

# FEDERAL ACQUISITION CIRCULAR

May 29, 2014

Number 2005-73  
Effective May 29, 2013  
Revised pages

Federal Acquisition Circular (FAC) 2005-73 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 2005-73 were effective April 29, 2014 except for item I which is effective May 29, 2014.

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**FAC 2005-73 FILING INSTRUCTIONS**  
**Revised pages**

**NOTE:** The following pages reflect FAR amendments. Please do not file these pages until their effective date of May 29, 2014.

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**PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM**

*Sec.*

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**1.000 Scope of part.**

This part sets forth basic policies and general information about the Federal Acquisition Regulations System including purpose, authority, applicability, issuance, arrangement, numbering, dissemination, implementation, supplementation, maintenance, administration, and deviation. [Subparts 1.2, 1.3, and 1.4](#) prescribe administrative procedures for maintaining the FAR System.

**Subpart 1.1—Purpose, Authority, Issuance****1.101 Purpose.**

The Federal Acquisition Regulations System is established for the codification and publication of uniform policies and procedures for acquisition by all executive agencies. The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in [1.301\(a\)\(2\)](#).

**1.102 Statement of guiding principles for the Federal Acquisition System.**

(a) The vision for the Federal Acquisition System is to deliver on a timely basis the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives. Participants in the acquisition process should work together as a team and should be empowered to make decisions within their area of responsibility.

(b) The Federal Acquisition System will—

(1) Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service by, for example—

(i) Maximizing the use of commercial products and services;

(ii) Using contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform; and

(iii) Promoting competition;

(2) Minimize administrative operating costs;

(3) Conduct business with integrity, fairness, and openness; and

(4) Fulfill public policy objectives.

(c) The Acquisition Team consists of all participants in Government acquisition including not only representatives of the technical, supply, and procurement communities but also the customers they serve, and the contractors who provide the products and services.

(d) The role of each member of the Acquisition Team is to exercise personal initiative and sound business judgment in providing the best value product or service to meet the customer's needs. In exercising initiative, Government members of the Acquisition Team may assume if a specific strategy,

practice, policy or procedure is in the best interests of the Government and is not addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, that the strategy, practice, policy or procedure is a permissible exercise of authority.

**1.102-1 Discussion.**

(a) *Introduction.* The statement of Guiding Principles for the Federal Acquisition System (System) represents a concise statement designed to be user-friendly for all participants in Government acquisition. The following discussion of the principles is provided in order to illuminate the meaning of the terms and phrases used. The framework for the System includes the Guiding Principles for the System and the supporting policies and procedures in the FAR.

(b) *Vision.* All participants in the System are responsible for making acquisition decisions that deliver the best value product or service to the customer. Best value must be viewed from a broad perspective and is achieved by balancing the many competing interests in the System. The result is a system which works better and costs less.

**1.102-2 Performance standards.**

(a) *Satisfy the customer in terms of cost, quality, and timeliness of the delivered product or service.* (1) The principal customers for the product or service provided by the System are the users and line managers, acting on behalf of the American taxpayer.

(2) The System must be responsive and adaptive to customer needs, concerns, and feedback. Implementation of acquisition policies and procedures, as well as consideration of timeliness, quality, and cost throughout the process, must take into account the perspective of the user of the product or service.

(3) When selecting contractors to provide products or perform services, the Government will use contractors who have a track record of successful past performance or who demonstrate a current superior ability to perform.

(4) The Government must not hesitate to communicate with the commercial sector as early as possible in the acquisition cycle to help the Government determine the capabilities available in the commercial marketplace. The Government will maximize its use of commercial products and services in meeting Government requirements.

(5) It is the policy of the System to promote competition in the acquisition process.

(6) The System must perform in a timely, high quality, and cost-effective manner.

(7) All members of the Team are required to employ planning as an integral part of the overall process of acquiring products or services. Although advance planning is required, each member of the Team must be flexible in order to accommodate changing or unforeseen mission needs. Planning is a

tool for the accomplishment of tasks, and application of its discipline should be commensurate with the size and nature of a given task.

(b) *Minimize administrative operating costs.*(1) In order to ensure that maximum efficiency is obtained, rules, regulations, and policies should be promulgated only when their benefits clearly exceed the costs of their development, implementation, administration, and enforcement. This applies to internal administrative processes, including reviews, and to rules and procedures applied to the contractor community.

(2) The System must provide uniformity where it contributes to efficiency or where fairness or predictability is essential. The System should also, however, encourage innovation, and local adaptation where uniformity is not essential.

(c) *Conduct business with integrity, fairness, and openness.*(1) An essential consideration in every aspect of the System is maintaining the public's trust. Not only must the System have integrity, but the actions of each member of the Team must reflect integrity, fairness, and openness. The foundation of integrity within the System is a competent, experienced, and well-trained, professional workforce. Accordingly, each member of the Team is responsible and accountable for the wise use of public resources as well as acting in a manner which maintains the public's trust. Fairness and openness require open communication among team members, internal and external customers, and the public.

(2) To achieve efficient operations, the System must shift its focus from "risk avoidance" to one of "risk management." The cost to the taxpayer of attempting to eliminate all risk is prohibitive. The Executive Branch will accept and manage the risk associated with empowering local procurement officials to take independent action based on their professional judgment.

(3) The Government shall exercise discretion, use sound business judgment, and comply with applicable laws and regulations in dealing with contractors and prospective contractors. All contractors and prospective contractors shall be treated fairly and impartially but need not be treated the same.

(d) *Fulfill public policy objectives.* The System must support the attainment of public policy goals adopted by the Congress and the President. In attaining these goals, and in its overall operations, the process shall ensure the efficient use of public resources.

### 1.102-3 Acquisition Team.

The purpose of defining the Federal Acquisition Team (Team) in the Guiding Principles is to ensure that participants in the System are identified beginning with the customer and ending with the contractor of the product or service. By identifying the team members in this manner, teamwork, unity of

purpose, and open communication among the members of the Team in sharing the vision and achieving the goal of the System are encouraged. Individual team members will participate in the acquisition process at the appropriate time.

### 1.102-4 Role of the Acquisition Team.

(a) Government members of the Team must be empowered to make acquisition decisions within their areas of responsibility, including selection, negotiation, and administration of contracts consistent with the Guiding Principles. In particular, the contracting officer must have the authority to the maximum extent practicable and consistent with law, to determine the application of rules, regulations, and policies, on a specific contract.

(b) The authority to make decisions and the accountability for the decisions made will be delegated to the lowest level within the System, consistent with law.

(c) The Team must be prepared to perform the functions and duties assigned. The Government is committed to provide training, professional development, and other resources necessary for maintaining and improving the knowledge, skills, and abilities for all Government participants on the Team, both with regard to their particular area of responsibility within the System, and their respective role as a team member. The contractor community is encouraged to do likewise.

(d) The System will foster cooperative relationships between the Government and its contractors consistent with its overriding responsibility to the taxpayers.

(e) The FAR outlines procurement policies and procedures that are used by members of the Acquisition Team. If a policy or procedure, or a particular strategy or practice, is in the best interest of the Government and is not specifically addressed in the FAR, nor prohibited by law (statute or case law), Executive order or other regulation, Government members of the Team should not assume it is prohibited. Rather, absence of direction should be interpreted as permitting the Team to innovate and use sound business judgment that is otherwise consistent with law and within the limits of their authority. Contracting officers should take the lead in encouraging business process innovations and ensuring that business decisions are sound.

### 1.103 Authority.

(a) The development of the FAR System is in accordance with the requirements of [41 U.S.C. chapter 13](#), Acquisition Councils.

(b) The FAR is prepared, issued, and maintained, and the FAR System is prescribed jointly by the Secretary of Defense, the Administrator of General Services, and the Administrator, National Aeronautics and Space Administration, under their several statutory authorities.

**1.104 Applicability.**

The FAR applies to all acquisitions as defined in [Part 2](#) of the FAR, except where expressly excluded.

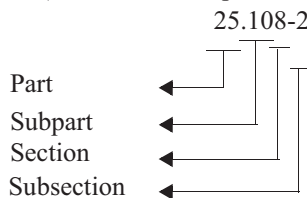
**1.105 Issuance.**

**1.105-1 Publication and code arrangement.**

- (a) The FAR is published in—
  - (1) The daily issue of the *Federal Register*;
  - (2) Cumulated form in the *Code of Federal Regulations* (CFR); and
  - (3) A separate loose-leaf edition.
- (b) The FAR is issued as Chapter 1 of Title 48, CFR. Subsequent chapters are reserved for agency acquisition regulations that implement or supplement the FAR (see [Subpart 1.3](#)). The CFR Staff will assign chapter numbers to requesting agencies.
- (c) Each numbered unit or segment (e.g., part, subpart, section, etc.) of an agency acquisition regulation that is codified in the CFR shall begin with the chapter number. However, the chapter number assigned to the FAR will not be included in the numbered units or segments of the FAR.

**1.105-2 Arrangement of regulations.**

- (a) *General.* The FAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.
- (b) *Numbering.* (1) The numbering system permits the discrete identification of every FAR paragraph. The digits to the left of the decimal point represent the part number. The numbers to the right of the decimal point and to the left of the dash represent, in order, the subpart (one or two digits), and the section (two digits). The number to the right of the dash represents the subsection. Subdivisions may be used at the section and subsection level to identify individual paragraphs. The following example illustrates the make-up of a FAR number citation (note that subchapters are not used with citations):



- (2) Subdivisions below the section or subsection level consist of parenthetical alpha numerics using the following sequence:

(a)(1)(i)(A)(I)(i)

- (c) *References and citations.* (1) Unless otherwise stated, cross-references indicate parts, subparts, sections, subsections, paragraphs, subparagraphs, or subdivisions of this regulation.
- (2) This regulation may be referred to as the Federal Acquisition Regulation or the FAR.

(3) Using the FAR coverage at 9.106-4(d) as a typical illustration, reference to the—

- (i) Part would be “FAR part 9” outside the FAR and “part 9” within the FAR.
  - (ii) Subpart would be “FAR subpart 9.1” outside the FAR and “subpart 9.1” within the FAR.
  - (iii) Section would be “FAR 9.106” outside the FAR and “9.106” within the FAR.
  - (iv) Subsection would be “FAR 9.106-4” outside the FAR and “9.106-4” within the FAR.
  - (v) Paragraph would be “FAR 9.106-4(d)” outside the FAR and “9.106-4(d)” within the FAR.
- (4) Citations of authority (e.g., statutes or Executive orders) in the FAR shall follow the *Federal Register* form guides.

**1.105-3 Copies.**

Copies of the FAR in *Federal Register*, loose-leaf, CD-ROM, and CFR form may be purchased from the—

Superintendent of Documents  
Government Printing Office (GPO)  
Washington, DC 20402.

**1.106 OMB approval under the Paperwork Reduction Act.**

The Paperwork Reduction Act of 1980 ([44 U.S.C. chapter 35](#)) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply:

FAR segment	OMB Control Number
<a href="#">3.103</a>	9000-0018
<a href="#">3.11</a>	9000-0181
<a href="#">3.4</a>	9000-0003
<a href="#">4.102</a>	9000-0033
<a href="#">4.14</a>	9000-0177
<a href="#">4.5</a>	9000-0137
<a href="#">4.605</a>	9000-0145
<a href="#">4.607</a>	9000-0145
<a href="#">4.7</a>	9000-0034
<a href="#">4.9</a>	9000-0097
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<a href="#">5.405</a>	9000-0036
<a href="#">7.2</a>	9000-0082
<a href="#">8.5</a>	9000-0113
<a href="#">9.1</a>	9000-0011
<a href="#">9.2</a>	9000-0020
<a href="#">14.201</a>	9000-0034
<a href="#">14.202-4</a>	9000-0040
<a href="#">14.202-5</a>	9000-0039
<a href="#">14.205</a>	9000-0037

<b>FAR segment</b>	<b>OMB Control Number</b>	<b>FAR segment</b>	<b>OMB Control Number</b>
<a href="#">14.407</a>	9000-0038	<a href="#">47</a>	9000-0061
<a href="#">14.5</a>	9000-0041	<a href="#">47.208</a>	9000-0056
<a href="#">15.2</a>	9000-0037	<a href="#">48</a>	9000-0027
<a href="#">15.209</a>	9000-0034	<a href="#">49</a>	9000-0028
<a href="#">15.4</a>	9000-0013	<a href="#">50</a>	9000-0029
<a href="#">15.404-1(f)</a>	9000-0080	<a href="#">51.1</a>	9000-0031
<a href="#">15.407-2</a>	9000-0078	<a href="#">51.2</a>	9000-0032
<a href="#">15.408</a>	9000-0115	<a href="#">52.203-2</a>	9000-0018
<a href="#">19.7</a>	9000-0006 and 9000-0007	<a href="#">52.203-7</a>	9000-0091
<a href="#">19.12</a>	9000-0150	<a href="#">52.203-16</a>	9000-0181
<a href="#">22.103</a>	9000-0065	<a href="#">52.204-3</a>	9000-0097
<a href="#">22.8</a>	1215-0072	<a href="#">52.204-6</a>	9000-0145
<a href="#">22.11</a>	9000-0066	<a href="#">52.204-7</a>	9000-0159
<a href="#">22.12</a>	1235-0007 and 1235-0025	<a href="#">52.204-10</a>	9000-0177
<a href="#">22.13</a>	1293-0005 and 1215-0072	<a href="#">52.204-12</a>	9000-0145
<a href="#">22.14</a>	1215-0072	<a href="#">52.204-13</a>	9000-0159
<a href="#">22.16</a>	1215-0209	<a href="#">52.204-14</a>	9000-0179
<a href="#">23.602</a>	9000-0107	<a href="#">52.204-15</a>	9000-0179
<a href="#">25.302</a>	9000-0184	<a href="#">52.207-3</a>	9000-0114
<a href="#">27.2</a>	9000-0096	<a href="#">52.208-8</a>	9000-0113
<a href="#">27.3</a>	9000-0095	<a href="#">52.208-9</a>	9000-0113
<a href="#">27.4</a>	9000-0090	<a href="#">52.209-1(b)</a>	9000-0020
<a href="#">28.1</a>	9000-0045	<a href="#">52.209-1(c)</a>	9000-0083
<a href="#">28.2</a>	9000-0045	<a href="#">52.209-5</a>	9000-0094
<a href="#">29.304</a>	9000-0059	<a href="#">52.209-6</a>	9000-0094
<a href="#">30.6</a>	9000-0129	<a href="#">52.209-7</a>	9000-0174
<a href="#">31.205-46</a>	9000-0079	<a href="#">52.209-9</a>	9000-0174
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<a href="#">32.000</a>	9000-0138	<a href="#">52.212-1(k)</a>	9000-0159
<a href="#">32.1</a>	9000-0070 and 9000-0138	<a href="#">52.212-3</a>	9000-0136
<a href="#">32.2</a>	9000-0138	<a href="#">52.212-4(t)</a>	9000-0159
<a href="#">32.4</a>	9000-0073	<a href="#">52.214-14</a>	9000-0047
<a href="#">32.5</a>	9000-0010 and 9000-0138	<a href="#">52.214-15</a>	9000-0044
<a href="#">32.7</a>	9000-0074	<a href="#">52.214-16</a>	9000-0044
<a href="#">32.9</a>	9000-0102	<a href="#">52.214-21</a>	9000-0039
<a href="#">32.10</a>	9000-0138	<a href="#">52.214-26</a>	9000-0034
<a href="#">33</a>	9000-0035	<a href="#">52.214-28</a>	9000-0013
<a href="#">36.213-2</a>	9000-0037	<a href="#">52.215-2</a>	9000-0034
<a href="#">36.603</a>	9000-0157	<a href="#">52.215-1(c)(2)(iv)</a>	9000-0048
<a href="#">41.202(c)</a>	9000-0125	<a href="#">52.215-1(d)</a>	9000-0044
<a href="#">42.7</a>	9000-0013	<a href="#">52.215-6</a>	9000-0047
<a href="#">42.12</a>	9000-0076	<a href="#">52.215-9</a>	9000-0078
<a href="#">42.13</a>	9000-0076	<a href="#">52.215-12</a>	9000-0013
<a href="#">45</a>	9000-0075	<a href="#">52.215-13</a>	9000-0013
<a href="#">46</a>	9000-0077	<a href="#">52.215-14</a>	9000-0080
		<a href="#">52.215-19</a>	9000-0115
		<a href="#">52.215-20</a>	9000-0013
		<a href="#">52.215-21</a>	9000-0013
		<a href="#">52.215-22</a>	9000-0173
		<a href="#">52.215-23</a>	9000-0173

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<a href="#">52.216-3</a>	9000-0068	<a href="#">52.225-11</a>	9000-0141
<a href="#">52.216-4</a>	9000-0068	<a href="#">52.225-18</a>	9000-0161
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<a href="#">52.216-16</a>	9000-0067	<a href="#">52.227-14</a>	9000-0090
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<a href="#">52.219-10</a>	9000-0006	<a href="#">52.227-18</a>	9000-0090
<a href="#">52.219-22</a>	9000-0150	<a href="#">52.227-19</a>	9000-0090
<a href="#">52.219-23</a>	9000-0150	<a href="#">52.227-20</a>	9000-0090
<a href="#">52.219-25</a>	9000-0150	<a href="#">52.227-21</a>	9000-0090
<a href="#">52.219-28</a>	9000-0163	<a href="#">52.227-22</a>	9000-0090
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<a href="#">52.222-6</a>	1215-0140	<a href="#">52.228-13</a>	9000-0045
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<a href="#">52.222-22</a>	1215-0072	<a href="#">52.232-4</a>	9000-0070
<a href="#">52.222-23</a>	1215-0072	<a href="#">52.232-5</a>	9000-0070
<a href="#">52.222-25</a>	1215-0072	<a href="#">52.232-6</a>	9000-0070
<a href="#">52.222-26</a>	1215-0072	<a href="#">52.232-7</a>	9000-0070
<a href="#">52.222-27</a>	1215-0072	<a href="#">52.232-8</a>	9000-0070
<a href="#">52.222-32</a>	9000-0154	<a href="#">52.232-9</a>	9000-0070
<a href="#">52.222-35</a>	1215-0072	<a href="#">52.232-10</a>	9000-0070
<a href="#">52.222-36</a>	1215-0072	<a href="#">52.232-11</a>	9000-0070
<a href="#">52.222-37</a>	1293-0005	<a href="#">52.232-12</a>	9000-0073
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<a href="#">52.222-46</a>	9000-0066	<a href="#">52.232-16</a>	9000-0010
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<a href="#">52.247-30</a>	9000-0061	SF 1428	9000-0075
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<a href="#">52.247-32</a>	9000-0061	SF 1435	9000-0012
<a href="#">52.247-33</a>	9000-0061	SF 1436	9000-0012
<a href="#">52.247-34</a>	9000-0061	SF 1437	9000-0012
<a href="#">52.247-35</a>	9000-0061	SF 1438	9000-0012
<a href="#">52.247-36</a>	9000-0061	SF 1439	9000-0012
<a href="#">52.247-37</a>	9000-0061	SF 1440	9000-0012
<a href="#">52.247-38</a>	9000-0061	SF 1443	9000-0010
<a href="#">52.247-39</a>	9000-0061	SF 1444	9000-0089
<a href="#">52.247-40</a>	9000-0061	SF 1445	9000-0089
<a href="#">52.247-41</a>	9000-0061	SF 1446	9000-0089
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<a href="#">52.247-43</a>	9000-0061		
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<a href="#">52.247-64</a>	9000-0061		
<a href="#">52.247-68</a>	9000-0056		
<a href="#">52.248-1</a>	9000-0027		

### 1.107 Certifications.

In accordance with [41 U.S.C. 1304](#), a new requirement for a certification by a contractor or offeror may not be included in this chapter unless—

(a) The certification requirement is specifically imposed by statute; or

(b) Written justification for such certification is provided to the Administrator for Federal Procurement Policy by the Federal Acquisition Regulatory Council, and the Administra-



tor approves in writing the inclusion of such certification requirement.

**1.108 FAR conventions.**

The following conventions provide guidance for interpreting the FAR:

(a) *Words and terms.* Definitions in [Part 2](#) apply to the entire regulation unless specifically defined in another part, subpart, section, provision, or clause. Words or terms defined in a specific part, subpart, section, provision, or clause have that meaning when used in that part, subpart, section, provision, or clause. Undefined words retain their common dictionary meaning.

(b) *Delegation of authority.* Each authority is delegable unless specifically stated otherwise (see [1.102-4\(b\)](#)).

(c) *Dollar thresholds.* Unless otherwise specified, a specific dollar threshold for the purpose of applicability is the final anticipated dollar value of the action, including the dollar value of all options. If the action establishes a maximum quantity of supplies or services to be acquired or establishes a ceiling price or establishes the final price to be based on future events, the final anticipated dollar value must be the highest final priced alternative to the Government, including the dollar value of all options.

(d) *Application of FAR changes to solicitations and contracts.* Unless otherwise specified—

(1) FAR changes apply to solicitations issued on or after the effective date of the change;

(2) Contracting officers may, at their discretion, include the FAR changes in solicitations issued before the effective date, provided award of the resulting contract(s) occurs on or after the effective date; and

(3) Contracting officers may, at their discretion, include the changes in any existing contract with appropriate consideration.

(e) *Citations.* When the FAR cites a statute, Executive order, Office of Management and Budget circular, Office of Federal Procurement Policy policy letter, or relevant portion of the *Code of Federal Regulations*, the citation includes all applicable amendments, unless otherwise stated.

(f) *Imperative sentences.* When an imperative sentence directs action, the contracting officer is responsible for the action, unless another party is expressly cited.

