion initiated under the Nonprocurement Common Rule implementing Executive Order 12549 on or after August 25, 1995, shall be recognized by and effective for Executive Branch agencies as a debarment or suspension under this subpart. Similarly, any debarment, suspension, proposed debarment or other Governmentwide exclusion initiated on or after August 25, 1995, under this subpart shall also be recognized by and effective for those agencies and participants as an exclusion under the Nonprocurement Common Rule.

### 9.402 Policy.

(a) Agencies shall solicit offers from, award contracts to, and consent to subcontracts with responsible contractors only. Debarment and suspension are discretionary actions that, taken in accordance with this subpart, are appropriate means to effectuate this policy.

(b) The serious nature of debarment and suspension requires that these sanctions be imposed only in the public interest for the Government’s protection and not for purposes of punishment. Agencies shall impose debarment or suspension to protect the Government’s interest and only for the causes and in accordance with the procedures set forth in this subpart.

(c) Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions.

(d) When more than one agency has an interest in the debarment or suspension of a contractor, the Interagency Committee on Debarment and Suspension, established under Executive Order 12549, and authorized by Section 873 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), shall resolve the lead agency issue and coordinate such resolution among all interested agencies prior

to the initiation of any suspension, debarment, or related administrative action by any agency.

(e) Agencies shall establish appropriate procedures to implement the policies and procedures of this subpart.

### 9.403 Definitions.

As used in this subpart—

“Affiliates.” Business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly, (1) either one controls or has the power to control the other, or (2) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the debarment, suspension, or proposed debarment of a contractor which has the same or similar management, ownership, or principal employees as the contractor that was debarred, suspended, or proposed for debarment.

“Agency” means any executive department, military department or defense agency, or other agency or independent establishment of the executive branch.

“Civil judgment” means a judgment or finding of a civil offense by any court of competent jurisdiction.

“Contractor” means any individual or other legal entity that—

(1) Directly or indirectly (*e.g.*, through an affiliate), submits offers for or is awarded, or reasonably may be expected to submit offers for or be awarded, a Government contract, including a contract for carriage under Government or commercial bills of lading, or a subcontract under a Government contract; or

(2) Conducts business, or reasonably may be expected to conduct business, with the Government as an agent or representative of another contractor.

“Debarring official” means—

(1) An agency head; or

(2) A designee authorized by the agency head to impose debarment.

“Indictment” means indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense is given the same effect as an indictment.

“Legal proceedings” means any civil judicial proceeding to which the Government is a party or any criminal proceeding. The term includes appeals from such proceedings.

“Nonprocurement Common Rule” means the procedures used by Federal Executive Agencies to suspend, debar, or exclude individuals or entities from participation in nonprocurement transactions under Executive Order 12549. Examples of nonprocurement transactions are grants, cooperative agreements, scholarships, fellowships, contracts of assistance, loans, loan guarantees, subsidies, insurance, payments for specified use, and donation agreements.

“Suspending official” means—

(1) An agency head; or

(2) A designee authorized by the agency head to impose suspension.

“Unfair trade practices” means the commission of any or the following acts by a contractor:

(1) A violation of Section 337 of the Tariff Act of 1930 ([19 U.S.C. 1337](#)) as determined by the International Trade Commission.

(2) A violation, as determined by the Secretary of Commerce, of any agreement of the group known as the “Coordination Committee” for purposes of the Export Administration Act of 1979 ([50 U.S.C. App. 2401](#), *et seq.*) or any similar bilateral or multilateral export control agreement.

(3) A knowingly false statement regarding a material element of a certification concerning the foreign content of an item of supply, as determined by the Secretary of the Department or the head of the agency to which such certificate was furnished.

#### 9.404 Excluded Parties List System.

(a) The General Services Administration (GSA)—

(1) Operates the web-based Excluded Parties List System (EPLS);

(2) Provides technical assistance to Federal agencies in the use of the EPLS; and

(3) Includes in the list the name and telephone number of the official responsible for its maintenance and distribution.

(b) The EPLS includes the—

(1) Names and addresses of all contractors debarred, suspended, proposed for debarment, declared ineligible, or excluded or disqualified under the nonprocurement common rule, with cross-references when more than one name is involved in a single action;

(2) Name of the agency or other authority taking the action;

(3) Cause for the action (see [9.406-2](#) and [9.407-2](#) for causes authorized under this subpart) or other statutory or regulatory authority;

(4) Effect of the action;

(5) Termination date for each listing;

(6) DUNS No.;

(7) Social Security Number (SSN), Employer Identification Number (EIN), or other Taxpayer Identification Number (TIN), if available; and

(8) Name and telephone number of the agency point of contact for the action.

(c) Each agency must—

(1) Obtain password(s) from GSA to access the EPLS for data entry;

(2) Notify GSA in the event a password needs to be rescinded (*e.g.*, when an agency employee leaves or changes function);

(3) Enter the information required by paragraph (b) of this section within 5 working days after the action becomes effective;

(4) Determine whether it is legally permitted to enter the SSN, EIN, or other TIN, under agency authority to suspend or debar;

(5) Update EPLS, generally within 5 working days after modifying or rescinding an action;

(6) In accordance with internal retention procedures, maintain records relating to each debarment, suspension, or proposed debarment taken by the agency;

(7) Establish procedures to ensure that the agency does not solicit offers from, award contracts to, or consent to subcontracts with contractors whose names are in the EPLS, except as otherwise provided in this subpart;

(8) Direct inquiries concerning listed contractors to the agency or other authority that took the action; and

(9) Contact GSA for technical assistance with the EPLS, via the support e-mail address or on the technical support phone line available at the EPLS web site provided in paragraph (d) of this section.

(d) The EPLS is available at <http://epls.gov>.

#### 9.405 Effect of listing.

(a) Contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action (see [9.405-1](#)(b), [9.405-2](#), [9.406-1](#)(c), [9.407-1](#)(d), and [23.506](#)(e)). Contractors debarred, suspended, or proposed for debarment are also excluded from conducting business with the Government as agents or representatives of other contractors.

(b) Contractors included in the EPLS as having been declared ineligible on the basis of statutory or other regulatory procedures are excluded from receiving contracts, and if applicable, subcontracts, under the conditions and for the period set forth in the statute or regulation. Agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors under those conditions and for that period.

(c) Contractors debarred, suspended, or proposed for debarment are excluded from acting as individual sureties (see [Part 28](#)).

(d)(1) After the opening of bids or receipt of proposals, the contracting officer shall review the EPLS.

(2) Bids received from any listed contractor in response to an invitation for bids shall be entered on the abstract of bids, and rejected unless the agency head determines in writing that there is a compelling reason to consider the bid.

(3) Proposals, quotations, or offers received from any listed contractor shall not be evaluated for award or included in the competitive range, nor shall discussions be conducted with a listed offeror during a period of ineligibility, unless the agency head determines, in writing, that there is a compelling