**1.109 Statutory acquisition-related dollar thresholds—adjustment for inflation.**

(a) [41 U.S.C. 1908](#) requires that the FAR Council periodically adjust all statutory acquisition-related dollar thresholds in the FAR for inflation, except as provided in paragraph (c) of this section. This adjustment is calculated every 5 years, starting in October 2005, using the Consumer Price Index (CPI) for all-urban consumers, and supersedes the applicabil-

ity of any other provision of law that provides for the adjustment of such acquisition-related dollar thresholds.

(b) The statute defines an acquisition-related dollar threshold as a dollar threshold that is specified in law as a factor in defining the scope of the applicability of a policy, procedure, requirement, or restriction provided in that law to the procurement of supplies or services by an executive agency, as determined by the FAR Council.

(c) The statute does not permit escalation of acquisition-related dollar thresholds established by:

(1) [40 U.S.C. chapter 31](#), subchapter IV, Wage Rate Requirements (Construction);

(2) [41 U.S.C. chapter 67](#), Service Contract Labor Standards; or

(3) The United States Trade Representative pursuant to the authority of the Trade Agreements Act of 1979 ([19 U.S.C. 2511 et seq.](#)).

(d) A matrix showing calculation of the most recent escalation adjustments of statutory acquisition-related dollar thresholds is available via the Internet at <http://www.regulations.gov> (search FAR Case 2008-024).

**1.110 Positive law codification.**

(a) Public Law 107-217 revised, codified, and enacted as title 40, United States Code, Public Buildings, Property, and Works, certain general and permanent laws of the United States.

(b) Public Law 111-350 revised, codified, and enacted as title 41, United States Code, Public Contracts, certain general and permanent laws of the United States.

(c) The following table provides cross references between the historical titles of the acts, and the current reference in title 40 or title 41.

<u>Historical Title of Act</u>	<u>Division/Chapter/Subchapter</u>	<u>Title</u>
Anti-Kickback Act	<a href="#">41 U.S.C. chapter 87</a>	Kickbacks
Brooks Architect Engineer Act	<a href="#">40 U.S.C. chapter 11</a>	Selection of Architects and Engineers
Buy American Act	<a href="#">41 U.S.C. chapter 83</a>	Buy American
Contract Disputes Act of 1978	<a href="#">41 U.S.C. chapter 71</a>	Contract Disputes
Contract Work Hours and Safety Standards Act	<a href="#">40 U.S.C. chapter 37</a>	Contract Work Hours and Safety Standards
Davis-Bacon Act	<a href="#">40 U.S.C. chapter 31, Subchapter IV</a>	Wage Rate Requirements (Construction)
Drug-Free Workplace Act	<a href="#">41 U.S.C. chapter 81</a>	Drug-Free Workplace

<u>Historical Title of Act</u>	<u>Division/Chapter/Subchapter</u>	<u>Title</u>
Federal Property and Administrative Services Act of 1949, Title III.	<a href="#">41 U.S.C. Div. C of subtitle I*</a>	Procurement
Javits-Wagner-O'Day Act	<a href="#">41 U.S.C. chapter 85</a>	Committee for Purchase from People Who Are Blind or Severely Disabled
Miller Act	<a href="#">40 U.S.C. chapter 31, subchapter III</a>	Bonds
Office of Federal Procurement Policy Act	<a href="#">41 U.S.C. Div. B of subtitle I**</a>	Office of Federal Procurement Policy

<u>Historical Title of Act</u>	<u>Division/Chapter/Subchapter</u>	<u>Title</u>
Procurement Integrity Act	<a href="#">41 U.S.C. chapter 21</a>	Restrictions on Obtaining and Disclosing Certain Information
Service Contract Act of 1965	<a href="#">41 U.S.C. chapter 67</a>	Service Contract Labor Standards
Truth in Negotiations Act	<a href="#">41 U.S.C. chapter 35</a>	Truthful Cost or Pricing Data
Walsh-Healey Public Contracts Act	<a href="#">41 U.S.C. chapter 65</a>	Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000.

\* Except sections 3302, 3501(b), 3509, 3906, 4710, and 4711.

\*\* Except sections 1704 and 2303.

## Subpart 1.3—Agency Acquisition Regulations

### 1.301 Policy.

(a)(1) Subject to the authorities in paragraph (c) of this section and other statutory authority, an agency head may issue or authorize the issuance of agency acquisition regulations that implement or supplement the FAR and incorporate, together with the FAR, agency policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between the agency, including any of its suborganizations, and contractors or prospective contractors.

(2) Subject to the authorities in paragraph (c) of this section and other statutory authority, an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (*e.g.*, designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements).

(b) Agency heads shall establish procedures to ensure that agency acquisition regulations are published for comment in the *Federal Register* in conformance with the procedures in [subpart 1.5](#) and as required by [41 U.S.C. 1707](#), and other applicable statutes, when they have a significant effect beyond the internal operating procedures of the agency or have a significant cost or administrative impact on contractors or offerors. However, publication is not required for issuances that merely implement or supplement higher level issuances that have previously undergone the public comment process, unless such implementation or supplementation results in an additional significant cost or administrative impact on contractors or offerors or effect beyond the internal operating procedures of the issuing organization. Issuances under [1.301\(a\)\(2\)](#) need not be publicized for public comment.

(c) When adopting acquisition regulations, agencies shall ensure that they comply with the Paperwork Reduction Act ([44 U.S.C. 3501](#), *et seq.*) as implemented in 5 CFR 1320 (see [1.106](#)) and the Regulatory Flexibility Act ([5 U.S.C. 601](#), *et seq.*). Normally, when a law requires publication of a proposed regulation, the Regulatory Flexibility Act applies and agencies must prepare written analyses, or certifications as provided in the law.

(d) Agency acquisition regulations implementing or supplementing the FAR are, for—

(1) The military departments and defense agencies, issued subject to the authority of the Secretary of Defense;

(2) NASA activities, issued subject to the authorities of the Administrator of NASA; and

(3) The civilian agencies other than NASA, issued by the heads of those agencies subject to the overall authority of the Administrator of General Services or independent authority the agency may have.

### 1.302 Limitations.

Agency acquisition regulations shall be limited to—

(a) Those necessary to implement FAR policies and procedures within the agency; and

(b) Additional policies, procedures, solicitation provisions, or contract clauses that supplement the FAR to satisfy the specific needs of the agency.

### 1.303 Publication and codification.

(a) Agency-wide acquisition regulations shall be published in the *Federal Register* as required by law, shall be codified under an assigned chapter in Title 48, *Code of Federal Regulations*, and shall parallel the FAR in format, arrangement, and numbering system (but see [1.105-1\(c\)](#)). Coverage in an agency acquisition regulation that implements a specific part, subpart, section, or subsection of the FAR shall be numbered and titled to correspond to the appropriate FAR number and title. Supplementary material for which there is no counterpart in the FAR shall be codified using chapter, part, subpart, section, or subsection numbers of 70 and up (*e.g.*, for the Department of Interior, whose assigned chapter number in Title 48 is 14, Part 1470, Subpart 1401.70, section 1401.370, or subsection 1401.301-70).

(b) Issuances under [1.301\(a\)\(2\)](#) need not be published in the *Federal Register*.

### 1.304 Agency control and compliance procedures.

(a) Under the authorities of [1.301\(d\)](#), agencies shall control and limit issuance of agency acquisition regulations and, in particular, local agency directives that restrain the flexibilities found in the FAR, and shall establish formal procedures for the review of these documents to assure compliance with this [Part 1](#).

(b) Agency acquisition regulations shall not—

(1) Unnecessarily repeat, paraphrase, or otherwise restate material contained in the FAR or higher-level agency acquisition regulations; or

(2) Except as required by law or as provided in [subpart 1.4](#), conflict or be inconsistent with FAR content.

(c) Agencies shall evaluate all regulatory coverage in agency acquisition regulations to determine if it could apply to other agencies. Coverage that is not peculiar to one agency shall be recommended for inclusion in the FAR.

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## Subpart 1.5—Agency and Public Participation

### 1.501 Solicitation of agency and public views.

#### 1.501-1 Definition.

“Significant revisions,” as used in this subpart, means revisions that alter the substantive meaning of any coverage in the FAR System and which have a significant cost or administrative impact on contractors or offerors, or significant effect beyond the internal operating procedures of the issuing agency. This expression, for example, does not include editorial, stylistic, or other revisions that have no impact on the basic meaning of the coverage being revised.

#### 1.501-2 Opportunity for public comments.

(a) Views of agencies and nongovernmental parties or organizations will be considered in formulating acquisition policies and procedures.

(b) The opportunity to submit written comments on proposed significant revisions shall be provided by placing a notice in the *Federal Register*. Each of these notices shall include—

- (1) The text of the revision or, if it is impracticable to publish the full text, a summary of the proposal;
- (2) The address and telephone number of the individual from whom copies of the revision, in full text, can be

requested and to whom comments thereon should be addressed; and

(3) When 1.501-3(b) is applicable, a statement that the revision is effective on a temporary basis pending completion of the public comment period.

(c) A minimum of 30 days and, normally, at least 60 days will be given for the receipt of comments.

#### 1.501-3 Exceptions.

(a) Comments need not be solicited when the proposed coverage does not constitute a significant revision.

(b) Advance comments need not be solicited when urgent and compelling circumstances make solicitation of comments impracticable prior to the effective date of the coverage, such as when a new statute must be implemented in a relatively short period of time. In such case, the coverage shall be issued on a temporary basis and shall provide for at least a 30 day public comment period.

### 1.502 Unsolicited proposed revisions.

Consideration shall also be given to unsolicited recommendations for revisions that have been submitted in writing with sufficient data and rationale to permit their evaluation.

### 1.503 Public meetings.

Public meetings may be appropriate when a decision to adopt, amend, or delete FAR coverage is likely to benefit from significant additional views and discussion.

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## Subpart 1.6—Career Development, Contracting Authority, and Responsibilities

### 1.601 General.

(a) Unless specifically prohibited by another provision of law, authority and responsibility to contract for authorized supplies and services are vested in the agency head. The agency head may establish contracting activities and delegate broad authority to manage the agency's contracting functions to heads of such contracting activities. Contracts may be entered into and signed on behalf of the Government only by contracting officers. In some agencies, a relatively small number of high level officials are designated contracting officers solely by virtue of their positions. Contracting officers below the level of a head of a contracting activity shall be selected and appointed under [1.603](#).

(b) Agency heads may mutually agree to—

- (1) Assign contracting functions and responsibilities from one agency to another; and
- (2) Create joint or combined offices to exercise acquisition functions and responsibilities.

### 1.602 Contracting officers.

#### 1.602-1 Authority.

(a) Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings. Contracting officers may bind the Government only to the extent of the authority delegated to them. Contracting officers shall receive from the appointing authority (see [1.603-1](#)) clear instructions in writing regarding the limits of their authority. Information on the limits of the contracting officers' authority shall be readily available to the public and agency personnel.

(b) No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.

#### 1.602-2 Responsibilities.

Contracting officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships. In order to perform these responsibilities, contracting officers should be allowed wide latitude to exercise business judgment. Contracting officers shall—

- (a) Ensure that the requirements of [1.602-1\(b\)](#) have been met, and that sufficient funds are available for obligation;
- (b) Ensure that contractors receive impartial, fair, and equitable treatment;
- (c) Request and consider the advice of specialists in audit, law, engineering, information security, transportation, and other fields, as appropriate; and
- (d) Designate and authorize, in writing and in accordance with agency procedures, a contracting officer's representative (COR) on all contracts and orders other than those that are

firm-fixed price, and for firm-fixed-price contracts and orders as appropriate, unless the contracting officer retains and executes the COR duties. See [7.104\(e\)](#). A COR—

(1) Shall be a Government employee, unless otherwise authorized in agency regulations;

(2) Shall be certified and maintain certification in accordance with the current Office of Management and Budget memorandum on the Federal Acquisition Certification for Contracting Officer Representatives (FAC-COR) guidance, or for DoD, in accordance with the current applicable DoD policy guidance;

(3) Shall be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with agency procedures;

(4) May not be delegated responsibility to perform functions that have been delegated under [42.202](#) to a contract administration office, but may be assigned some duties at [42.302](#) by the contracting officer;

(5) Has no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract nor in any way direct the contractor or its subcontractors to operate in conflict with the contract terms and conditions;

(6) Shall be nominated either by the requiring activity or in accordance with agency procedures; and

(7) Shall be designated in writing, with copies furnished to the contractor and the contract administration office—

- (i) Specifying the extent of the COR's authority to act on behalf of the contracting officer;
- (ii) Identifying the limitations on the COR's authority;
- (iii) Specifying the period covered by the designation;
- (iv) Stating the authority is not redelegable; and
- (v) Stating that the COR may be personally liable for unauthorized acts.

#### 1.602-3 Ratification of unauthorized commitments.

(a) *Definitions.*

“Ratification,” as used in this subsection, means the act of approving an unauthorized commitment by an official who has the authority to do so.

“Unauthorized commitment,” as used in this subsection, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.

(b) *Policy.*(1) Agencies should take positive action to preclude, to the maximum extent possible, the need for ratification actions. Although procedures are provided in this section for use in those cases where the ratification of an unauthorized commitment is necessary, these procedures may not be used in a manner that encourages such commitments being made by Government personnel.

(2) Subject to the limitations in paragraph (c) of this subsection, the head of the contracting activity, unless a higher level official is designated by the agency, may ratify an unauthorized commitment.

(3) The ratification authority in paragraph (b)(2) of this subsection may be delegated in accordance with agency procedures, but in no case shall the authority be delegated below the level of chief of the contracting office.

(4) Agencies should process unauthorized commitments using the ratification authority of this subsection instead of referring such actions to the Government Accountability Office for resolution. (See [1.602-3\(d\)](#).)

(5) Unauthorized commitments that would involve claims subject to resolution under [41 U.S.C. chapter 71](#), Contract Disputes, should be processed in accordance with [Subpart 33.2](#), Disputes and Appeals.

(c) *Limitations.* The authority in paragraph (b)(2) of this subsection may be exercised only when—

(1) Supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;

(2) The ratifying official has the authority to enter into a contractual commitment;

(3) The resulting contract would otherwise have been proper if made by an appropriate contracting officer;

(4) The contracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable;

(5) The contracting officer recommends payment and legal counsel concurs in the recommendation, unless agency procedures expressly do not require such concurrence;

(6) Funds are available and were available at the time the unauthorized commitment was made; and

(7) The ratification is in accordance with any other limitations prescribed under agency procedures.

(d) *Nonratifiable commitments.* Cases that are not ratifiable under this subsection may be subject to resolution as recommended by the Government Accountability Office under its claim procedure (GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 4, Chapter 2), or as authorized by FAR [Subpart 50.1](#). Legal advice should be obtained in these cases.

### **1.603 Selection, appointment, and termination of appointment for contracting officers.**

#### **1.603-1 General.**

[41 U.S.C. 1702\(b\)\(3\)\(F\)](#) requires agency heads to establish and maintain a procurement career management program and a system for the selection, appointment, and termination of appointment of contracting officers. Agency heads or their designees may select and appoint contracting officers and terminate their appointments. These selections and appointments shall be consistent with Office of Federal Procurement Policy's (OFPP) standards for skill-based training in performing contracting and purchasing duties as published in OFPP Policy Letter No. 05-01, Developing and Managing the Acquisition Workforce, April 15, 2005.

#### **1.603-2 Selection.**

In selecting contracting officers, the appointing official shall consider the complexity and dollar value of the acquisitions to be assigned and the candidate's experience, training, education, business acumen, judgment, character, and reputation. Examples of selection criteria include—

(a) Experience in Government contracting and administration, commercial purchasing, or related fields;

(b) Education or special training in business administration, law, accounting, engineering, or related fields;

(c) Knowledge of acquisition policies and procedures, including this and other applicable regulations;

(d) Specialized knowledge in the particular assigned field of contracting; and

(e) Satisfactory completion of acquisition training courses.

#### **1.603-3 Appointment.**

(a) Contracting officers shall be appointed in writing on an [SF 1402](#), Certificate of Appointment, which shall state any limitations on the scope of authority to be exercised, other than limitations contained in applicable law or regulation. Appointing officials shall maintain files containing copies of all appointments that have not been terminated.

(b) Agency heads are encouraged to delegate micro-purchase authority to individuals who are employees of an executive agency or members of the Armed Forces of the United States who will be using the supplies or services being purchased. Individuals delegated this authority are not required to be appointed on an [SF 1402](#), but shall be appointed in writing in accordance with agency procedures.

#### **1.603-4 Termination.**

Termination of a contracting officer appointment will be by letter, unless the Certificate of Appointment contains other provisions for automatic termination. Terminations may be for reasons such as reassignment, termination of employment, or unsatisfactory performance. No termination shall operate retroactively.

#### **1.604 Contracting Officer's Representative (COR).**

A contracting officer's representative (COR) assists in the technical monitoring or administration of a contract (see [1.602-2\(d\)](#)). The COR shall maintain a file for each assigned contract. The file must include, at a minimum—

(a) A copy of the contracting officer's letter of designation and other documents describing the COR's duties and responsibilities;

(b) A copy of the contract administration functions delegated to a contract administration office which may not be delegated to the COR (see [1.602-2\(d\)\(4\)](#)); and

(c) Documentation of COR actions taken in accordance with the delegation of authority.



(ii) An order placed against an indefinite quantity contract under a—

(A) Federal Supply Schedule contract; or

(B) Task-order contract or delivery-order contract awarded by another agency (*i.e.*, Governmentwide acquisition contract or multi-agency contract).

(4) This definition does not apply to a contract that will be awarded and performed entirely outside of the United States.

“Business unit” means any segment of an organization, or an entire business organization that is not divided into segments.

“Certified cost or pricing data” means “cost or pricing data” that were required to be submitted in accordance with FAR [15.403-4](#) and [15.403-5](#) and have been certified, or is required to be certified, in accordance with [15.406-2](#). This certification states that, to the best of the person’s knowledge and belief, the cost or pricing data are accurate, complete, and current as of a date certain before contract award. Cost or pricing data are required to be certified in certain procurements ([10 U.S.C. 2306a](#) and [41 U.S.C. chapter 35](#)).

“Change-of-name agreement” means a legal instrument executed by the contractor and the Government that recognizes the legal change of name of the contractor without disturbing the original contractual rights and obligations of the parties.

“Change order” means a written order, signed by the contracting officer, directing the contractor to make a change that the Changes clause authorizes the contracting officer to order without the contractor’s consent.

“Chief Acquisition Officer” means an executive level acquisition official responsible for agency performance of acquisition activities and acquisition programs created pursuant to [41 U.S.C. 1702](#).

“Chief of mission” means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 502(c) of the Foreign Service Act of 1980 (Public Law 96-465) to be temporarily in charge of such a mission or office.

“Claim” means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$100,000 is not a claim under [41 U.S.C. chapter 71](#), Contract Disputes, until certified as required by the statute. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contract-

ing officer as provided in [33.206\(a\)](#), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

“Classified acquisition” means an acquisition in which offerors must have access to classified information to properly submit an offer or quotation, to understand the performance requirements, or to perform the contract.

“Classified contract” means any contract in which the contractor or its employees must have access to classified information during contract performance. A contract may be a classified contract even though the contract document itself is unclassified.

“Classified information” means any knowledge that can be communicated or any documentary material, regardless of its physical form or characteristics, that—

(1)(i) Is owned by, is produced by or for, or is under the control of the United States Government; or

(ii) Has been classified by the Department of Energy as privately generated restricted data following the procedures in 10 CFR 1045.21; and

(2) Must be protected against unauthorized disclosure according to Executive Order 12958, Classified National Security Information, April 17, 1995, or classified in accordance with the Atomic Energy Act of 1954.

“Cognizant Federal agency” means the Federal agency that, on behalf of all Federal agencies, is responsible for establishing final indirect cost rates and forward pricing rates, if applicable, and administering cost accounting standards for all contracts in a business unit.

“Combatant commander” means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

“Commercial component” means any component that is a commercial item.

“Commercial computer software” means any computer software that is a commercial item.

“Commercial item” means—

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and—

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for—

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. Minor modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if—

(i) Such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. For purposes of these services—

(i) “Catalog price” means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) “Market prices” means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

(7) Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments.

“Commercially available off-the-shelf (COTS) item—”

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition in this section);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

“Common item” means material that is common to the applicable Government contract and the contractor’s other work.

“Component” means any item supplied to the Government as part of an end item or of another component, except that for use in—

(1) [Part 25](#), see the definition in [25.003](#);

(2) [52.225-1](#) and [52.225-3](#), see the definition in [52.225-1\(a\)](#) and [52.225-3\(a\)](#);

(3) [52.225-9](#) and [52.225-11](#), see the definition in [52.225-9\(a\)](#) and [52.225-11\(a\)](#); and

(4) [52.225-21](#) and [52.225-23](#), see the definition in [52.225-21\(a\)](#) and [52.225-23\(a\)](#).

“Computer database” or “database” means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

“Computer software”—(1) Means (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

“Computer software documentation” means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

“Consent to subcontract” means the contracting officer’s written consent for the prime contractor to enter into a particular subcontract.

“Construction” means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms “buildings, structures, or other real property” include, but are not limited to, improvements of all

types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property (except that for use in subpart [22.5](#), see the definition at [22.502](#)).

“Contiguous United States (CONUS)” means the 48 contiguous States and the District of Columbia.

“Contingency operation” ([10 U.S.C. 101\(a\)\(13\)](#)) means a military operation that—

(1) Is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or

(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under sections [688](#), [12301\(a\)](#), [12302](#), [12304](#), [12304\(a\)](#), [12305](#), or [12406](#) of [title 10](#) of the United States Code, [Chapter 15](#) of [title 10](#) of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.

“Continued portion of the contract” means the portion of a contract that the contractor must continue to perform following a partial termination.

“Contract” means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the Government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to) awards and notices of awards; job orders or task letters issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by [31 U.S.C. 6301](#), *et seq.* For discussion of various types of contracts, see [Part 16](#).

“Contract administration office” means an office that performs—

(1) Assigned postaward functions related to the administration of contracts; and

(2) Assigned preaward functions.

“Contract clause” or “clause” means a term or condition used in contracts or in both solicitations and contracts, and applying after contract award or both before and after award.

“Contract modification” means any written change in the terms of a contract (see [43.103](#)).

“Contracting” means purchasing, renting, leasing, or otherwise obtaining supplies or services from nonfederal sources. Contracting includes description (but not determination) of supplies and services required, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration. It does not include making grants or cooperative agreements.

“Contracting activity” means an element of an agency designated by the agency head and delegated broad authority regarding acquisition functions.

“Contracting office” means an office that awards or executes a contract for supplies or services and performs post-award functions not assigned to a contract administration office (except for use in [Part 48](#), see also [48.001](#)).

“Contracting officer” means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer. “Administrative contracting officer (ACO)” refers to a contracting officer who is administering contracts. “Termination contracting officer (TCO)” refers to a contracting officer who is settling terminated contracts. A single contracting officer may be responsible for duties in any or all of these areas. Reference in this regulation (48 CFR Chapter 1) to administrative contracting officer or termination contracting officer does not—

(1) Require that a duty be performed at a particular office or activity; or

(2) Restrict in any way a contracting officer in the performance of any duty properly assigned.

“Contracting officer’s representative (COR)” means an individual, including a contracting officer’s technical representative (COTR), designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.

“Conviction” means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*. For use in [subpart 23.5](#), see the definition at [23.503](#).

“Cost or pricing data” ([10 U.S.C. 2306a\(h\)\(1\)](#) and [41 U.S.C. chapter 35](#)) means all facts that, as of the date of price agreement, or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor’s judgment about estimated future costs or projections, they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to

contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include, but are not limited to, such factors as—

- (1) Vendor quotations;
- (2) Nonrecurring costs;
- (3) Information on changes in production methods and in production or purchasing volume;
- (4) Data supporting projections of business prospects and objectives and related operations costs;
- (5) Unit-cost trends such as those associated with labor efficiency;
- (6) Make-or-buy decisions;
- (7) Estimated resources to attain business goals; and
- (8) Information on management decisions that could have a significant bearing on costs.

“Cost realism” means that the costs in an offeror’s proposal—

- (1) Are realistic for the work to be performed;
- (2) Reflect a clear understanding of the requirements; and
- (3) Are consistent with the various elements of the offeror’s technical proposal.

“Cost sharing” means an explicit arrangement under which the contractor bears some of the burden of reasonable, allocable, and allowable contract cost.

“Customs territory of the United States” means the 50 States, the District of Columbia, and Puerto Rico.

“Data other than certified cost or pricing data” means pricing data, cost data, and judgmental information necessary for the contracting officer to determine a fair and reasonable price or to determine cost realism. Such data may include the identical types of data as certified cost or pricing data, consistent with [Table 15-2](#) of [15.408](#), but without the certification. The data may also include, for example, sales data and any information reasonably required to explain the offeror’s estimating process, including, but not limited to—

- (1) The judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data; and
- (2) The nature and amount of any contingencies included in the proposed price.

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B), to identify unique business entities, which is used as the identification number for Federal contractors.

“Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional System for Award Management records for identifying alternative Electronic

Funds Transfer (EFT) accounts (see [subpart 32.11](#)) for the same concern.

“Day” means, unless otherwise specified, a calendar day.

“Debarment” means action taken by a debarring official under [9.406](#) to exclude a contractor from Government contracting and Government-approved subcontracting for a reasonable, specified period; a contractor that is excluded is “debarred.”

“Delivery order” means an order for supplies placed against an established contract or with Government sources.

“Depreciation” means a charge to current operations that distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life refers to the prospective period of economic usefulness in a particular contractor’s operations as distinguished from physical life; it is evidenced by the actual or estimated retirement and replacement practice of the contractor.

“Descriptive literature” means information provided by an offeror, such as cuts, illustrations, drawings, and brochures, that shows a product’s characteristics or construction of a product or explains its operation. The term includes only that information needed to evaluate the acceptability of the product and excludes other information for operating or maintaining the product.

“Design-to-cost” means a concept that establishes cost elements as management goals to achieve the best balance between life-cycle cost, acceptable performance, and schedule. Under this concept, cost is a design constraint during the design and development phases and a management discipline throughout the acquisition and operation of the system or equipment.

“Designated operational area” means a geographic area designated by the combatant commander or subordinate joint force commander for the conduct or support of specified military operations.

“Direct cost” means any cost that is identified specifically with a particular final cost objective. Direct costs are not limited to items that are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objectives.

“Direct acquisition” means a type of interagency acquisition where a requesting agency places an order directly against a servicing agency’s indefinite-delivery contract. The servicing agency manages the indefinite-delivery contract but does not participate in the placement or administration of an order.

“Disaster Response Registry” means a voluntary registry of contractors who are willing to perform debris removal, distribution of supplies, reconstruction, and other disaster or

been completed or when the contractor will not agree to a forward pricing rate agreement.

“Freight” means supplies, goods, and transportable property.

“Full and open competition,” when used with respect to a contract action, means that all responsible sources are permitted to compete.

“General and administrative (G&A) expense” means any management, financial, and other expense which is incurred by or allocated to a business unit and which is for the general management and administration of the business unit as a whole. G&A expense does not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period.

“Governmentwide acquisition contract (GWAC)” means a task-order or delivery-order contract for information technology established by one agency for Governmentwide use that is operated—

(1) By an executive agent designated by the Office of Management and Budget pursuant to [40 U.S.C. 11302\(e\)](#); or

(2) Under a delegation of procurement authority issued by the General Services Administration (GSA) prior to August 7, 1996, under authority granted GSA by former section [40 U.S.C. 759](#), repealed by Pub. L. 104-106. The Economy Act does not apply to orders under a Governmentwide acquisition contract.

“Governmentwide point of entry (GPE)” means the single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. The GPE is located at <http://www.fedbizopps.gov>.

“Head of the agency” (see “agency head”).

“Head of the contracting activity” means the official who has overall responsibility for managing the contracting activity.

“Historically black college or university” means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2. For the Department of Defense, the National Aeronautics and Space Administration, and the Coast Guard, the term also includes any nonprofit research institution that was an integral part of such a college or university before November 14, 1986.

“HUBZone” means a historically underutilized business zone that is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, lands within the external boundaries of an Indian reservation, qualified base closure areas, or redesignated areas, as defined in 13 CFR 126.103.

“HUBZone contract” means a contract awarded to a “HUBZone small business” concern through any of the following procurement methods:

(1) A sole source award to a HUBZone small business concern.

(2) Set-aside awards based on competition restricted to HUBZone small business concerns.

(3) Awards to HUBZone small business concerns through full and open competition after a price evaluation preference in favor of HUBZone small business concerns.

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration (13 CFR 126.103).

“Humanitarian or peacekeeping operation” means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under Chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing ([10 U.S.C. 2302\(8\)](#) and [41 U.S.C. 153\(2\)](#)).

“In writing,” “writing,” or “written” means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

“Indirect cost” means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

“Indirect cost rate” means the percentage or dollar factor that expresses the ratio of indirect expense incurred in a given period to direct labor cost, manufacturing cost, or another appropriate base for the same period (see also “final indirect cost rate”).

“Ineligible” means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this regulation ([48 CFR chapter 1](#)) and its implementing and supplementing regulations; for example, pursuant to—

(1) [40 U.S.C. chapter 31](#), subchapter IV, Wage Rate Requirements (Construction), and its related statutes and implementing regulations;

(2) [41 U.S.C. chapter 67](#), Service Contract Labor Standards;

(3) The Equal Employment Opportunity Acts and Executive orders;

(4) [41 U.S.C. chapter 65](#), Contracts for Material, Supplies, Articles, and Equipment Exceeding \$15,000;

(5) [41 U.S.C. chapter 83](#), Buy American; or

(6) The Environmental Protection Acts and Executive orders.

“Information security” means protecting information and information systems from unauthorized access, use, disclo-

sure, disruption, modification, or destruction in order to provide—

(1) Integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

(2) Confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information; and

(3) Availability, which means ensuring timely and reliable access to, and use of, information.

“Information technology” means any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(1) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires—

(i) Its use; or

(ii) To a significant extent, its use in the performance of a service or the furnishing of a product.

(2) The term “information technology” includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

(3) The term “information technology” does not include any equipment that—

(i) Is acquired by a contractor incidental to a contract; or

(ii) Contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment, such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

“Inherently governmental function” means, as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a policy determination, not a legal determination. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: the act of governing, *i.e.*, the discretionary exercise of Government authority, and monetary transactions and entitlements.

(1) An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to—

(i) Bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(ii) Determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(iii) Significantly affect the life, liberty, or property of private persons;

(iv) Commission, appoint, direct, or control officers or employees of the United States; or

(v) Exert ultimate control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the United States, including the collection, control, or disbursement of Federal funds.

(2) Inherently governmental functions do not normally include gathering information for or providing advice, opinions, recommendations, or ideas to Government officials. They also do not include functions that are primarily ministerial and internal in nature, such as building security, mail operations, operation of cafeterias, housekeeping, facilities operations and maintenance, warehouse operations, motor vehicle fleet management operations, or other routine electrical or mechanical services.

“Inspection” means examining and testing supplies or services (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether they conform to contract requirements.

“Insurance” means a contract that provides that for a stipulated consideration, one party undertakes to indemnify another against loss, damage, or liability arising from an unknown or contingent event.

“Interagency acquisition” means a procedure by which an agency needing supplies or services (the requesting agency) obtains them from another agency (the servicing agency), by an assisted acquisition or a direct acquisition. The term includes—

(1) Acquisitions under the Economy Act ([31 U.S.C. 1535](#)); and

(2) Non-Economy Act acquisitions completed under other statutory authorities, (e.g., General Services Administration Federal Supply Schedules in subpart 8.4 and Government-wide acquisition contracts (GWACs)).

“Invoice” means a contractor’s bill or written request for payment under the contract for supplies delivered or services performed (see also “proper invoice”).

“Irrevocable letter of credit” means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon the Government’s (the beneficiary) presentation of a written demand for payment. Neither the financial institution nor the offeror/contractor can revoke or condition the letter of credit.

“Labor surplus area” means a geographical area identified by the Department of Labor in accordance with 20 CFR Part 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

“Labor surplus area concern” means a concern that together with its first-tier subcontractors will perform sub-

stantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

“Latent defect” means a defect that exists at the time of acceptance but cannot be discovered by a reasonable inspection.

“Major system” means that combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property. A system is a major system if—

(1) The Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than \$189.5 million or the eventual total expenditure for the acquisition exceeds \$890 million;

(2) A civilian agency is responsible for the system and total expenditures for the system are estimated to exceed \$2 million or the dollar threshold for a “major system” established by the agency pursuant to Office of Management and Budget Circular A-109, entitled “Major System Acquisitions,” whichever is greater; or

(3) The system is designated a “major system” by the head of the agency responsible for the system ([10 U.S.C. 2302](#) and [41 U.S.C. 109](#)).

“Make-or-buy program” means that part of a contractor’s written plan for a contract identifying those major items to be produced or work efforts to be performed in the prime contractor’s facilities and those to be subcontracted.

“Market research” means collecting and analyzing information about capabilities within the market to satisfy agency needs.

“Master solicitation” means a document containing special clauses and provisions that have been identified as essential for the acquisition of a specific type of supply or service that is acquired repetitively.

“May” denotes the permissive. However, the words “no person may...” mean that no person is required, authorized, or permitted to do the act described.

“Micro-purchase” means an acquisition of supplies or services using simplified acquisition procedures, the aggregate amount of which does not exceed the micro-purchase threshold.

“Micro-purchase threshold” means \$3,000, except it means—

(1) For acquisitions of construction subject to [40 U.S.C. chapter 31](#), subchapter IV, Wage Rate Requirements (Construction), \$2,000;

(2) For acquisitions of services subject to [41 U.S.C. chapter 67](#), Service Contract Labor Standards, \$2,500; and

(3) 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 as described in [13.201\(g\)\(1\)](#), except for construction subject to 40 U.S.C. chapter 31, subchapter IV, Wage Rate Requirements (Construction) ([41 U.S.C. 1903](#))—

(i) \$15,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and

(ii) \$30,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States.

“Minority Institution” means an institution of higher education meeting the requirements of Section 365(3) of the Higher Education Act of 1965 ([20 U.S.C. 1067k](#)), including a Hispanic-serving institution of higher education, as defined in Section 502(a) of the Act ([20 U.S.C. 1101a](#)).

“Multi-agency contract (MAC)” means a task-order or delivery-order contract established by one agency for use by Government agencies to obtain supplies and services, consistent with the Economy Act (see [17.502-2](#)). Multi-agency contracts include contracts for information technology established pursuant to [40 U.S.C. 11314\(a\)\(2\)](#).

“Must” (see “shall”).

“National defense” means any activity related to programs for military or atomic energy production or construction, military assistance to any foreign nation, stockpiling, or space, except that for use in [subpart 11.6](#), see the definition in [11.601](#).

“Neutral person” means an impartial third party, who serves as a mediator, fact finder, or arbitrator, or otherwise functions to assist the parties to resolve the issues in controversy. A neutral person may be a permanent or temporary officer or employee of the Federal Government or any other individual who is acceptable to the parties. A neutral person must have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless the interest is fully disclosed in writing to all parties and all parties agree that the neutral person may serve ([5 U.S.C. 583](#)).

“Nondevelopmental item” means—

(1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;

(2) Any item described in paragraph (1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraphs (1) or (2) solely because the item is not yet in use.

“Novation agreement” means a legal instrument—

(1) Executed by the—

(i) Contractor (transferor);

(ii) Successor in interest (transferee); and

(iii) Government; and

(2) By which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets.

“Offer” means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called “bids” or “sealed bids”; responses to requests for proposals (negotiation) are offers called “proposals”; however, responses to requests for quotations (simplified acquisition) are “quotations,” not offers. For unsolicited proposals, see [subpart 15.6](#).

“Offeror” means offeror or bidder.

“Office of Small and Disadvantaged Business Utilization” means the Office of Small Business Programs when referring to the Department of Defense.

“Option” means a unilateral right in a contract by which, for a specified time, the Government may elect to purchase additional supplies or services called for by the contract, or may elect to extend the term of the contract.

“Organizational conflict of interest” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

“Outlying areas” means—

(1) *Commonwealths*.(i) Puerto Rico.

(ii) The Northern Mariana Islands;

(2) *Territories*.(i) American Samoa.

(ii) Guam.

(iii) U.S. Virgin Islands; and

(3) *Minor outlying islands*.(i) Baker Island.

(ii) Howland Island.

(iii) Jarvis Island.

(iv) Johnston Atoll.

(v) Kingman Reef.

(vi) Midway Islands.

(vii) Navassa Island.

(viii) Palmyra Atoll.

(ix) Wake Atoll.

“Overtime” means time worked by a contractor’s employee in excess of the employee’s normal workweek.

“Overtime premium” means the difference between the contractor’s regular rate of pay to an employee for the shift involved and the higher rate paid for overtime. It does not include shift premium, *i.e.*, the difference between the contractor’s regular rate of pay to an employee and the higher rate paid for extra-pay-shift work.



“Ozone-depleting substance” means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

“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, Federal installations, and Federal and non-Federal industrial operations, 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 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 System for Award Management (SAM) database” means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, the Contractor and Government Entity (CAGE) code, as well

as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into the SAM database;

(2) The Contractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in the SAM database;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record *Active*.

“Renewable energy” means energy produced by solar, wind, geothermal, biomass, landfill gas, ocean (including tidal, wave, current, and thermal), municipal solid waste, or new hydroelectric generation capacity achieved from increased efficiency or additions of new capacity at an existing hydroelectric project (Energy Policy Act of 2005, [42 U.S.C. 15852](#)).

“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.

“Requesting agency” means the agency that has the requirement for an interagency acquisition.

“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](#).

(3)

“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 [41 U.S.C. 1702\(c\)](#) 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\(16\)](#).

“Servicing agency” means the agency that will conduct an assisted acquisition on behalf of the requesting agency.

“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 \$150,000, 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. 1903](#)), the term means—

(1) \$300,000 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, license agreements, facilities, sales territory, and nature of business activity. (See [15 U.S.C. 632](#).)

“Small business subcontractor” means a concern, including affiliates, that for subcontracts valued at—

(1) \$10,000 or less, does not have more than 500 employees; and

(2) More than \$10,000, does not have employees or average annual receipts exceeding the size standard in 13 CFR Part 121 (see [19.102](#)) for the product or service it is providing on the subcontract.

“Small disadvantaged business concern” (except for [52.212-3\(c\)\(4\)](#) and [52.219-1\(b\)\(2\)](#) for general statistical purposes and [52.212-3\(c\)\(9\)\(ii\)](#), [52.219-22\(b\)\(2\)](#), [52.219-22\(b\)\(1\)\(C\)](#), and [52.219-23\(a\)\(3\)](#) for joint ventures under the price evaluation adjustment for small disadvantaged business concerns), consistent with 13 CFR 124.1002, means an offeror, that is a small business under the size standard applicable to the acquisition; and either—

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR Part 124, Subpart B; and

(i) No material change in disadvantaged ownership and control has occurred since its certification;

(ii) Where the concern is owned by one or more disadvantaged individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iii) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the Dynamic Small Business Search data base maintained by the Small Business Administration;

(2) For a prime contractor, it has submitted a completed application to the Small Business Administration or a private

certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR Part 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since it submitted its application. In this case, a contractor must receive certification as a small disadvantaged business by the Small Business Administration prior to contract award; or

(3) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program if it believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

“Sole source acquisition” means a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

“Solicitation” means any request to submit offers or quotations to the Government. Solicitations under sealed bid procedures are called “invitations for bids.” Solicitations under negotiated procedures are called “requests for proposals.” Solicitations under simplified acquisition procedures may require submission of either a quotation or an offer.

“Solicitation provision or provision” means a term or condition used only in solicitations and applying only before contract award.

“Source selection information” means any of the following information that is prepared for use by an agency for the purpose of evaluating a bid or proposal to enter into an agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Bid prices submitted in response to an agency invitation for bids, or lists of those bid prices before bid opening.

(2) Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices.

(3) Source selection plans.

(4) Technical evaluation plans.

(5) Technical evaluations of proposals.

(6) Cost or price evaluations of proposals.

(7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(8) Rankings of bids, proposals, or competitors.

(9) Reports and evaluations of source selection panels, boards, or advisory councils.

(10) Other information marked as “Source Selection Information—See FAR [2.101](#) and [3.104](#)” based on a case-by-case determination by the head of the agency or the contracting officer, that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

“Special competency” means a special or unique capability, including qualitative aspects, developed incidental to the

primary functions of the Federally Funded Research and Development Centers to meet some special need.

“Special test equipment” means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including foundations and similar improvements necessary for installing special test equipment, and standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. Special test equipment does not include material, special tooling, real property, and equipment items used for general testing purposes or property that with relatively minor expense can be made suitable for general purpose use.

“Special tooling” means jigs, dies, fixtures, molds, patterns, taps, gauges, and all components of these items including foundations and similar improvements necessary for installing special tooling, and which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular services. Special tooling does not include material, special test equipment, real property, equipment, machine tools, or similar capital items.

“State and local taxes” means taxes levied by the States, the District of Columbia, outlying areas of the United States, or their political subdivisions.

“Statement of Objectives (SOO)” means a Government-prepared document incorporated into the solicitation that states the overall performance objectives. It is used in solicitations when the Government intends to provide the maximum flexibility to each offeror to propose an innovative approach.

“Substantial evidence” means information sufficient to support the reasonable belief that a particular act or omission has occurred.

“Substantially as follows” or “substantially the same as,” when used in the prescription and introductory text of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition; provided that the variation includes the salient features of the FAR provision or clause, and is not inconsistent with the intent, principle, and substance of the FAR provision or clause or related coverage of the subject matter.

“Supplemental agreement” means a contract modification that is accomplished by the mutual action of the parties.

“Supplies” means all property except land or interest in land. It includes (but is not limited to) public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts and accessories; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing.

“Supporting a diplomatic or consular mission” means performing outside the United States under a contract administered by Federal agency personnel who are subject to the direction of a Chief of Mission.

“Surety” means an individual or corporation legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation. The types of sureties referred to are as follows:

(1) An individual surety is one person, as distinguished from a business entity, who is liable for the entire penal amount of the bond.

(2) A corporate surety is licensed under various insurance laws and, under its charter, has legal power to act as surety for others.

(3) A cosurety is one of two or more sureties that are jointly liable for the penal sum of the bond. A limit of liability for each surety may be stated.

“Surplus property” means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA). (See 41 CFR 102-36.40).

“Suspension” means action taken by a suspending official under [9.407](#) to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor that is disqualified is “suspended.”

“Sustainable acquisition” means acquiring goods and services in order to create and maintain conditions—

(1) Under which humans and nature can exist in productive harmony; and

(2) That permit fulfilling the social, economic, and other requirements of present and future generations.

“System for Award Management (SAM)” means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes—

(1) Data collected from prospective Federal awardees required for the conduct of business with the Government;

(2) Prospective contractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and

Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

“Task order” means an order for services placed against an established contract or with Government sources.

“Taxpayer Identification Number (TIN)” means the number required by the IRS to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

“Technical data” means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or

management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See [41 U.S.C. 116](#)).

“Termination for convenience” means the exercise of the Government’s right to completely or partially terminate performance of work under a contract when it is in the Government’s interest.

“Termination for default” means the exercise of the Government’s right to completely or partially terminate a contract because of the contractor’s actual or anticipated failure to perform its contractual obligations.

“Termination inventory” means any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes Government-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.

“Terminated portion of the contract” means the portion of a contract that the contractor is not to perform following a partial termination. For construction contracts that have been completely terminated for convenience, it means the entire contract, notwithstanding the completion of, and payment for, individual items of work before termination.

“Unallowable cost” means any cost that, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost-reimbursements, or settlements under a Government contract to which it is allocable.

“Unique and innovative concept,” when used relative to an unsolicited research proposal, means that—

(1) In the opinion and to the knowledge of the Government evaluator, the meritorious proposal—

(i) Is the product of original thinking submitted confidentially by one source;

(ii) Contains new, novel, or changed concepts, approaches, or methods;

(iii) Was not submitted previously by another; and

(iv) Is not otherwise available within the Federal Government.

(2) In this context, the term does not mean that the source has the sole capability of performing the research.

“United States,” when used in a geographic sense, means the 50 States and the District of Columbia, except as follows:

(1) For use in [subpart 3.10](#), see the definition at [3.1001](#).

(2) For use in [subpart 22.8](#), see the definition at [22.801](#).

(3) For use in [subpart 22.10](#), see the definition at [22.1001](#).

(4) For use in [subpart 22.12](#), see the definition at [22.1201](#).

(5) For use in [subpart 22.13](#), see the definition at [22.1301](#).

(6) For use in [subpart 22.16](#), see the definition at [22.1601](#).

(7) For use in [subpart 22.18](#), see the definition at [22.1801](#).

(8) For use in part [23](#), see definition at [23.001](#).

(9) For use in [Part 25](#), see the definition at [25.003](#).

(10) For use in [Part 27](#), see the definition at [27.001](#).

(11) For use in [subpart 47.4](#), see the definition at [47.401](#).

“Unsolicited proposal” means a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the Government, and that is not in response to a request for proposals, Broad Agency Announcement, Small Business Innovation Research topic, Small Business Technology Transfer Research topic, Program Research and Development Announcement, or any other Government-initiated solicitation or program.

“Value engineering” means an analysis of the functions of a program, project, system, product, item of equipment, building, facility, service, or supply of an executive agency, performed by qualified agency or contractor personnel, directed at improving performance, reliability, quality, safety, and life-cycle costs ([41 U.S.C. 1711](#)). For use in the clause at [52.248-2](#), see the definition at [52.248-2\(b\)](#).

“Value engineering change proposal (VECP)”—

(1) Means a proposal that—

(i) Requires a change to the instant contract to implement; and

(ii) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics, provided, that it does not involve a change—

(A) In deliverable end item quantities only;

(B) In research and development (R&D) items or R&D test quantities that are due solely to results of previous testing under the instant contract; or

(C) To the contract type only.

(2) For use in the clauses at—

(i) [52.248-2](#), see the definition at [52.248-2\(b\)](#); and

(ii) [52.248-3](#), see the definition at [52.248-3\(b\)](#).

“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.

“Virgin material” means—

(1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or

(2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

“Voluntary consensus standards” means common and repeated use of rules, conditions, guidelines or characteristics for products, or related processes and production methods and related management systems. Voluntary Consensus Standards are developed or adopted by domestic and international voluntary consensus standard making bodies (*e.g.*, International Organization for Standardization (ISO) and ASTM-International). See OMB Circular A-119.

“Warranty” means a promise or affirmation given by a contractor to the Government regarding the nature, usefulness, or condition of the supplies or performance of services furnished under the contract.

“Waste reduction” means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

“Water consumption intensity” means water consumption per square foot of building space.

“Women-owned small business concern” means—

(1) A small business concern—

(i) 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

(ii) Whose management and daily business operations are controlled by one or more women; or

(2) A small business concern eligible under the Women-Owned Small Business Program in accordance with 13 CFR part 127 (see subpart [19.15](#)).

“Women-Owned Small Business (WOSB) Program.”

(1) “Women-Owned Small Business Program (WOSB Program)” means a program that authorizes contracting officers to limit competition to—

(i) Eligible economically disadvantaged women-owned small business concerns for Federal contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which the Small Business Administration (SBA) has determined that WOSB concerns are underrepresented in Federal procurement; and

(ii) Eligible WOSB concerns eligible under the WOSB Program for Federal contracts assigned a NAICS code in an industry in which SBA has determined that WOSB concerns are substantially underrepresented.

(2) “Economically disadvantaged women-owned small business (EDWOSB) concern” means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business concern eligible under the WOSB Program.

(3) “Women-owned small business (WOSB)” concern eligible under the WOSB Program means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States (13 CFR part 127).

**3.000 Scope of part.**

This part prescribes policies and procedures for avoiding improper business practices and personal conflicts of interest and for dealing with their apparent or actual occurrence.

**Subpart 3.1—Safeguards****3.101 Standards of conduct.****3.101-1 General.**

Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. While many Federal laws and regulations place restrictions on the actions of Government personnel, their official conduct must, in addition, be such that they would have no reluctance to make a full public disclosure of their actions.

**3.101-2 Solicitation and acceptance of gratuities by Government personnel.**

As a rule, no Government employee may solicit or accept, directly or indirectly, any gratuity, gift, favor, entertainment, loan, or anything of monetary value from anyone who (a) has or is seeking to obtain Government business with the employee's agency, (b) conducts activities that are regulated by the employee's agency, or (c) has interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Certain limited exceptions are authorized in agency regulations.

**3.101-3 Agency regulations.**

(a) Agencies are required by Executive Order 11222 of May 8, 1965, and 5 CFR 735 to prescribe "Standards of Conduct." These agency standards contain—

(1) Agency-authorized exceptions to [3.101-2](#); and

(2) Disciplinary measures for persons violating the standards of conduct.

(b) Requirements for employee financial disclosure and restrictions on private employment for former Government employees are in Office of Personnel Management and agency regulations implementing Public Law 95-521, which amended [18 U.S.C. 207](#).

**3.102 [Reserved]****3.103 Independent pricing.****3.103-1 Solicitation provision.**

The contracting officer shall insert the provision at [52.203-2](#), Certificate of Independent Price Determination, in solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(a) The acquisition is to be made under the simplified acquisition procedures in [Part 13](#);

(b) [Reserved]

(c) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(d) The solicitation is for utility services for which rates are set by law or regulation.

**3.103-2 Evaluating the certification.**

(a) *Evaluation guidelines.* (1) None of the following, in and of itself, constitutes "disclosure" as it is used in paragraph (a)(2) of the Certificate of Independent Price Determination (hereafter, the certificate):

(i) The fact that a firm has published price lists, rates, or tariffs covering items being acquired by the Government.

(ii) The fact that a firm has informed prospective customers of proposed or pending publication of new or revised price lists for items being acquired by the Government.

(iii) The fact that a firm has sold the same items to commercial customers at the same prices being offered to the Government.

(2) For the purpose of paragraph (b)(2) of the certificate, an individual may use a blanket authorization to act as an agent for the person(s) responsible for determining the offered prices if—

(i) The proposed contract to which the certificate applies is clearly within the scope of the authorization; and

(ii) The person giving the authorization is the person within the offeror's organization who is responsible for determining the prices being offered at the time the certification is made in the particular offer.

(3) If an offer is submitted jointly by two or more concerns, the certification provided by the representative of each concern applies only to the activities of that concern.

(b) *Rejection of offers suspected of being collusive.* (1) If the offeror deleted or modified paragraph (a)(1) or (a)(3) or paragraph (b) of the certificate, the contracting officer shall reject the offeror's bid or proposal.

(2) If the offeror deleted or modified paragraph (a)(2) of the certificate, the offeror must have furnished with its offer a signed statement of the circumstances of the disclosure of prices contained in the bid or proposal. The chief of the contracting office shall review the altered certificate and the statement and shall determine, in writing, whether the disclosure was made for the purpose or had the effect of restricting com-

petition. If the determination is positive, the bid or proposal shall be rejected; if it is negative, the bid or proposal shall be considered for award.

(3) Whenever an offer is rejected under paragraph (b)(1) or (b)(2) of this section, or the certificate is suspected of being false, the contracting officer shall report the situation to the Attorney General in accordance with [3.303](#).

(4) The determination made under paragraph (b)(2) of this section shall not prevent or inhibit the prosecution of any criminal or civil actions involving the occurrences or transactions to which the certificate relates.

### 3.103-3 The need for further certifications.

A contractor that properly executed the certificate before award does not have to submit a separate certificate with each proposal to perform a work order or similar ordering instrument issued pursuant to the terms of the contract, where the Government's requirements cannot be met from another source.

## 3.104 Procurement integrity.

### 3.104-1 Definitions.

As used in this section—

“Agency ethics official” means the designated agency ethics official described in 5 CFR 2638.201 or other designated person, including—

(1) Deputy ethics officials described in 5 CFR 2638.204, to whom authority under [3.104-6](#) has been delegated by the designated agency ethics official; and

(2) Alternate designated agency ethics officials described in 5 CFR 2638.202(b).

“Compensation” means wages, salaries, honoraria, commissions, professional fees, and any other form of compensation, provided directly or indirectly for services rendered. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

“Contractor bid or proposal information” means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Cost or pricing data (as defined by [10 U.S.C. 2306a\(h\)](#)) with respect to procurements subject to that section, and [41 U.S.C. 3501\(a\)\(2\)](#), with respect to procurements subject to that section.

(2) Indirect costs and direct labor rates.

(3) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(4) Information marked by the contractor as “contractor bid or proposal information” in accordance with applicable law or regulation.

(5) Information marked in accordance with [52.215-1\(e\)](#).

“Decision to award a subcontract or modification of subcontract” means a decision to designate award to a particular source.

“Federal agency procurement” means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds. For broad agency announcements and small business innovation research programs, each proposal received by an agency constitutes a separate procurement for purposes of [41 U.S.C. chapter 21](#).

“In excess of \$10,000,000” means—

(1) The value, or estimated value, at the time of award, of the contract, including all options;

(2) The total estimated value at the time of award of all orders under an indefinite-delivery, indefinite-quantity, or requirements contract;

(3) Any multiple award schedule contract, unless the contracting officer documents a lower estimate;

(4) The value of a delivery order, task order, or an order under a Basic Ordering Agreement;

(5) The amount paid or to be paid in settlement of a claim; or

(6) The estimated monetary value of negotiated overhead or other rates when applied to the Government portion of the applicable allocation base.

“Official” means—

(1) An officer, as defined in [5 U.S.C. 2104](#);

(2) An employee, as defined in [5 U.S.C. 2105](#);

(3) A member of the uniformed services, as defined in [5 U.S.C. 2101\(3\)](#); or

(4) A special Government employee, as defined in [18 U.S.C. 202](#).

“Participating personally and substantially in a Federal agency procurement” means—

(1) Active and significant involvement of an official in any of the following activities directly related to that procurement:

(i) Drafting, reviewing, or approving the specification or statement of work for the procurement.

(ii) Preparing or developing the solicitation.

(iii) Evaluating bids or proposals, or selecting a source.

(iv) Negotiating price or terms and conditions of the contract.

(v) Reviewing and approving the award of the contract.



(2) “Participating personally” means participating directly, and includes the direct and active supervision of a subordinate’s participation in the matter.

(3) “Participating substantially” means that the official’s involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. However, the review of procurement documents solely to determine compliance with regulatory, administrative, or budgetary procedures, does not constitute substantial participation in a procurement.

(4) Generally, an official will not be considered to have participated personally and substantially in a procurement solely by participating in the following activities:

(i) Agency-level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency-level missions or objectives.

(ii) The performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular procurement, notwithstanding that such general, technical, engineering, or scientific effort subsequently may be incorporated into a particular procurement.

(iii) Clerical functions supporting the conduct of a particular procurement.

(iv) For procurements to be conducted under the procedures of OMB Circular A-76, participation in management studies, preparation of in-house cost estimates, preparation of “most efficient organization” analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.

“Source selection evaluation board” means any board, team, council, or other group that evaluates bids or proposals.

### 3.104-2 General.

(a) This section implements [41 U.S.C. chapter 21](#), Restrictions on Obtaining and Disclosing Certain Information. Agency supplementation of [3.104](#), including specific definitions to identify individuals who occupy positions specified in [3.104-3\(d\)\(1\)\(ii\)](#), and any clauses required by [3.104](#) must be approved by the senior procurement executive of the agency, unless a law establishes a higher level of approval for that agency.

(b) Agency officials are reminded that there are other statutes and regulations that deal with the same or related prohibited conduct, for example—

(1) The offer or acceptance of a bribe or gratuity is prohibited by [18 U.S.C. 201](#) and [10 U.S.C. 2207](#). The acceptance of a gift, under certain circumstances, is prohibited by [5 U.S.C. 7353](#) and 5 CFR Part 2635;

(2) Contacts with an offeror during the conduct of an acquisition may constitute “seeking employment,” (see Subpart F of 5 CFR Part 2636 and [3.104-3\(c\)\(2\)](#)). Government officers and employees (employees) are prohibited by [18 U.S.C. 208](#) and 5 CFR Part 2635 from participating personally and substantially in any particular matter that would affect the financial interests of any person with whom the employee is seeking employment. An employee who engages in negotiations or is otherwise seeking employment with an offeror or who has an arrangement concerning future employment with an offeror must comply with the applicable disqualification requirements of 5 CFR 2635.604 and 2635.606. The statutory prohibition in [18 U.S.C. 208](#) also may require an employee’s disqualification from participation in the acquisition even if the employee’s duties may not be considered “participating personally and substantially,” as this term is defined in [3.104-1](#);

(3) Post-employment restrictions are covered by [18 U.S.C. 207](#) and 5 CFR parts 2637 and 2641, that prohibit certain activities by former Government employees, including representation of a contractor before the Government in relation to any contract or other particular matter involving specific parties on which the former employee participated personally and substantially while employed by the Government. Additional restrictions apply to certain senior Government employees and for particular matters under an employee’s official responsibility;

(4) [Parts 14](#) and [15](#) place restrictions on the release of information related to procurements and other contractor information that must be protected under [18 U.S.C. 1905](#);

(5) Release of information both before and after award (see [3.104-4](#)) may be prohibited by the Privacy Act ([5 U.S.C. 552a](#)), the Trade Secrets Act ([18 U.S.C. 1905](#)), and other laws; and

(6) Using nonpublic information to further an employee’s private interest or that of another and engaging in a financial transaction using nonpublic information are prohibited by 5 CFR 2635.703.

### 3.104-3 Statutory and related prohibitions, restrictions, and requirements.

(a) *Prohibition on disclosing procurement information* ([41 U.S.C. 2102](#)). (1) A person described in paragraph (a)(2) of this subsection must not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal

agency procurement contract to which the information relates. (See [3.104-4\(a\)](#).)

(2) Paragraph (a)(1) of this subsection applies to any person who—

(i) Is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(ii) By virtue of that office, employment, or relationship, has or had access to contractor bid or proposal information or source selection information.

(b) *Prohibition on obtaining procurement information* ([41 U.S.C. 2102](#)). A person must not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(c) *Actions required when an agency official contacts or is contacted by an offeror regarding non-Federal employment* ([41 U.S.C. 2103](#)). (1) If an agency official, participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold, contacts or is contacted by a person who is an offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official must—

(i) Promptly report the contact in writing to the official's supervisor and to the agency ethics official; and

(ii) Either reject the possibility of non-Federal employment or disqualify himself or herself from further personal and substantial participation in that Federal agency procurement (see [3.104-5](#)) until such time as the agency authorizes the official to resume participation in that procurement, in accordance with the requirements of [18 U.S.C. 208](#) and applicable agency regulations, because—

(A) The person is no longer an offeror in that Federal agency procurement; or

(B) All discussions with the offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(2) A contact is any of the actions included as "seeking employment" in 5 CFR 2635.603(b). In addition, unsolicited communications from offerors regarding possible employment are considered contacts.

(3) Agencies must retain reports of employment contacts for 2 years from the date the report was submitted.

(4) Conduct that complies with [41 U.S.C. 2104](#) may be prohibited by other criminal statutes and the Standards of Ethical Conduct for Employees of the Executive Branch. See [3.104-2\(b\)\(2\)](#).

(d) *Prohibition on former official's acceptance of compensation from a contractor* ([41 U.S.C. 2104](#)). (1) A former official of a Federal agency may not accept compensation from a contractor that has been awarded a competitive or sole source contract, as an employee, officer, director, or consultant of the

contractor within a period of 1 year after such former official—

(i) Served, at the time of selection of the contractor or the award of a contract to that contractor, as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of \$10,000,000;

(ii) Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of \$10,000,000 awarded to that contractor; or

(iii) Personally made for the Federal agency a decision to—

(A) Award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of \$10,000,000 to that contractor;

(B) Establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of \$10,000,000;

(C) Approve issuance of a contract payment or payments in excess of \$10,000,000 to that contractor; or

(D) Pay or settle a claim in excess of \$10,000,000 with that contractor.

(2) The 1-year prohibition begins on the date—

(i) Of contract award for positions described in paragraph (d)(1)(i) of this subsection, or the date of contractor selection if the official was not serving in the position on the date of award;

(ii) The official last served in one of the positions described in paragraph (d)(1)(ii) of this subsection; or

(iii) The official made one of the decisions described in paragraph (d)(1)(iii) of this subsection.

(3) Nothing in paragraph (d)(1) of this subsection may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in paragraph (d)(1) of this subsection.

#### **3.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.**

(a) Except as specifically provided for in this subsection, no person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by the agency head or the contracting officer to receive such information.

(b) Contractor bid or proposal information and source selection information must be protected from unauthorized disclosure in accordance with [14.401](#), [15.207](#), applicable law, and agency regulations.

(c) Individuals unsure if particular information is source selection information, as defined in [2.101](#), should consult with agency officials as necessary. Individuals responsible for preparing material that may be source selection information as described at paragraph (10) of the “source selection information” definition in [2.101](#) must mark the cover page and each page that the individual believes contains source selection information with the legend “*Source Selection Information—See FAR 2.101 and 3.104.*” Although the information in paragraphs (1) through (9) of the definition in [2.101](#) is considered to be source selection information whether or not marked, all reasonable efforts must be made to mark such material with the same legend.

(d) Except as provided in paragraph (d)(3) of this subsection, the contracting officer must notify the contractor in writing if the contracting officer believes that proprietary information, contractor bid or proposal information, or information marked in accordance with [52.215-1\(e\)](#) has been inappropriately marked. The contractor that has affixed the marking must be given an opportunity to justify the marking.

(1) If the contractor agrees that the marking is not justified, or does not respond within the time specified in the notice, the contracting officer may remove the marking and release the information.

(2) If, after reviewing the contractor’s justification, the contracting officer determines that the marking is not justified, the contracting officer must notify the contractor in writing before releasing the information.

(3) For technical data marked as proprietary by a contractor, the contracting officer must follow the procedures in [27.404-5](#).

(e) This section does not restrict or prohibit—

(1) A contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(2) The disclosure or receipt of information, not otherwise protected, relating to a Federal agency procurement after it has been canceled by the Federal agency, before contract award, unless the Federal agency plans to resume the procurement;

(3) Individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur; or

(4) The Government’s use of technical data in a manner consistent with the Government’s rights in the data.

(f) This section does not authorize—

(1) The withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, the Comptroller General, or an Inspector General of a Federal agency, except as otherwise authorized by law or regulation. Any release containing con-

tractor bid or proposal information or source selection information must clearly identify the information as contractor bid or proposal information or source selection information related to the conduct of a Federal agency procurement and notify the recipient that the disclosure of the information is restricted by [41 U.S.C. chapter 21](#);

(2) The withholding of information from, or restricting its receipt by, the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract;

(3) The release of information after award of a contract or cancellation of a procurement if such information is contractor bid or proposal information or source selection information that pertains to another procurement; or

(4) The disclosure, solicitation, or receipt of bid or proposal information or source selection information after award if disclosure, solicitation, or receipt is prohibited by law. (See [3.104-2\(b\)\(5\)](#) and [Subpart 24.2](#).)

### 3.104-5 Disqualification.

(a) *Contacts through agents or other intermediaries.* Employment contacts between the employee and the offeror, that are conducted through agents, or other intermediaries, may require disqualification under [3.104-3\(c\)\(1\)](#). These contacts may also require disqualification under other statutes and regulations. (See [3.104-2\(b\)\(2\)](#).)

(b) *Disqualification notice.* In addition to submitting the contact report required by [3.104-3\(c\)\(1\)](#), an agency official who must disqualify himself or herself pursuant to [3.104-3\(c\)\(1\)\(ii\)](#) must promptly submit written notice of disqualification from further participation in the procurement to the contracting officer, the source selection authority if other than the contracting officer, and the agency official’s immediate supervisor. As a minimum, the notice must—

(1) Identify the procurement;

(2) Describe the nature of the agency official’s participation in the procurement and specify the approximate dates or time period of participation; and

(3) Identify the offeror and describe its interest in the procurement.

(c) *Resumption of participation in a procurement.* (1) The official must remain disqualified until such time as the agency, at its sole and exclusive discretion, authorizes the official to resume participation in the procurement in accordance with [3.104-3\(c\)\(1\)\(ii\)](#).

(2) After the conditions of [3.104-3\(c\)\(1\)\(ii\)\(A\)](#) or (B) have been met, the head of the contracting activity (HCA), after consultation with the agency ethics official, may authorize the disqualified official to resume participation in the procurement, or may determine that an additional disqualification period is necessary to protect the integrity of the procurement process. In determining the disqualification period, the HCA must consider any factors that create an

appearance that the disqualified official acted without complete impartiality in the procurement. The HCA's reinstatement decision should be in writing.

(3) Government officer or employee must also comply with the provisions of [18 U.S.C. 208](#) and 5 CFR Part 2635 regarding any resumed participation in a procurement matter. Government officer or employee may not be reinstated to participate in a procurement matter affecting the financial interest of someone with whom the individual is seeking employment, unless the individual receives—

(i) A waiver pursuant to [18 U.S.C. 208\(b\)\(1\)](#) or (b)(3); or

(ii) An authorization in accordance with the requirements of Subpart F of 5 CFR Part 2635.

### **3.104-6 Ethics advisory opinions regarding prohibitions on a former official's acceptance of compensation from a contractor.**

(a) An official or former official of a Federal agency who does not know whether he or she is or would be precluded by [41 U.S.C. 2104](#) (see [3.104-3\(d\)](#)) from accepting compensation from a particular contractor may request advice from the appropriate agency ethics official before accepting such compensation.

(b) The request for an advisory opinion must be in writing, include all relevant information reasonably available to the official or former official, and be dated and signed. The request must include information about the—

(1) Procurement(s), or decision(s) on matters under [3.104-3\(d\)\(1\)\(iii\)](#), involving the particular contractor, in which the individual was or is involved, including contract or solicitation numbers, dates of solicitation or award, a description of the supplies or services procured or to be procured, and contract amount;

(2) Individual's participation in the procurement or decision, including the dates or time periods of that participation, and the nature of the individual's duties, responsibilities, or actions; and

(3) Contractor, including a description of the products or services produced by the division or affiliate of the contractor from whom the individual proposes to accept compensation.

(c) Within 30 days after receipt of a request containing complete information, or as soon thereafter as practicable, the agency ethics official should issue an opinion on whether the proposed conduct would violate [41 U.S.C. 2104](#).

(d)(1) If complete information is not included in the request, the agency ethics official may ask the requester to provide more information or request information from other persons, including the source selection authority, the contracting officer, or the requester's immediate supervisor.

(2) In issuing an opinion, the agency ethics official may rely upon the accuracy of information furnished by the

requester or other agency sources, unless he or she has reason to believe that the information is fraudulent, misleading, or otherwise incorrect.

(3) If the requester is advised in a written opinion by the agency ethics official that the requester may accept compensation from a particular contractor, and accepts such compensation in good faith reliance on that advisory opinion, then neither the requester nor the contractor will be found to have knowingly violated [41 U.S.C. 2104](#). If the requester or the contractor has actual knowledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information, their reliance upon the opinion will not be deemed to be in good faith.

### **3.104-7 Violations or possible violations.**

(a) A contracting officer who receives or obtains information of a violation or possible violation of [41 U.S.C. 2102, 2103, or 2104](#) (see [3.104-3](#)) must determine if the reported violation or possible violation has any impact on the pending award or selection of the contractor.

(1) If the contracting officer concludes that there is no impact on the procurement, the contracting officer must forward the information concerning the violation or possible violation and documentation supporting a determination that there is no impact on the procurement to an individual designated in accordance with agency procedures.

(i) If that individual concurs, the contracting officer may proceed with the procurement.

(ii) If that individual does not concur, the individual must promptly forward the information and documentation to the HCA and advise the contracting officer to withhold award.

(2) If the contracting officer concludes that the violation or possible violation impacts the procurement, the contracting officer must promptly forward the information to the HCA.

(b) The HCA must review all information available and, in accordance with agency procedures, take appropriate action, such as—

(1) Advise the contracting officer to continue with the procurement;

(2) Begin an investigation;

(3) Refer the information disclosed to appropriate criminal investigative agencies;

(4) Conclude that a violation occurred; or

(5) Recommend that the agency head determine that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under [41 U.S.C. 2105](#), for the purpose of voiding or rescinding the contract.

(c) Before concluding that an offeror, contractor, or person has violated [41 U.S.C. Chapter 21](#), the HCA may consider that the interests of the Government are best served by requesting information from appropriate parties regarding the violation or possible violation.

(d) If the HCA concludes that [41 U.S.C. Chapter 21](#) has been violated, the HCA may direct the contracting officer to—

(1) If a contract has not been awarded—

(i) Cancel the procurement;

(ii) Disqualify an offeror; or

(iii) Take any other appropriate actions in the interests of the Government.

(2) If a contract has been awarded—

(i) Effect appropriate contractual remedies, including profit recapture under the clause at [52.203-10](#), Price or Fee Adjustment for Illegal or Improper Activity, or, if the contract has been rescinded under paragraph (d)(2)(ii) of this subsection, recovery of the amount expended under the contract;

(ii) Void or rescind the contract with respect to which—

(A) The contractor or someone acting for the contractor has been convicted for an offense where the conduct constitutes a violation of [41 U.S.C. 2102](#) for the purpose of either—

(1) Exchanging the information covered by the subsections for anything of value; or

(2) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(B) The agency head has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under [41 U.S.C. 2105\(a\)](#) or

(iii) Take any other appropriate actions in the best interests of the Government.

(3) Refer the matter to the agency suspending or debarring official.

(e) The HCA should recommend or direct an administrative or contractual remedy commensurate with the severity and effect of the violation.

(f) If the HCA determines that urgent and compelling circumstances justify an award, or award is otherwise in the interests of the Government, the HCA, in accordance with

agency procedures, may authorize the contracting officer to award the contract or execute the contract modification after notifying the agency head.

(g) The HCA may delegate his or her authority under this subsection to an individual at least one organizational level above the contracting officer and of General Officer, Flag, Senior Executive Service, or equivalent rank.

### 3.104-8 Criminal and civil penalties, and further administrative remedies.

Criminal and civil penalties, and administrative remedies, may apply to conduct that violates [41 U.S.C. Chapter 21](#) (see [3.104-3](#)). See [33.102\(f\)](#) for special rules regarding bid protests. See [3.104-7](#) for administrative remedies relating to contracts.

(a) An official who knowingly fails to comply with the requirements of [3.104-3](#) is subject to the penalties and administrative action set forth in [41 U.S.C. 2105](#).

(b) An offeror who engages in employment discussion with an official subject to the restrictions of [3.104-3](#), knowing that the official has not complied with [3.104-3\(c\)\(1\)](#), is subject to the criminal, civil, or administrative penalties set forth in subsection 27(e) of the Act.

(c) An official who refuses to terminate employment discussions (see [3.104-5](#)) may be subject to agency administrative actions under 5 CFR 2635.604(d) if the official's disqualification from participation in a particular procurement interferes substantially with the individual's ability to perform assigned duties.

### 3.104-9 Contract clauses.

In solicitations and contracts for other than commercial items that exceed the simplified acquisition threshold, insert the clauses at—

(a) [52.203-8](#), Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity; and

(b) [52.203-10](#), Price or Fee Adjustment for Illegal or Improper Activity.

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### Subpart 3.3—Reports of Suspected Antitrust Violations

#### 3.301 General.

(a) Practices that eliminate competition or restrain trade usually lead to excessive prices and may warrant criminal, civil, or administrative action against the participants. Examples of anticompetitive practices are collusive bidding, follow-the-leader pricing, rotated low bids, collusive price estimating systems, and sharing of the business.

(b) Contracting personnel are an important potential source of investigative leads for antitrust enforcement and should therefore be sensitive to indications of unlawful behavior by offerors and contractors. Agency personnel shall report, in accordance with agency regulations, evidence of suspected antitrust violations in acquisitions for possible referral to—

- (1) The Attorney General under [3.303](#); and
- (2) The agency office responsible for contractor debarment and suspension under [Subpart 9.4](#).

#### 3.302 Definitions.

As used in this subpart—

“Identical bids” means bids for the same line item that are determined to be identical as to unit price or total line item amount, with or without the application of evaluation factors (*e.g.*, discount or transportation cost).

“Line item” means an item of supply or service, specified in a solicitation, that the offeror must separately price.

#### 3.303 Reporting suspected antitrust violations.

(a) Agencies are required by [41 U.S.C. 3707](#) and [10 U.S.C. 2305\(b\)\(9\)](#) to report to the Attorney General any bids or proposals that evidence a violation of the antitrust laws. These reports are in addition to those required by [Subpart 9.4](#).

(b) The antitrust laws are intended to ensure that markets operate competitively. Any agreement or mutual understanding among competing firms that restrains the natural operation of market forces is suspect. Paragraph (c) of this section identifies behavior patterns that are often associated with antitrust violations. Activities meeting the descriptions in paragraph (c) are not necessarily improper, but they are sufficiently questionable to warrant notifying the appropriate authorities, in accordance with agency procedures.

(c) Practices or events that may evidence violations of the antitrust laws include—

- (1) The existence of an “industry price list” or “price agreement” to which contractors refer in formulating their offers;

(2) A sudden change from competitive bidding to identical bidding;

(3) Simultaneous price increases or follow-the-leader pricing;

(4) Rotation of bids or proposals, so that each competitor takes a turn in sequence as low bidder, or so that certain competitors bid low only on some sizes of contracts and high on other sizes;

(5) Division of the market, so that certain competitors bid low only for contracts awarded by certain agencies, or for contracts in certain geographical areas, or on certain products, and bid high on all other jobs;

(6) Establishment by competitors of a collusive price estimating system;

(7) The filing of a joint bid by two or more competitors when at least one of the competitors has sufficient technical capability and productive capacity for contract performance;

(8) Any incidents suggesting direct collusion among competitors, such as the appearance of identical calculation or spelling errors in two or more competitive offers or the submission by one firm of offers for other firms; and

(9) Assertions by the employees, former employees, or competitors of offerors, that an agreement to restrain trade exists.

(d) Identical bids shall be reported under this section if the agency has some reason to believe that the bids resulted from collusion.

(e) For offers from foreign contractors for contracts to be performed outside the United States and its outlying areas, contracting officers may refer suspected collusive offers to the authorities of the foreign government concerned for appropriate action.

(f) Agency reports shall be addressed to the—

Attorney General  
U.S. Department of Justice  
Washington DC 20530  
Attention: Assistant Attorney General  
Antitrust Division

and shall include—

(1) A brief statement describing the suspected practice and the reason for the suspicion; and

(2) The name, address, and telephone number of an individual in the agency who can be contacted for further information.

(g) Questions concerning this reporting requirement may be communicated by telephone directly to the Office of the Assistant Attorney General, Antitrust Division.

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## Subpart 3.4—Contingent Fees

### 3.400 Scope of subpart.

This subpart prescribes policies and procedures that restrict contingent fee arrangements for soliciting or obtaining Government contracts to those permitted by [10 U.S.C. 2306\(b\)](#) and [41 U.S.C. 3901](#).

### 3.401 Definitions.

As used in this subpart—

“Bona fide agency” means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

“Bona fide employee” means a person, employed by a contractor and subject to the contractor’s supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

“Contingent fee” means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

“Improper influence” means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

### 3.402 Statutory requirements.

Contractors’ arrangements to pay contingent fees for soliciting or obtaining Government contracts have long been considered contrary to public policy because such arrangements may lead to attempted or actual exercise of improper influence. In [10 U.S.C. 2306\(b\)](#) and [41 U.S.C. 3901](#), Congress affirmed this public policy but permitted certain exceptions. These statutes—

(a) Require in every negotiated contract a warranty by the contractor against contingent fees;

(b) Permit, as an exception to the warranty, contingent fee arrangements between contractors and bona fide employees or bona fide agencies; and

(c) Provide that, for breach or violation of the warranty by the contractor, the Government may annul the contract without liability or deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

### 3.403 Applicability.

This subpart applies to all contracts. Statutory requirements for negotiated contracts are, as a matter of policy, extended to sealed bid contracts.

### 3.404 Contract clause.

The contracting officer shall insert the clause at [52.203-5](#), Covenant Against Contingent Fees, in all solicitations and contracts exceeding the simplified acquisition threshold, other than those for commercial items (see [Parts 2](#) and [12](#)).

### 3.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) Government personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the Covenant Against Contingent Fees shall report the matter promptly to the contracting officer or appropriate higher authority in accordance with agency procedures.

(b) When there is specific evidence or other reasonable basis to suspect one or more of the violations in paragraph (a) of this section, the chief of the contracting office shall review the facts and, if appropriate, take or direct one or more of the following, or other, actions:

(1) If before award, reject the bid or proposal.

(2) If after award, enforce the Government’s right to annul the contract or to recover the fee.

(3) Initiate suspension or debarment action under [Subpart 9.4](#).

(4) Refer suspected fraudulent or criminal matters to the Department of Justice, as prescribed in agency regulations.

### 3.406 Records.

For enforcement purposes, agencies shall preserve any specific evidence of one or more of the violations in [3.405\(a\)](#), together with all other pertinent data, including a record of actions taken. Contracting offices shall not retire or destroy these records until it is certain that they are no longer needed for enforcement purposes. If the original record is maintained in a central file, a copy must be retained in the contract file.

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## Subpart 3.5—Other Improper Business Practices

### 3.501 Buying-in.

#### 3.501-1 Definition.

“Buying-in,” as used in this section, means submitting an offer below anticipated costs, expecting to—

- (1) Increase the contract amount after award (*e.g.*, through unnecessary or excessively priced change orders); or
- (2) Receive follow-on contracts at artificially high prices to recover losses incurred on the buy-in contract.

#### 3.501-2 General.

(a) Buying-in may decrease competition or result in poor contract performance. The contracting officer must take appropriate action to ensure buying-in losses are not recovered by the contractor through the pricing of—

- (1) Change orders; or
- (2) Follow-on contracts subject to cost analysis.

(b) The Government should minimize the opportunity for buying-in by seeking a price commitment covering as much of the entire program concerned as is practical by using—

- (1) Multiyear contracting, with a requirement in the solicitation that a price be submitted only for the total multi-year quantity; or
- (2) Priced options for additional quantities that, together with the firm contract quantity, equal the program requirements (see [Subpart 17.2](#)).

(c) Other safeguards are available to the contracting officer to preclude recovery of buying-in losses (*e.g.*, amortization of nonrecurring costs (see [15.408](#), [Table 15-2](#), paragraph A, column (2) under “Formats for Submission of Line Item Summaries”) and treatment of unreasonable price quotations (see [15.405](#)).

### 3.502 Subcontractor kickbacks.

#### 3.502-1 Definitions.

As used in this section—

“Kickback” means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

“Person” means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

“Prime contract” means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

“Prime Contractor” means a person who has entered into a prime contract with the United States.

“Prime Contractor employee” means any officer, partner, employee, or agent of a prime contractor.

“Subcontract” means a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

“Subcontractor” (1) means any person, other than the prime contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract; and (2) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.

#### 3.502-2 Subcontractor kickbacks.

The Anti-Kickback Act of 1986 (now codified at 41 U.S.C. chapter 87, Kickbacks,) was passed to deter subcontractors from making payments and contractors from accepting payments for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. The Kickbacks statute—

(a) Prohibits any person from—

(1) Providing, attempting to provide, or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a subcontractor to a prime contractor or a higher tier subcontractor or in the contract price charged by a prime contractor to the United States.

(b) Imposes criminal penalties on any person who knowingly and willfully engages in the prohibited conduct addressed in paragraph (a) of this subsection.

(c) Provides for the recovery of civil penalties by the United States from any person who knowingly engages in such prohibited conduct and from any person whose employee, subcontractor, or subcontractor employee provides, accepts, or charges a kickback.

(d) Provides that—

(1) The contracting officer may offset the amount of a kickback against monies owed by the United States to the prime contractor under the prime contract to which such kickback relates;

(2) The contracting officer may direct a prime contractor to withhold from any sums owed to a subcontractor under a subcontract of the prime contract the amount of any kickback which was or may be offset against the prime contractor under paragraph (d)(1) of this subsection; and

(3) An offset under paragraph (d)(1) or a direction under paragraph (d)(2) of this subsection is a claim by the Government for the purposes of 41 U.S.C. chapter 71, Contract Disputes.

(e) Authorizes contracting officers to order that sums withheld under paragraph (d)(2) of this subsection be paid to the contracting agency, or if the sum has already been offset against the prime contractor, that it be retained by the prime contractor.

(f) Requires the prime contractor to notify the contracting officer when the withholding under paragraph (d)(2) of this subsection has been accomplished unless the amount withheld has been paid to the Government.

(g) Requires a prime contractor or subcontractor to report in writing to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General any possible violation of the Kickbacks statute when the prime contractor or subcontractor has reasonable grounds to believe such violation may have occurred.

(h) Provides that, for the purpose of ascertaining whether there has been a violation of the Kickbacks statute with respect to any prime contract, the Government Accountability Office and the inspector general of the contracting agency, or a representative of such contracting agency designated by the head of the agency if the agency does not have an inspector general, shall have access to and may inspect the facilities and audit the books and records, including any electronic data or records, of any prime contractor or subcontractor under a prime contract awarded by such agency.

(i) Requires each contracting agency to include in each prime contract exceeding \$150,000 for other than commercial items (see [Part 12](#)), a requirement that the prime contractor shall—

(1) Have in place and follow reasonable procedures designed to prevent and detect violations of the Kickbacks statute in its own operations and direct business relationships (*e.g.*, company ethics rules prohibiting kickbacks by employees, agents, or subcontractors; education programs for new employees and subcontractors, explaining policies about

kickbacks, related company procedures and the consequences of detection; procurement procedures to minimize the opportunity for kickbacks; audit procedures designed to detect kickbacks; periodic surveys of subcontractors to elicit information about kickbacks; procedures to report kickbacks to law enforcement officials; annual declarations by employees of gifts or gratuities received from subcontractors; annual employee declarations that they have violated no company ethics rules; personnel practices that document unethical or illegal behavior and make such information available to prospective employers); and

(2) Cooperate fully with any Federal agency investigating a possible violation of the Kickbacks statute.

(j) Notwithstanding paragraph (i) of this section, a prime contractor shall cooperate fully with any Federal Government agency investigating a violation of [41 U.S.C. 8702](#) (see [41 U.S.C. 8703\(b\)](#)).

### **3.502-3 Contract clause.**

The contracting officer shall insert the clause at [52.203-7](#), Anti-Kickback Procedures, in solicitations and contracts exceeding the simplified acquisition threshold, other than those for commercial items (see [Part 12](#)).

### **3.503 Unreasonable restrictions on subcontractor sales.**

#### **3.503-1 Policy.**

[10 U.S.C. 2402](#) and [41 U.S.C. 4704](#) require that subcontractors not be unreasonably precluded from making direct sales to the Government of any supplies or services made or furnished under a contract. However, this does not preclude contractors from asserting rights that are otherwise authorized by law or regulation.

#### **3.503-2 Contract clause.**

The contracting officer shall insert the clause at [52.203-6](#), Restrictions on Subcontractor Sales to the Government, in solicitations and contracts exceeding the simplified acquisition threshold. For the acquisition of commercial items, the contracting officer shall use the clause with its Alternate I.

### Subpart 3.7—Voiding and Rescinding Contracts

#### 3.700 Scope of subpart.

(a) This subpart prescribes Governmentwide policies and procedures for exercising discretionary authority to declare void and rescind contracts in relation to which—

(1) There has been a final conviction for bribery, conflict of interest, disclosure or receipt of contractor bid or proposal information or source selection information in exchange for a thing of value or to give anyone a competitive advantage in the award of a Federal agency procurement contract, or similar misconduct; or

(2) There has been an agency head determination that contractor bid or proposal information or source selection information has been disclosed or received in exchange for a thing of value, or for the purpose of obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract.

(b) This subpart does not prescribe policies or procedures for, or govern the exercise of, any other remedy available to the Government with respect to such contracts, including but not limited to, the common law right of avoidance, rescission, or cancellation.

#### 3.701 Purpose.

This subpart provides—

(a) An administrative remedy with respect to contracts in relation to which there has been—

(1) A final conviction for bribery, conflict of interest, disclosure or receipt of contractor bid or proposal information or source selection information in exchange for a thing of value or to give anyone a competitive advantage in the award of a Federal agency procurement contract, or similar misconduct; or

(2) An agency head determination that contractor bid or proposal information or source selection information has been disclosed or received in exchange for a thing of value, or for the purpose of obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; and

(b) A means to deter similar misconduct in the future by those who are involved in the award, performance, and administration of Government contracts.

#### 3.702 Definition.

“Final conviction” means a conviction, whether entered on a verdict or plea, including a plea of *nolo contendere*, for which a sentence has been imposed.

#### 3.703 Authority.

(a) Section 1(e) of Public Law 87-849, [18 U.S.C. 218](#) (“the Act”), empowers the President or the heads of executive

agencies acting under regulations prescribed by the President, to declare void and rescind contracts and other transactions enumerated in the Act, in relation to which there has been a final conviction for bribery, conflict of interest, or any other violation of Chapter 11 of Title 18 of the United States Code ([18 U.S.C. 201-224](#)). Executive Order 12448, November 4, 1983, delegates the President’s authority under the Act to the heads of the executive agencies and military departments.

(b) [41 U.S.C. 2105\(c\)](#) requires a Federal agency, upon receiving information that a contractor or a person has violated [41 U.S.C. 2102](#), to consider rescission of a contract with respect to which—

(1) The contractor or someone acting for the contractor has been convicted for an offense punishable under [41 U.S.C. 2105\(a\)](#); or

(2) The head of the agency, or designee, has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense.

#### 3.704 Policy.

(a) In cases in which there is a final conviction for any violation of [18 U.S.C. 201-224](#) involving or relating to contracts awarded by an agency, the agency head or designee, shall consider the facts available and, if appropriate, may declare void and rescind contracts, and recover the amounts expended and property transferred by the agency in accordance with the policies and procedures of this subpart.

(b) Since a final conviction under [18 U.S.C. 201-224](#) relating to a contract also may justify the conclusion that the party involved is not presently responsible, the agency should consider initiating debarment proceedings in accordance with [Subpart 9.4](#), Debarment, Suspension, and Ineligibility, if debarment has not been initiated, or is not in effect at the time the final conviction is entered.

(c) If there is a final conviction for an offense punishable under [41 U.S.C. 2105](#), or if the head of the agency, or designee, has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting such an offense, then the head of the contracting activity shall consider, in addition to any other penalty prescribed by law or regulation—

(1) Declaring void and rescinding contracts, as appropriate, and recovering the amounts expended under the contracts by using the procedures at [3.705](#) (see [3.104-7](#)); and

(2) Recommending the initiation of suspension or debarment proceedings in accordance with [Subpart 9.4](#).

#### 3.705 Procedures.

(a) *Reporting*. The facts concerning any final conviction for any violation of [18 U.S.C. 201-224](#) involving or relating to agency contracts shall be reported promptly to the agency

head or designee for that official's consideration. The agency head or designee shall promptly notify the Civil Division, Department of Justice, that the action is being considered under this subpart.

(b) *Decision.* Following an assessment of the facts, the agency head or designee may declare void and rescind contracts with respect to which a final conviction has been entered, and recover the amounts expended and the property transferred by the agency under the terms of the contracts involved.

(c) *Decision-making process.* Agency procedures governing the voiding and rescinding decision-making process shall be as informal as practicable, consistent with the principles of fundamental fairness. As a minimum, however, agencies shall provide the following:

(1) A notice of proposed action to declare void and rescind the contract shall be made in writing and sent by certified mail, return receipt requested.

(2) A thirty calendar day period after receipt of the notice, for the contractor to submit pertinent information before any final decision is made.

(3) Upon request made within the period for submission of pertinent information, an opportunity shall be afforded for a hearing at which witnesses may be presented, and any witness the agency presents may be confronted. However, no inquiry shall be made regarding the validity of a conviction.

(4) If the agency head or designee decides to declare void and rescind the contracts involved, that official shall issue a written decision which—

(i) States that determination;

(ii) Reflects consideration of the fair value of any tangible benefits received and retained by the agency; and

(iii) States the amount due and the property to be returned to the agency.

(d) *Notice of proposed action.* The notice of proposed action, as a minimum shall—

(1) Advise that consideration is being given to declaring void and rescinding contracts awarded by the agency, and

recovering the amounts expended and property transferred therefor, under the provisions of [18 U.S.C. 218](#);

(2) Specifically identify the contracts affected by the action;

(3) Specifically identify the offense or final conviction on which the action is based;

(4) State the amounts expended and property transferred under each of the contracts involved, and the money and the property demanded to be returned;

(5) Identify any tangible benefits received and retained by the agency under the contract, and the value of those benefits, as calculated by the agency;

(6) Advise that pertinent information may be submitted within 30 calendar days after receipt of the notice, and that, if requested within that time, a hearing shall be held at which witnesses may be presented and any witness the agency presents may be confronted; and

(7) Advise that action shall be taken only after the agency head or designee issues a final written decision on the proposed action.

(e) *Final agency decision.* The final agency decision shall be based on the information available to the agency head or designee, including any pertinent information submitted or, if a hearing was held, presented at the hearing. If the agency decision declares void and rescinds the contract, the final decision shall specify the amounts due and property to be returned to the agency, and reflect consideration of the fair value of any tangible benefits received and retained by the agency. Notice of the decision shall be sent promptly by certified mail, return receipt requested. Rescission of contracts under the authority of the Act and demand for recovery of the amounts expended and property transferred therefor, is not a claim within the meaning of [41 U.S.C. chapter 71](#), Contract Disputes, or [part 32](#). Therefore, the procedures required by the statute and the FAR for the issuance of a final contracting officer decision are not applicable to final agency decisions under this subpart, and shall not be followed.

## Subpart 3.10—Contractor Code of Business Ethics and Conduct

### 3.1000 Scope of subpart.

This subpart—

(a) Implements [41 U.S.C. 3509](#), Notification of Violations of Federal Criminal Law or Overpayments; and

(b) Prescribes policies and procedures for the establishment of contractor codes of business ethics and conduct, and display of agency Office of Inspector General (OIG) fraud hotline posters.

### 3.1001 Definitions.

As used in this subpart—

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnished supplies or services to or for a prime contractor or another subcontractor.

“United States” means the 50 States, the District of Columbia, and outlying areas.

### 3.1002 Policy.

(a) Government contractors must conduct themselves with the highest degree of integrity and honesty.

(b) Contractors should have a written code of business ethics and conduct. To promote compliance with such code of business ethics and conduct, contractors should have an employee business ethics and compliance training program and an internal control system that—

(1) Are suitable to the size of the company and extent of its involvement in Government contracting;

(2) Facilitate timely discovery and disclosure of improper conduct in connection with Government contracts; and

(3) Ensure corrective measures are promptly instituted and carried out.

### 3.1003 Requirements.

(a) *Contractor requirements.* (1) Although the policy at [3.1002](#) applies as guidance to all Government contractors, the contractual requirements set forth in the clauses at [52.203-13](#), Contractor Code of Business Ethics and Conduct, and [52.203-14](#), Display of Hotline Poster(s), are mandatory if the contracts meet the conditions specified in the clause prescriptions at [3.1004](#).

(2) Whether or not the clause at [52.203-13](#) is applicable, a contractor may be suspended and/or debarred for knowing failure by a principal to timely disclose to the Government, in connection with the award, performance, or closeout of a Government contract performed by the contractor or a subcontract awarded thereunder, credible evidence of a violation

of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act. Knowing failure to timely disclose credible evidence of any of the above violations remains a cause for suspension and/or debarment until 3 years after final payment on a contract (see [9.406-2\(b\)\(1\)\(vi\)](#) and [9.407-2\(a\)\(8\)](#)).

(3) The Payment clauses at FAR [52.212-4\(i\)\(5\)](#), [52.232-25\(d\)](#), [52.232-26\(c\)](#), and [52.232-27\(l\)](#) require that, if the contractor becomes aware that the Government has overpaid on a contract financing or invoice payment, the contractor shall remit the overpayment amount to the Government. A contractor may be suspended and/or debarred for knowing failure by a principal to timely disclose credible evidence of a significant overpayment, other than overpayments resulting from contract financing payments as defined in [32.001](#) (see [9.406-2\(b\)\(1\)\(vi\)](#) and [9.407-2\(a\)\(8\)](#)).

(b) *Notification of possible contractor violation.* If the contracting officer is notified of possible contractor violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 U.S.C.; or a violation of the civil False Claims Act, the contracting officer shall—

(1) Coordinate the matter with the agency Office of the Inspector General; or

(2) Take action in accordance with agency procedures.

(c) *Fraud Hotline Poster.* (1) Agency OIGs are responsible for determining the need for, and content of, their respective agency OIG fraud hotline poster(s).

(2) When requested by the Department of Homeland Security, agencies shall ensure that contracts funded with disaster assistance funds require display of any fraud hotline poster applicable to the specific contract. As established by the agency OIG, such posters may be displayed in lieu of, or in addition to, the agency’s standard poster.

### 3.1004 Contract clauses.

(a) Insert the clause at FAR [52.203-13](#), Contractor Code of Business Ethics and Conduct, in solicitations and contracts if the value of the contract is expected to exceed \$5,000,000 and the performance period is 120 days or more.

(b)(1) Unless the contract is for the acquisition of a commercial item or will be performed entirely outside the United States, insert the clause at FAR [52.203-14](#), Display of Hotline Poster(s), if—

(i) The contract exceeds \$5,000,000 or a lesser amount established by the agency; and

(ii)(A) The agency has a fraud hotline poster; or

(B) The contract is funded with disaster assistance funds.

(2) In paragraph (b)(3) of the clause, the contracting officer shall—

- (i) Identify the applicable posters; and
  - (ii) Insert the website link(s) or other contact information for obtaining the agency and/or Department of Homeland Security poster.
- (3) In paragraph (d) of the clause, if the agency has established policies and procedures for display of the OIG

fraud hotline poster at a lesser amount, the contracting officer shall replace “\$5,000,000” with the lesser amount that the agency has established.



**Subpart 3.11—Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions**

**3.1100 Scope of subpart.**

This subpart implements policy on personal conflicts of interest by employees of Government contractors as required by [41 U.S.C. 2303](#).

**3.1101 Definitions.**

As used in this subpart—

“Acquisition function closely associated with inherently governmental functions” means supporting or providing advice or recommendations with regard to the following activities of a Federal agency:

- (1) Planning acquisitions.
- (2) Determining what supplies or services are to be acquired by the Government, including developing statements of work.
- (3) Developing or approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria.
- (4) Evaluating contract proposals.
- (5) Awarding Government contracts.
- (6) Administering contracts (including ordering changes or giving technical direction in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services).
- (7) Terminating contracts.
- (8) Determining whether contract costs are reasonable, allocable, and allowable.

“Covered employee” means an individual who performs an acquisition function closely associated with inherently governmental functions and is—

- (1) An employee of the contractor; or
- (2) A subcontractor that is a self-employed individual treated as a covered employee of the contractor because there is no employer to whom such an individual could submit the required disclosures.

“Personal conflict of interest” means a situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee’s ability to act impartially and in the best interest of the Government when performing under the contract. (A *de minimis* interest that would not “impair the employee’s ability to act impartially and in the best interest of the Government” is not covered under this definition.)

- (1) Among the sources of personal conflicts of interest are—
  - (i) Financial interests of the covered employee, of close family members, or of other members of the covered employee’s household;

- (ii) Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and
  - (iii) Gifts, including travel.
- (2) For example, financial interests referred to in paragraph (1) of this definition may arise from—
- (i) Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;
  - (ii) Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);
  - (iii) Services provided in exchange for honorariums or travel expense reimbursements;
  - (iv) Research funding or other forms of research support;
  - (v) Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);
  - (vi) Real estate investments;
  - (vii) Patents, copyrights, and other intellectual property interests; or
  - (viii) Business ownership and investment interests.

**3.1102 Policy.**

The Government’s policy is to require contractors to—

- (a) Identify and prevent personal conflicts of interest of their covered employees; and
- (b) Prohibit covered employees who have access to non-public information by reason of performance on a Government contract from using such information for personal gain.

**3.1103 Procedures.**

(a) By use of the contract clause at [52.203-16](#), as prescribed at [3.1106](#), the contracting officer shall require each contractor whose employees perform acquisition functions closely associated with inherently Government functions to—

- (1) Have procedures in place to screen covered employees for potential personal conflicts of interest by—
  - (i) Obtaining and maintaining from each covered employee, when the employee is initially assigned to the task under the contract, a disclosure of interests that might be affected by the task to which the employee has been assigned, as follows:
    - (A) Financial interests of the covered employee, of close family members, or of other members of the covered employee’s household.
    - (B) Other employment or financial relationships of the covered employee (including seeking or negotiating for prospective employment or business).
    - (C) Gifts, including travel; and
  - (ii) Requiring each covered employee to update the disclosure statement whenever the employee’s personal or

financial circumstances change in such a way that a new personal conflict of interest might occur because of the task the covered employee is performing.

(2) For each covered employee—

(i) Prevent personal conflicts of interest, including not assigning or allowing a covered employee to perform any task under the contract for which the Contractor has identified a personal conflict of interest for the employee that the Contractor or employee cannot satisfactorily prevent or mitigate in consultation with the contracting agency;

(ii) Prohibit use of non-public information accessed through performance of a Government contract for personal gain; and

(iii) Obtain a signed non-disclosure agreement to prohibit disclosure of non-public information accessed through performance of a Government contract.

(3) Inform covered employees of their obligation—

(i) To disclose and prevent personal conflicts of interest;

(ii) Not to use non-public information accessed through performance of a Government contract for personal gain; and

(iii) To avoid even the appearance of personal conflicts of interest;

(4) Maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(5) Take appropriate disciplinary action in the case of covered employees who fail to comply with policies established pursuant to this section; and

(6) Report to the contracting officer any personal conflict-of-interest violation by a covered employee as soon as identified. This report shall include a description of the violation and the proposed actions to be taken by the contractor in response to the violation, with follow-up reports of corrective actions taken, as necessary.

(b) If a contractor reports a personal conflict-of-interest violation by a covered employee to the contracting officer in accordance with paragraph (b)(6) of the clause at [52.203-16](#), Preventing Personal Conflicts of Interest, the contracting officer shall—

(1) Review the actions taken by the contractor;

(2) Determine whether any action taken by the contractor has resolved the violation satisfactorily; and

(3) If the contracting officer determines that the contractor has not resolved the violation satisfactorily, take any appropriate action in consultation with agency legal counsel.

### 3.1104 Mitigation or waiver.

(a) In exceptional circumstances, if the contractor cannot satisfactorily prevent a personal conflict of interest as required by paragraph (b)(2)(i) of the clause at [52.203-16](#), Preventing Personal Conflicts of Interest, the contractor may submit a request, through the contracting officer, for the head of the contracting activity to—

(1) Agree to a plan to mitigate the personal conflict of interest; or

(2) Waive the requirement to prevent personal conflicts of interest.

(b) If the head of the contracting activity determines in writing that such action is in the best interest of the Government, the head of the contracting activity may impose conditions that provide mitigation of a personal conflict of interest or grant a waiver.

(c) This authority shall not be redelegated.

### 3.1105 Violations.

If the contracting officer suspects violation by the contractor of a requirement of paragraph (b), (c)(3), or (d) of the clause at [52.203-16](#), Preventing Personal Conflicts of Interest, the contracting officer shall contact the agency legal counsel for advice and/or recommendations on a course of action.

### 3.1106 Contract clause.

(a) Insert the clause at [52.203-16](#), Preventing Personal Conflicts of Interest, in solicitations and contracts that—

(1) Exceed the simplified acquisition threshold; and

(2) Include a requirement for services by contractor employee(s) that involve performance of acquisition functions closely associated with inherently governmental functions for, or on behalf of, a Federal agency or department.

(b) If only a portion of a contract is for the performance of acquisition functions closely associated with inherently governmental functions, then the contracting officer shall still insert the clause, but shall limit applicability of the clause to that portion of the contract that is for the performance of such services.

(c) Do not insert the clause in solicitations or contracts with a self-employed individual if the acquisition functions closely associated with inherently governmental functions are to be performed entirely by the self-employed individual, rather than an employee of the contractor.

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### Subpart 4.5—Electronic Commerce in Contracting

#### 4.500 Scope of subpart.

This subpart provides policy and procedures for the establishment and use of electronic commerce in Federal acquisition as required by [41 U.S.C. 2301](#).

#### 4.501 [Reserved]

#### 4.502 Policy.

(a) The Federal Government shall use electronic commerce whenever practicable or cost-effective. The use of terms commonly associated with paper transactions (*e.g.*, “copy,” “document,” “page,” “printed,” “sealed envelope,” and “stamped”) shall not be interpreted to restrict the use of electronic commerce. Contracting officers may supplement electronic transactions by using other media to meet the requirements of any contract action governed by the FAR (*e.g.*, transmit hard copy of drawings).

(b) Agencies may exercise broad discretion in selecting the hardware and software that will be used in conducting electronic commerce. However, as required by [41 U.S.C. 2301](#), the head of each agency, after consulting with the Administrator of OFPP, shall ensure that systems, technologies, procedures, and processes used by the agency to conduct electronic commerce—

(1) Are implemented uniformly throughout the agency, to the maximum extent practicable;

(2) Are implemented only after considering the full or partial use of existing infrastructures;

(3) Facilitate access to Government acquisition opportunities by small business concerns, small disadvantaged business concerns, women-owned, veteran-owned, HUB-Zone, and service-disabled veteran-owned small business concerns;

(4) Include a single means of providing widespread public notice of acquisition opportunities through the Governmentwide point of entry and a means of responding to notices or solicitations electronically; and

(5) Comply with nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information, such as standards established by the National Institute of Standards and Technology.

(c) Before using electronic commerce, the agency head shall ensure that the agency systems are capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information.

(d) Agencies may accept electronic signatures and records in connection with Government contracts.

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## Subpart 4.6—Contract Reporting

### 4.600 Scope of subpart.

This subpart prescribes uniform reporting requirements for the Federal Procurement Data System (FPDS).

#### 4.601 Definitions.

As used in this subpart—

“*Contract action*” means any oral or written action that results in the purchase, rent, or lease of supplies or equipment, services, or construction using appropriated dollars over the micro-purchase threshold, or modifications to these actions regardless of dollar value. Contract action does not include grants, cooperative agreements, other transactions, real property leases, requisitions from Federal stock, training authorizations, or other non-FAR based transactions.

“*Contract action report (CAR)*” means contract action data required to be entered into the Federal Procurement Data System (FPDS).

“*Definitive contract*” means any contract that must be reported to FPDS other than an indefinite delivery vehicle. This definition is only for FPDS, and is not intended to apply to [Part 16](#).

“*Entitlement program*” means a Federal program that guarantees a certain level of benefits to persons or other entities who meet requirements set by law, such as Social Security, farm price supports, or unemployment benefits.

“*Generic DUNS number*” means a DUNS number assigned to a category of vendors not specific to any individual or entity.

“*Indefinite delivery vehicle (IDV)*” means an indefinite delivery contract or agreement that has one or more of the following clauses:

- (1) [52.216-18](#), Ordering.
- (2) [52.216-19](#), Order Limitations.
- (3) [52.216-20](#), Definite Quantity.
- (4) [52.216-21](#), Requirements.
- (5) [52.216-22](#), Indefinite Quantity.
- (6) Any other clause allowing ordering.

#### 4.602 General.

(a) The FPDS provides a comprehensive web-based tool for agencies to report contract actions. The resulting data provides—

(1) A basis for recurring and special reports to the President, the Congress, the Government Accountability Office, Federal executive agencies, and the general public;

(2) A means of measuring and assessing the effect of Federal contracting on the Nation's economy and the extent to which small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, women-owned small business concerns, and AbilityOne nonprofit

agencies operating under [41 U.S.C. chapter 85](#), Committee for Purchase from People Who Are Blind or Severely Disabled, are sharing in Federal contracts;

(3) A means of measuring and assessing the effect of Federal contracting for promoting sustainable technologies, materials, products, and high-performance sustainable buildings. This is accomplished by collecting and reporting agency data on sustainable acquisition, including types of products purchased, the purchase costs, and the exceptions used for other than sustainable acquisition; and

(4) A means of measuring and assessing the effect of other policy and management initiatives (e.g., performance based acquisitions and competition).

(b) FPDS does not provide reports for certain acquisition information used in the award of a contract action (e.g., sub-contracting data, funding data, or accounting data).

(c) The FPDS Web site, <https://www.fpds.gov>, provides instructions for submitting data. It also provides—

- (1) A complete list of departments, agencies, and other entities that submit data to the FPDS;
- (2) Technical and end-user guidance;
- (3) A computer-based tutorial; and
- (4) Information concerning reports not generated in FPDS.

#### 4.603 Policy.

(a) In accordance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), all unclassified Federal award data must be publicly accessible.

(b) Executive agencies shall use FPDS to maintain publicly available information about all unclassified contract actions exceeding the micro-purchase threshold, and any modifications to those actions that change previously reported contract action report data, regardless of dollar value.

(c) Agencies awarding assisted acquisitions or direct acquisitions must report these actions and identify the Program/Funding Agency and Office Codes from the applicable agency codes maintained by each agency at FPDS. These codes represent the agency and office that has provided the predominant amount of funding for the contract action. For assisted acquisitions, the requesting agency will receive socioeconomic credit for meeting agency small business goals, where applicable. Requesting agencies shall provide the appropriate agency/bureau component code as part of the written interagency agreement between the requesting and servicing agencies (see [17.502-1\(b\)\(1\)](#)).

(d) Agencies awarding contract actions with a mix of appropriated and non-appropriated funding shall only report the full appropriated portion of the contract action in FPDS.

#### 4.604 Responsibilities.

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

(b)(1) The responsibility for the completion and accuracy of the individual contract action report (CAR) resides with the

contracting officer who awarded the contract action. CARs in a draft or error status in FPDS are not considered complete.

(2) The CAR must be confirmed for accuracy by the contracting officer prior to release of the contract award. The CAR must then be completed in FPDS within three business days after contract award.

(3) For any action awarded in accordance with FAR [6.302-2](#) or pursuant to any of the authorities listed at FAR subpart [18.2](#), the CAR must be completed in FPDS within 30 days after contract award.

(4) When the contracting office receives written notification that a contractor has changed its size status in accordance with the clause at [52.219-28](#), Post-Award Small Business Program Representation, the contracting officer must submit a modification contract action report to ensure that the updated size status is entered in FPDS.

(c) The chief acquisition officer of each agency required to report its contract actions must submit to the General Services Administration (GSA), in accordance with FPDS guidance, within 120 days after the end of each fiscal year, an annual certification of whether, and to what degree, agency CAR data for the preceding fiscal year is complete and accurate.

#### 4.605 Procedures.

(a) *Procurement Instrument Identifier (PIID)*. Agencies shall have in place a process that ensures that each PIID reported to FPDS is unique Governmentwide, for all solicitations, contracts, blanket purchase agreements, basic agreements, basic ordering agreements, or orders in accordance with [4.1601](#), and will remain so for at least 20 years from the date of contract award. Other pertinent PIID instructions for FPDS reporting can be found at <https://www.fpds.gov>.

(b) *Data Universal Numbering System*. The contracting officer must identify and report a Data Universal Numbering System (DUNS) number (Contractor Identification Number) for the successful offeror on a contract action. The DUNS number reported must identify the successful offeror's name and address as stated in the offer and resultant contract, and as registered in the System for Award Management database in accordance with the provision at [52.204-7](#), System for Award Management. The contracting officer must ask the offeror to provide its DUNS number by using either the provision at [52.204-6](#), Data Universal Numbering System Number, the provision at [52.204-7](#), System for Award Management, or the provision at [52.212-1](#), Instructions to Offerors—Commercial Items.

(c) *Generic DUNS number*. (1) The use of a generic DUNS number should be limited, and only used in the situations described in paragraph (c)(2) of this section. Use of a generic DUNS number does not supersede the requirements of either provisions [52.204-6](#) or [52.204-7](#) (if present in the solicitation) for the contractor to have a DUNS number assigned.

(2) Authorized generic DUNS numbers, maintained by the Integrated Acquisition Environment (IAE) program office (<https://www.acquisition.gov>), may be used to report contracts in lieu of the contractor's actual DUNS number only for—

(i) Contract actions valued at or below \$25,000 that are awarded to a contractor that is—

(A) A student;

(B) A dependent of either a veteran, foreign service officer, or military member assigned outside the United States and its outlying areas (as defined in [2.101](#)); or

(C) Located outside the United States and its outlying areas for work to be performed outside the United States and its outlying areas and the contractor does not otherwise have a DUNS number;

(ii) Contracts valued above \$25,000 awarded to individuals located outside the United States and its outlying areas for work to be performed outside the United States and its outlying areas; or

(iii) Contracts when specific public identification of the contracted party could endanger the mission, contractor, or recipients of the acquired goods or services. The contracting officer must include a written determination in the contract file of a decision applicable to authority under this paragraph (c)(2)(iii).

(d) *American Recovery and Reinvestment Act actions*. The contracting officer, when entering data in FPDS, shall use the instructions at <https://www.fpds.gov> to identify any action funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

#### 4.606 Reporting Data.

(a) *Actions required to be reported to FPDS*. (1) As a minimum, agencies must report the following contract actions over the micro-purchase threshold, regardless of solicitation process used, and agencies must report any modification to these contract actions that change previously reported contract action data, regardless of dollar value:

(i) Definitive contracts, including purchase orders and imprest fund buys over the micro-purchase threshold awarded by a contracting officer.

(ii) Indefinite delivery vehicle (identified as an “IDV” in FPDS). Examples of IDVs include the following:

(A) Task and Delivery Order Contracts (see [Subpart 16.5](#)), including—

(1) Government-wide acquisition contracts.

(2) Multi-agency contracts.

(B) GSA Federal supply schedules.

(C) Blanket Purchase Agreements (see [13.303](#)).

(D) Basic Ordering Agreements (see [16.703](#)).

(E) Any other agreement or contract against which individual orders or purchases may be placed.

- (2) Bills, invoices, vouchers, and supporting documents.
- (3) Record of payments or receipts.
- (4) Other pertinent documents.

#### 4.804 Closeout of contract files.

##### 4.804-1 Closeout by the office administering the contract.

(a) Except as provided in paragraph (c) of this section, time standards for closing out contract files are as follows:

(1) Files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulations.

(2) Files for firm-fixed-price contracts, other than those using simplified acquisition procedures, should be closed within 6 months after the date on which the contracting officer receives evidence of physical completion.

(3) Files for contracts requiring settlement of indirect cost rates should be closed within 36 months of the month in which the contracting officer receives evidence of physical completion.

(4) Files for all other contracts should be closed within 20 months of the month in which the contracting officer receives evidence of physical completion.

(b) When closing out the contract files at [4.804-1\(a\)\(2\)](#), (3), and (4), the contracting officer shall use the closeout procedures at [4.804-5](#). However, these closeout actions may be modified to reflect the extent of administration that has been performed. Quick closeout procedures (see [42.708](#)) should be used, when appropriate, to reduce administrative costs and to enable deobligation of excess funds.

(c) A contract file shall not be closed if—

- (1) The contract is in litigation or under appeal; or
- (2) In the case of a termination, all termination actions have not been completed.

##### 4.804-2 Closeout of the contracting office files if another office administers the contract.

(a) Contract files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulation.

(b) All other contract files shall be closed as soon as practicable after the contracting officer receives a contract completion statement from the contract administration office. The contracting officer shall ensure that all contractual actions required have been completed and shall prepare a statement to that effect. This statement is authority to close the contract file and shall be made a part of the official contract file.

##### 4.804-3 Closeout of paying office contract files.

The paying office shall close the contract file upon issuance of the final payment voucher.

##### 4.804-4 Physically completed contracts.

(a) Except as provided in paragraph (b) of this section, a contract is considered to be physically completed when—

(1)(i) The contractor has completed the required deliveries and the Government has inspected and accepted the supplies;

(ii) The contractor has performed all services and the Government has accepted these services; and

(iii) All option provisions, if any, have expired; or

(2) The Government has given the contractor a notice of complete contract termination.

(b) Rental, use, and storage agreements are considered to be physically completed when—

(1) The Government has given the contractor a notice of complete contract termination; or

(2) The contract period has expired.

##### 4.804-5 Procedures for closing out contract files.

(a) The contract administration office is responsible for initiating (automated or manual) administrative closeout of the contract after receiving evidence of its physical completion. At the outset of this process, the contract administration office must review the contract funds status and notify the contracting office of any excess funds the contract administration office might deobligate. When complete, the administrative closeout procedures must ensure that—

(1) Disposition of classified material is completed;

(2) *Final patent report is cleared.* If a final patent report is required, the contracting officer may proceed with contract closeout in accordance with the following procedures, or as otherwise prescribed by agency procedures:

(i) Final patent reports should be cleared within 60 days of receipt.

(ii) If the final patent report is not received, the contracting officer shall notify the contractor of the contractor's obligations and the Government's rights under the applicable patent rights clause, in accordance with [27.303](#). If the contractor fails to respond to this notification, the contracting officer may proceed with contract closeout upon consultation with the agency legal counsel responsible for patent matters regarding the contractor's failure to respond.

(3) Final royalty report is cleared;

(4) There is no outstanding value engineering change proposal;

(5) Plant clearance report is received;

(6) Property clearance is received;

(7) All interim or disallowed costs are settled;

(8) Price revision is completed;

(9) Subcontracts are settled by the prime contractor;

- (10) Prior year indirect cost rates are settled;
- (11) Termination docket is completed;
- (12) Contract audit is completed;
- (13) Contractor’s closing statement is completed;
- (14) Contractor’s final invoice has been submitted; and
- (15) Contract funds review is completed and excess funds deobligated.

(b) When the actions in paragraph (a) of this subsection have been verified, the contracting officer administering the contract must ensure that a contract completion statement, containing the following information, is prepared:

- (1) Contract administration office name and address (if different from the contracting office).
- (2) Contracting office name and address.
- (3) Contract number.
- (4) Last modification number.
- (5) Last call or order number.
- (6) Contractor name and address.
- (7) Dollar amount of excess funds, if any.
- (8) Voucher number and date, if final payment has been made.

(9) Invoice number and date, if the final approved invoice has been forwarded to a disbursing office of another agency or activity and the status of the payment is unknown.

- (10) A statement that all required contract administration actions have been fully and satisfactorily accomplished.
- (11) Name and signature of the contracting officer.
- (12) Date.

(c) When the statement is completed, the contracting officer must ensure that—

- (1) The signed original is placed in the contracting office contract file (or forwarded to the contracting office for placement in the files if the contract administration office is different from the contracting office); and
- (2) A signed copy is placed in the appropriate contract administration file if administration is performed by a contract administration office.

**4.805 Storage, handling, and disposal of contract files.**

(a) Agencies must prescribe procedures for the handling, storing, and disposing of contract files. These procedures must take into account documents held in all types of media, including microfilm and various electronic media. Agencies may change the original medium to facilitate storage as long as the requirements of [Part 4](#), law, and other regulations are satisfied. The process used to create and store records must record and reproduce the original document, including signatures and other written and graphic images completely, accurately, and clearly. Data transfer, storage, and retrieval procedures must protect the original data from alteration. Unless law or other regulations require signed originals to be kept, they may be destroyed after the responsible agency official verifies that record copies on alternate media and copies

reproduced from the record copy are accurate, complete, and clear representations of the originals. Agency procedures for contract file disposal must include provisions that the documents specified in paragraph (b) of this section may not be destroyed before the times indicated, and may be retained longer if the responsible agency official determines that the files have future value to the Government. When original documents have been converted to alternate media for storage, the requirements in paragraph (b) of this section also apply to the record copies in the alternate media.

(b) If administrative records are mixed with program records and cannot be economically segregated, the entire file should be kept for the period of time approved for the program records. Similarly, if documents described in the following table are part of a subject or case file that documents activities that are not described in the table, they should be treated in the same manner as the files of which they are a part. The retention periods for acquisitions at or below the simplified acquisition threshold also apply to acquisitions conducted prior to July 3, 1995, that used small purchase procedures. The retention periods for acquisitions above the simplified acquisition threshold also apply to acquisitions conducted prior to July 3, 1995, that used other than small purchase procedures.

Document	Retention Period
(1) Records pertaining to Contract Disputes statute actions.	6 years and 3 months after final action or decision for files created prior to October 1, 1979. 1 year after final action or decision for files created on or after October 1, 1979.



## 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 System for Award Management (SAM) 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 SAM accessed via <https://www.acquisition.gov> as a part of required registration (see FAR [4.1102](#)).

(b)(1) Prospective contractors shall update the representations and certifications submitted to SAM 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 SAM.

(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 SAM 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 SAM as directed by the clause, if their size status has changed since contract award.

(c) Data in SAM is archived and is electronically retrievable. Therefore, when a prospective contractor has completed representations and certifications electronically via SAM, the contracting officer must reference the date of SAM 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 SAM 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 provision at [52.204-7](#), System for

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

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

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

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

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

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

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

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

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

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

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

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

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

(v) [52.225-4](#), Buy American—Free Trade Agreements—Israeli Trade Act Certificate (Basic, Alternates I, II, and III).

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

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

(y) [52.225-25](#), Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications.

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

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

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

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**5.000 Scope of part.**

This part prescribes policies and procedures for publicizing contract opportunities and award information.

**5.001 Definition.**

“Contract action,” as used in this part, means an action resulting in a contract, as defined in [Subpart 2.1](#), including actions for additional supplies or services outside the existing contract scope, but not including actions that are within the scope and under the terms of the existing contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

**5.002 Policy.**

Contracting officers must publicize contract actions in order to—

- (a) Increase competition;
- (b) Broaden industry participation in meeting Government requirements; and
- (c) Assist small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns in obtaining contracts and subcontracts.

**5.003 Governmentwide point of entry.**

For any requirement in the FAR to publish a notice, the contracting officer must transmit the notices to the GPE.

**Subpart 5.1—Dissemination of Information****5.101 Methods of disseminating information.**

(a) As required by the Small Business Act ([15 U.S.C. 637\(e\)](#)) and the Office of Federal Procurement Policy Act ([41 U.S.C. 1708](#)), contracting officers must disseminate information on proposed contract actions as follows:

- (1) For proposed contract actions expected to exceed \$25,000, by synopsisizing in the GPE (see [5.201](#)).
- (2) For proposed contract actions expected to exceed \$15,000, but not expected to exceed \$25,000, by displaying in a public place, or by any appropriate electronic means, an unclassified notice of the solicitation or a copy of the solicitation satisfying the requirements of [5.207\(c\)](#). The notice must include a statement that all responsible sources may submit a response which, if timely received, must be considered by the agency. The information must be posted not later than the date the solicitation is issued, and must remain posted for at least 10 days or until after quotations have been opened, whichever is later.

(i) If solicitations are posted instead of a notice, the contracting officer may employ various methods of satisfying the requirements of [5.207\(c\)](#). For example, the contracting

officer may meet the requirements of [5.207\(c\)](#) by stamping the solicitation, by a cover sheet to the solicitation, or by placing a general statement in the display room.

(ii) The contracting officer need not comply with the display requirements of this section when the exemptions at [5.202\(a\)\(1\)](#), (a)(4) through (a)(9), or (a)(11) apply, when oral solicitations are used, or when providing access to a notice of proposed contract action and solicitation through the GPE and the notice permits the public to respond to the solicitation electronically.

(iii) Contracting officers may use electronic posting of requirements in a place accessible by the general public at the Government installation to satisfy the public display requirement. Contracting offices using electronic systems for public posting that are not accessible outside the installation must periodically publicize the methods for accessing the information.

(b) In addition, one or more of the following methods may be used:

- (1) Preparing periodic handouts listing proposed contracts, and displaying them as in [5.101\(a\)\(2\)](#).
- (2) Assisting local trade associations in disseminating information to their members.
- (3) Making brief announcements of proposed contracts to newspapers, trade journals, magazines, or other mass communication media for publication without cost to the Government.

(4) Placing paid advertisements in newspapers or other communications media, subject to the following limitations:

(i) Contracting officers shall place paid advertisements of proposed contracts only when it is anticipated that effective competition cannot be obtained otherwise (see [5.205\(d\)](#)).

(ii) Contracting officers shall not place advertisements of proposed contracts in a newspaper published and printed in the District of Columbia unless the supplies or services will be furnished, or the labor performed, in the District of Columbia or adjoining counties in Maryland or Virginia ([44 U.S.C. 3701](#)).

(iii) Advertisements published in newspapers must be under proper written authority in accordance with [44 U.S.C. 3702](#) (see [5.502\(a\)](#)).

**5.102 Availability of solicitations.**

(a)(1) Except as provided in paragraph (a)(5) of this section, the contracting officer must make available through the GPE solicitations synopsisized through the GPE, including specifications, technical data, and other pertinent information determined necessary by the contracting officer. Transmissions to the GPE must be in accordance with the interface description available via the Internet at <http://www.fedbizopps.gov>.

(2) The contracting officer is encouraged, when practicable and cost-effective, to make accessible through the GPE additional information related to a solicitation.

(3) The contracting officer must ensure that solicitations transmitted using electronic commerce are forwarded to the GPE to satisfy the requirements of paragraph (a)(1) of this section.

(4) When an agency determines that a solicitation contains information that requires additional controls to monitor access and distribution (*e.g.*, technical data, specifications, maps, building designs, schedules, etc.), the information shall be made available through the enhanced controls of the GPE, unless an exception in paragraph (a)(5) of this section applies. The GPE meets the synopsis and advertising requirements of this part.

(5) The contracting officer need not make a solicitation available through the GPE as required in paragraph (a)(4) of this section, when—

(i) Disclosure would compromise the national security (*e.g.*, would result in disclosure of classified information, or information subject to export controls) or create other security risks. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception;

(ii) The nature of the file (*e.g.*, size, format) does not make it cost-effective or practicable for contracting officers to provide access to the solicitation through the GPE; or

(iii) The agency's senior procurement executive makes a written determination that access through the GPE is not in the Government's interest.

(6) When an acquisition contains brand name specifications, the contracting officer shall include with the solicitation the justification or documentation required by [6.302-1\(c\)](#), [13.106-1\(b\)](#), or [13.501](#), redacted as necessary (see [6.305](#)).

(b) When the contracting officer does not make a solicitation available through the GPE pursuant to paragraph (a)(5) of this section, the contracting officer—

(1) Should employ other electronic means (*e.g.*, CD-ROM or electronic mail) whenever practicable and cost-effective. When solicitations are provided electronically on physical media (*e.g.*, disks) or in paper form, the contracting officer must—

(i) Maintain a reasonable number of copies of solicitations, including specifications and other pertinent information determined necessary by the contracting officer (upon request, potential sources not initially solicited should be mailed or provided copies of solicitations, if available);

(ii) Provide copies on a “first-come-first-served” basis, for pickup at the contracting office, to publishers, trade associations, information services, and other members of the public having a legitimate interest (for construction, see [36.211](#)); and

(iii) Retain a copy of the solicitation and other documents for review by and duplication for those requesting copies after the initial number of copies is exhausted; and

(2) May require payment of a fee, not exceeding the actual cost of duplication, for a copy of the solicitation document.

(c) In addition to the methods of disseminating proposed contract information in [5.101\(a\)](#) and (b), provide, upon request to small business concerns, as required by [15 U.S.C. 637\(b\)](#)—

(1) A copy of the solicitation and specifications. In the case of solicitations disseminated by electronic data interchange, solicitations may be furnished directly to the electronic address of the small business concern;

(2) The name and telephone number of an employee of the contracting office who will answer questions on the solicitation; and

(3) Adequate citations to each applicable major Federal law or agency rule with which small business concerns must comply in performing the contract.

(d) When electronic commerce (see [Subpart 4.5](#)) is used in the solicitation process, availability of the solicitation may be limited to the electronic medium.

(e) Provide copies of a solicitation issued under other than full and open competition to firms requesting copies that were not initially solicited, but only after advising the requester of the determination to limit the solicitation to a specified firm or firms as authorized under [Part 6](#).

(f) This section [5.102](#) applies to classified contracts to the extent consistent with agency security requirements (see [5.202\(a\)\(1\)](#)).

## Subpart 5.2—Synopsis of Proposed Contract Actions

### 5.201 General.

(a) As required by the Small Business Act ([15 U.S.C. 637\(e\)](#)) and the Office of Federal Procurement Policy Act ([41 U.S.C. 1708](#)), agencies must make notices of proposed contract actions available as specified in paragraph (b) of this section.

(b)(1) For acquisitions of supplies and services, other than those covered by the exceptions in [5.202](#) and the special situations in [5.205](#), the contracting officer must transmit a notice to the GPE, for each proposed—

(i) Contract action meeting the threshold in [5.101\(a\)\(1\)](#);

(ii) Modification to an existing contract for additional supplies or services that meets the threshold in [5.101\(a\)\(1\)](#); or

(iii) Contract action in any amount when advantageous to the Government.

(2) When transmitting notices using electronic commerce, contracting officers must ensure the notice is forwarded to the GPE.

(c) The primary purposes of the notice are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities.

(d) The GPE may be accessed via the Internet at <http://www.fedbizopps.gov>.

### 5.202 Exceptions.

The contracting officer need not submit the notice required by [5.201](#) when—

(a) The contracting officer determines that—

(1) The synopsis cannot be worded to preclude disclosure of an agency's needs and such disclosure would compromise the national security (*e.g.*, would result in disclosure of classified information). The fact that a proposed solicitation or contract action contains classified information, or that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception to synopsis;

(2) The proposed contract action is made under the conditions described in [6.302-2](#) (or, for purchases conducted using simplified acquisition procedures, if unusual and compelling urgency precludes competition to the maximum extent practicable) and the Government would be seriously injured if the agency complies with the time periods specified in [5.203](#);

(3) The proposed contract action is one for which either the written direction of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government, or the terms of an international

agreement or treaty between the United States and a foreign government, or international organizations, has the effect of requiring that the acquisition shall be from specified sources;

(4) The proposed contract action is expressly authorized or required by a statute to be made through another Government agency, including acquisitions from the Small Business Administration (SBA) using the authority of section 8(a) of the Small Business Act (but see [5.205\(f\)](#)), or from a specific source such as a workshop for the blind under the rules of the Committee for Purchase from People Who Are Blind or Severely Disabled;

(5) The proposed contract action is for utility services other than telecommunications services and only one source is available;

(6) The proposed contract action is an order placed under subpart [16.5](#). When the order contains brand-name specifications, see especially [16.505\(a\)\(4\)](#);

(7) The proposed contract action results from acceptance of a proposal under the Small Business Innovation Development Act of 1982 (Pub. L. 97-219);

(8) The proposed contract action results from the acceptance of an unsolicited research proposal that demonstrates a unique and innovative concept (see [2.101](#)) and publication of any notice complying with [5.207](#) would improperly disclose the originality of thought or innovativeness of the proposed research, or would disclose proprietary information associated with the proposal. This exception does not apply if the proposed contract action results from an unsolicited research proposal and acceptance is based solely upon the unique capability of the source to perform the particular research services proposed (see [6.302-1\(a\)\(2\)\(i\)](#));

(9) The proposed contract action is made for perishable subsistence supplies, and advance notice is not appropriate or reasonable;

(10) The proposed contract action is made under conditions described in [6.302-3](#), or [6.302-5](#) with regard to brand name commercial items for authorized resale, or [6.302-7](#), and advance notice is not appropriate or reasonable;

(11) The proposed contract action is made under the terms of an existing contract that was previously synopsisized in sufficient detail to comply with the requirements of [5.207](#) with respect to the current proposed contract action;

(12) The proposed contract action is by a Defense agency and the proposed contract action will be made and performed outside the United States and its outlying areas, and only local sources will be solicited. This exception does not apply to proposed contract actions covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (see [Subpart 25.4](#));

(13) The proposed contract action—

(i) Is for an amount not expected to exceed the simplified acquisition threshold;

(ii) Will be made through a means that provides access to the notice of proposed contract action through the GPE; and

(iii) Permits the public to respond to the solicitation electronically; or

(14) The proposed contract action is made under conditions described in [6.302-3](#) with respect to the services of an expert to support the Federal Government in any current or anticipated litigation or dispute.

(b) The head of the agency determines in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that advance notice is not appropriate or reasonable.

### 5.203 Publicizing and response time.

Whenever agencies are required to publicize notice of proposed contract actions under [5.201](#), they must proceed as follows:

(a) An agency must transmit a notice of proposed contract action to the GPE (see [5.201](#)). All publicizing and response times are calculated based on the date of publication. The publication date is the date the notice appears on the GPE. The notice must be published at least 15 days before issuance of a solicitation, or a proposed contract action the Government intends to solicit and negotiate with only one source under the authority of [6.302](#), except that, for acquisitions of commercial items, the contracting officer may—

(1) Establish a shorter period for issuance of the solicitation; or

(2) Use the combined synopsis and solicitation procedure (see [12.603](#)).

(b) The contracting officer must establish a solicitation response time that will afford potential offerors a reasonable opportunity to respond to each proposed contract action, (including actions where the notice of proposed contract action and solicitation information is accessible through the GPE), in an amount estimated to be greater than \$25,000, but not greater than the simplified acquisition threshold; or each contract action for the acquisition of commercial items in an amount estimated to be greater than \$25,000. The contracting officer should consider the circumstances of the individual acquisition, such as the complexity, commerciality, availability, and urgency, when establishing the solicitation response time.

(c) Except for the acquisition of commercial items (see [5.203\(b\)](#)), agencies shall allow at least a 30-day response time for receipt of bids or proposals from the date of issuance of a solicitation, if the proposed contract action is expected to exceed the simplified acquisition threshold.

(d) Agencies shall allow at least a 30 day response time from the date of publication of a proper notice of intent to contract for architect-engineer services or before issuance of an order under a basic ordering agreement or similar arrangement if the proposed contract action is expected to exceed the simplified acquisition threshold.

(e) Agencies must allow at least a 45-day response time for receipt of bids or proposals from the date of publication of the notice required in [5.201](#) for proposed contract actions categorized as research and development if the proposed contract action is expected to exceed the simplified acquisition threshold.

(f) Nothing in this subpart prohibits officers or employees of agencies from responding to requests for information.

(g) Contracting officers may, unless they have evidence to the contrary, presume the notice was published one day after transmission to the GPE. This presumption does not negate the mandatory waiting or response times specified in paragraphs (a) through (d) of this section. Upon learning that a particular notice has not in fact been published within the presumed timeframes, contracting officers should consider whether the date for receipt of offers can be extended or whether circumstances have become sufficiently compelling to justify proceeding with the proposed contract action under the authority of [5.202\(a\)\(2\)](#).

(h) In addition to other requirements set forth in this section, for acquisitions covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (see [Subpart 25.4](#)), the period of time between publication of the synopsis notice and receipt of offers must be no less than 40 days. However, if the acquisition falls within a general category identified in an annual forecast, the availability of which is published, the contracting officer may reduce this time period to as few as 10 days.

### 5.204 Presolicitation notices.

Contracting officers must provide access to presolicitation notices through the GPE (see [15.201](#) and [36.213-2](#)). The contracting officer must synopsise a proposed contract action before issuing any resulting solicitation (see [5.201](#) and [5.203](#)).

### 5.205 Special situations.

(a) *Research and development (R&D) advance notices.* Contracting officers may transmit to the GPE advance notices of their interest in potential R&D programs whenever market research does not produce a sufficient number of concerns to obtain adequate competition. Advance notices must not be used where security considerations prohibit such publication. Advance notices will enable potential sources to learn of R&D programs and provide these sources with an opportunity to submit information which will permit evaluation of their capabilities. Contracting officers must consider potential sources which respond to advance notices for a subsequent solicitation. Advanced notices must be entitled “Research and Development Sources Sought” and include the name and telephone number of the contracting officer or other contracting activity official from whom technical details of the project can be obtained. This will enable sources to submit information for evaluation of their R&D capabilities. Contracting officers

must synopsise (see [5.201](#)) all subsequent solicitations for R&D contracts, including those resulting from a previously synopsized advance notice, unless one of the exceptions in [5.202](#) applies.

(b) *Federally Funded Research and Development Centers.* Before establishing a Federally Funded Research and Development Center (FFRDC) (see [Part 35](#)) or before changing its basic purpose and mission, the sponsor must transmit at least three notices over a 90-day period to the GPE and the *Federal Register*, indicating the agency's intention to sponsor an FFRDC or change the basic purpose and mission of an FFRDC. The notice must indicate the scope and nature of the effort to be performed and request comments. Notice is not required where the action is required by law.

(c) *Special notices.* Contracting officers may transmit to the GPE special notices of procurement matters such as business fairs, long-range procurement estimates, prebid or pre-proposal conferences, meetings, and the availability of draft solicitations or draft specifications for review.

(d) *Architect-engineering services.* Contracting officers must publish notices of intent to contract for architect-engineering services as follows:

(1) Except when exempted by [5.202](#), contracting officers must transmit to the GPE a synopsis of each proposed contract action for which the total fee (including phases and options) is expected to exceed \$25,000.

(2) When the total fee is expected to exceed \$15,000 but not exceed \$25,000, the contracting officer must comply with [5.101\(a\)\(2\)](#). When the proposed contract action is not required to be synopsized under paragraph (d)(1) of this section, the contracting officer must display a notice of the solicitation or a copy of the solicitation in a public place at the contracting office. Other optional publicizing methods are authorized in accordance with [5.101\(b\)](#).

(e) *Public-private competitions under OMB Circular A-76.* (1) The contracting officer shall make a formal public announcement for each streamlined or standard competition. The public announcement shall include, at a minimum, the agency, agency component, location, type of competition (streamlined or standard), activity being competed, incumbent service providers, number of Government personnel performing the activity, name of the Competitive Sourcing Official, name of the contracting officer, name of the Agency Tender Official, and projected end date of the competition.

(2) The contracting officer shall announce the end of the streamlined or standard competition by making a formal public announcement of the performance decision. (See OMB Circular A-76.)

(f) *Section 8(a) competitive acquisition.* When a national buy requirement is being considered for competitive acquisition limited to eligible 8(a) concerns under [Subpart 19.8](#), the contracting officer must transmit a synopsis of the proposed contract action to the GPE. The synopsis may be transmitted

to the GPE concurrent with submission of the agency offering (see [19.804-2](#)) to the Small Business Administration (SBA). The synopsis should also include information—

(1) Advising that the acquisition is being offered for competition limited to eligible 8(a) concerns;

(2) Specifying the North American Industry Classification System (NAICS) code;

(3) Advising that eligibility to participate may be restricted to firms in either the developmental stage or the developmental and transitional stages; and

(4) Encouraging interested 8(a) firms to request a copy of the solicitation as expeditiously as possible since the solicitation will be issued without further notice upon SBA acceptance of the requirement for the section 8(a) program.

#### 5.206 Notices of subcontracting opportunities.

(a) The following entities may transmit a notice to the GPE to seek competition for subcontracts, to increase participation by qualified HUBZone small business, small, small disadvantaged, women-owned small business, veteran-owned small business and service-disabled veteran-owned small business concerns, and to meet established subcontracting plan goals:

(1) A contractor awarded a contract exceeding \$150,000 that is likely to result in the award of any subcontracts.

(2) A subcontractor or supplier, at any tier, under a contract exceeding \$150,000, that has a subcontracting opportunity exceeding \$15,000.

(b) The notices must describe—

(1) The business opportunity;

(2) Any prequalification requirements; and

(3) Where to obtain technical data needed to respond to the requirement.

#### 5.207 Preparation and transmittal of synopses.

(a) *Content.* Each synopsis transmitted to the GPE must address the following data elements, as applicable:

(1) Action Code.

(2) Date.

(3) Year.

(4) Contracting Office ZIP Code.

(5) Classification Code.

(6) Contracting Office Address.

(7) Subject.

(8) Proposed Solicitation Number.

(9) Closing Response Date.

(10) Contact Point or Contracting Officer.

(11) Contract Award and Solicitation Number.

(12) Contract Award Dollar Amount.

(13) Contract Line Item Number.

(14) Contract Award Date.

(15) Contractor.

(16) Description.

(17) Place of Contract Performance.

(18) Set-aside Status.

(b) *Transmittal*. Transmissions to the GPE must be in accordance with the interface description available via the Internet at <http://www.fedbizopps.gov>.

(c) *General format for “Description.”* Prepare a clear and concise description of the supplies or services that is not unnecessarily restrictive of competition and will allow a prospective offeror to make an informed business judgment as to whether a copy of the solicitation should be requested including the following, as appropriate:

(1) National Stock Number (NSN) if assigned.

(2) Specification and whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and identification of the office from which additional information about the qualification requirement may be obtained (see [Subpart 9.2](#)).

(3) Manufacturer, including part number, drawing number, etc.

(4) Size, dimensions, or other form, fit or functional description.

(5) Predominant material of manufacture.

(6) Quantity, including any options for additional quantities.

(7) Unit of issue.

(8) Destination information.

(9) Delivery schedule.

(10) Duration of the contract period.

(11) Sustainable acquisition requirements (or a description of high-performance sustainable building practices required, if for design, construction, renovation, repair, or deconstruction) (see parts [23](#) or [36](#)).

(12) For a proposed contract action in an amount estimated to be greater than \$25,000 but not greater than the simplified acquisition threshold, enter—

(i) A description of the procedures to be used in awarding the contract (*e.g.*, request for oral or written quotation or solicitation); and

(ii) The anticipated award date.

(13) For Architect-Engineer projects and other projects for which the supply or service codes are insufficient, provide brief details with respect to: location, scope of services required, cost range and limitations, type of contract, estimated starting and completion dates, and any significant evaluation factors.

(14)(i) If the solicitation will include the FAR clause at [52.225-3](#), Buy American—Free Trade Agreements—Israeli Trade Act, or an equivalent agency clause, insert the following notice in the synopsis: “One or more of the items under this acquisition is subject to Free Trade Agreements.”

(ii) If the solicitation will include the FAR clause at [52.225-5](#), Trade Agreements, or an equivalent agency clause, insert the following notice in the synopsis: “One or more of the items under this acquisition is subject to the World Trade Organization Government Procurement Agreement and Free Trade Agreements.”

(iii) If the solicitation will include the FAR clause at [52.225-11](#), Buy American—Construction Materials under Trade Agreements, [52.225-23](#), Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials under Trade Agreements, or an equivalent agency clause, insert the following notice in the synopsis: “One or more of the items under this acquisition is subject to the World Trade Organization Government Procurement Agreement and Free Trade Agreements.”

(15) In the case of noncompetitive contract actions (including those that do not exceed the simplified acquisition threshold), identify the intended source and insert a statement of the reason justifying the lack of competition.

(16)(i) Except when using the sole source authority at [6.302-1](#), insert a statement that all responsible sources may submit a bid, proposal, or quotation which shall be considered by the agency.

(ii) When using the sole source authority at [6.302-1](#), insert a statement that all responsible sources may submit a capability statement, proposal, or quotation, which shall be considered by the agency.

(17) If solicitations synopsisized through the GPE will not be made available through the GPE, provide information on how to obtain the solicitation.

(18) If the solicitation will be made available to interested parties through electronic data interchange, provide any information necessary to obtain and respond to the solicitation electronically.

(19) If the technical data required to respond to the solicitation will not be furnished as part of such solicitation, identify the source in the Government, such as <http://www.fedbizopps.gov/>, from which the technical data may be obtained.

(d) *Set-asides*. When the proposed acquisition provides for a total or partial small business program set-aside, or when the proposed acquisition provides for a local area set-aside (see [Subpart 26.2](#)), the contracting officer shall identify the type of set-aside in the synopsis and in the solicitation.

(e) *Codes to be used in Synopses to identify services or supplies*. Contracting officers must use one of the classification codes identified at <http://www.fedbizopps.gov/> to identify services or supplies in synopses.

(f) *Notice of solicitation cancellation*. Contracting officers may publish notices of solicitation cancellations (or indefinite suspensions) of proposed contract actions in the GPE.



**PART 6—COMPETITION REQUIREMENTS**

*Sec.*

- 6.000 Scope of part.
- 6.001 Applicability.
- 6.002 Limitations.
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**Subpart 6.1—Full and Open Competition**

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**Subpart 6.3—Other Than Full and Open Competition**

- 6.300 Scope of subpart.
- 6.301 Policy.
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- 6.401 Sealed bidding and competitive proposals.

**Subpart 6.5—Advocates for Competition**

- 6.501 Requirement.
- 6.502 Duties and responsibilities.

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**6.000 Scope of part.**

This part prescribes policies and procedures to promote full and open competition in the acquisition process and to provide for full and open competition, full and open competition after exclusion of sources, other than full and open competition, and advocates for competition. This part does not deal with the results of competition (*e.g.*, adequate price competition), that are addressed in other parts (*e.g.*, [Part 15](#)).

**6.001 Applicability.**

This part applies to all acquisitions except—

(a) Contracts awarded using the simplified acquisition procedures of [Part 13](#) (but see [13.501](#) for requirements pertaining to sole source acquisitions of commercial items under [subpart 13.5](#));

(b) Contracts awarded using contracting procedures (other than those addressed in this part) that are expressly authorized by statute;

(c) Contract modifications, including the exercise of priced options that were evaluated as part of the initial competition (see [17.207\(f\)](#)), that are within the scope and under the terms of an existing contract;

(d) Orders placed under requirements contracts or definite-quantity contracts;

(e) Orders placed under indefinite-quantity contracts that were entered into pursuant to this part when—

(1) The contract was awarded under [subpart 6.1](#) or [6.2](#) and all responsible sources were realistically permitted to compete for the requirements contained in the order; or

(2) The contract was awarded under [subpart 6.3](#) and the required justification and approval adequately covers the requirements contained in the order; or

(f) Orders placed against task order and delivery order contracts entered into pursuant to [subpart 16.5](#).

**6.002 Limitations.**

No agency shall contract for supplies or services from another agency for the purpose of avoiding the requirements of this part.

**6.003 [Reserved]****Subpart 6.1—Full and Open Competition****6.100 Scope of subpart.**

This subpart prescribes the policy and procedures that are to be used to promote and provide for full and open competition.

**6.101 Policy.**

(a) [10 U.S.C. 2304](#) and [41 U.S.C. 3301](#) require, with certain limited exceptions (see [subpart 6.2](#) and [6.3](#)), that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts.

(b) Contracting officers shall provide for full and open competition through use of the competitive procedure(s) contained in this subpart that are best suited to the circumstances of the contract action and consistent with the need to fulfill the Government's requirements efficiently ([10 U.S.C. 2304](#) and [41 U.S.C. 3301](#)).

**6.102 Use of competitive procedures.**

The competitive procedures available for use in fulfilling the requirement for full and open competition are as follows:

(a) *Sealed bids.* (See [6.401\(a\)](#).)

(b) *Competitive proposals.* (See [6.401\(b\)](#).) If sealed bids are not appropriate under paragraph (a) of this section, contracting officers shall request competitive proposals or use the other competitive procedures under paragraph (c) or (d) of this section.

(c) *Combination of competitive procedures.* If sealed bids are not appropriate, contracting officers may use any combination of competitive procedures (*e.g.*, two-step sealed bidding).

(d) *Other competitive procedures.* (1) Selection of sources for architect-engineer contracts in accordance with the provisions of [40 U.S.C. 1102 et seq.](#) is a competitive procedure (see [subpart 36.6](#) for procedures).

(2) Competitive selection of basic and applied research and that part of development not related to the development of a specific system or hardware procurement is a competitive procedure if award results from—

(i) A broad agency announcement that is general in nature identifying areas of research interest, including criteria for selecting proposals, and soliciting the participation of all offerors capable of satisfying the Government's needs; and

(ii) A peer or scientific review.

(3) Use of multiple award schedules issued under the procedures established by the Administrator of General Services consistent with the requirement of [41 U.S.C. 152\(3\)\(A\)](#) for the multiple award schedule program of the General Services Administration is a competitive procedure.

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### Subpart 6.3—Other Than Full and Open Competition

#### 6.300 Scope of subpart.

This subpart prescribes policies and procedures, and identifies the statutory authorities, for contracting without providing for full and open competition.

#### 6.301 Policy.

(a) [41 U.S.C. 3304](#) and [10 U.S.C. 2304\(c\)](#) each authorize, under certain conditions, contracting without providing for full and open competition. The Department of Defense, Coast Guard, and National Aeronautics and Space Administration are subject to [10 U.S.C. 2304\(c\)](#). Other executive agencies are subject to [41 U.S.C. 3304](#). Contracting without providing for full and open competition or full and open competition after exclusion of sources is a violation of statute, unless permitted by one of the exceptions in [6.302](#).

(b) Each contract awarded without providing for full and open competition shall contain a reference to the specific authority under which it was so awarded. Contracting officers shall use the U.S. Code citation applicable to their agency (see [6.302](#)).

(c) Contracting without providing for full and open competition shall not be justified on the basis of—

- (1) A lack of advance planning by the requiring activity; or
- (2) Concerns related to the amount of funds available (*e.g.*, funds will expire) to the agency or activity for the acquisition of supplies or services.

(d) When not providing for full and open competition, the contracting officer shall solicit offers from as many potential sources as is practicable under the circumstances.

(e) For contracts under this subpart, the contracting officer shall use the contracting procedures prescribed in [6.102\(a\)](#) or (b), if appropriate, or any other procedures authorized by this regulation.

#### 6.302 Circumstances permitting other than full and open competition.

The following statutory authorities (including applications and limitations) permit contracting without providing for full and open competition. Requirements for justifications to support the use of these authorities are in [6.303](#).

#### 6.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(a) *Authority.*(1) Citations: [10 U.S.C. 2304\(c\)\(1\)](#) or [41 U.S.C. 3304\(a\)\(1\)](#).

(2) When the supplies or services required by the agency are available from only one responsible source, or, for DoD, NASA, and the Coast Guard, from only one or a limited number of responsible sources, and no other type of supplies

or services will satisfy agency requirements, full and open competition need not be provided for.

(i) Supplies or services may be considered to be available from only one source if the source has submitted an unsolicited research proposal that—

(A) Demonstrates a unique and innovative concept (see definition at [2.101](#)), or, demonstrates a unique capability of the source to provide the particular research services proposed;

(B) Offers a concept or services not otherwise available to the Government; and

(C) Does not resemble the substance of a pending competitive acquisition. (See [10 U.S.C. 2304\(d\)\(1\)\(A\)](#) and [41 U.S.C. 3304\(b\)\(1\)](#).)

(ii) Supplies may be deemed to be available only from the original source in the case of a follow-on contract for the continued development or production of a major system or highly specialized equipment, including major components thereof, when it is likely that award to any other source would result in—

(A) Substantial duplication of cost to the Government that is not expected to be recovered through competition; or

(B) Unacceptable delays in fulfilling the agency's requirements. (See [10 U.S.C. 2304\(d\)\(1\)\(B\)](#) or [41 U.S.C. 3304\(b\)\(2\)](#).)

(iii) For DoD, NASA, and the Coast Guard, services may be deemed to be available only from the original source in the case of follow-on contracts for the continued provision of highly specialized services when it is likely that award to any other source would result in—

(A) Substantial duplication of cost to the Government that is not expected to be recovered through competition; or

(B) Unacceptable delays in fulfilling the agency's requirements. (See [10 U.S.C. 2304\(d\)\(1\)\(B\)](#).)

(b) *Application.* This authority shall be used, if appropriate, in preference to the authority in [6.302-7](#); it shall not be used when any of the other circumstances is applicable. Use of this authority may be appropriate in situations such as the following (these examples are not intended to be all inclusive and do not constitute authority in and of themselves):

(1) When there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by—

(i) Unique supplies or services available from only one source or only one supplier with unique capabilities; or

(ii) For DoD, NASA, and the Coast Guard, unique supplies or services available from only one or a limited number of sources or from only one or a limited number of suppliers with unique capabilities.

(2) The existence of limited rights in data, patent rights, copyrights, or secret processes; the control of basic raw material; or similar circumstances, make the supplies and services

available from only one source (however, the mere existence of such rights or circumstances does not in and of itself justify the use of these authorities) (see [Part 27](#)).

(3) When acquiring utility services (see [41.101](#)), circumstances may dictate that only one supplier can furnish the service (see [41.202](#)); or when the contemplated contract is for construction of a part of a utility system and the utility company itself is the only source available to work on the system.

(4) When the agency head has determined in accordance with the agency's standardization program that only specified makes and models of technical equipment and parts will satisfy the agency's needs for additional units or replacement items, and only one source is available.

(c) *Application for brand-name descriptions.* (1) An acquisition or portion of an acquisition that uses a brand-name description or other purchase description to specify a particular brand-name, product, or feature of a product, peculiar to one manufacturer—

(i) Does not provide for full and open competition, regardless of the number of sources solicited; and

(ii) Shall be justified and approved in accordance with [6.303](#) and [6.304](#).

(A) If only a portion of the acquisition is for a brand-name product or item peculiar to one manufacturer, the justification and approval is to cover only the portion of the acquisition which is brand-name or peculiar to one manufacturer. The justification should state it is covering only the portion of the acquisition which is brand-name or peculiar to one manufacturer, and the approval level requirements will then only apply to that portion;

(B) The justification should indicate that the use of such descriptions in the acquisition or portion of an acquisition is essential to the Government's requirements, thereby precluding consideration of a product manufactured by another company; and

(C) The justification shall be posted with the solicitation (see [5.102\(a\)\(6\)](#)).

(2) Brand-name or equal descriptions, and other purchase descriptions that permit prospective contractors to offer products other than those specifically referenced by brand-name, provide for full and open competition and do not require justifications and approvals to support their use.

(d) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in [6.303](#) and [6.304](#).

(2) For contracts awarded using this authority, the notices required by [5.201](#) shall have been published and any bids, proposals, quotations, or capability statements must have been considered.

### 6.302-2 Unusual and compelling urgency.

(a) *Authority.* (1) Citations: [10 U.S.C. 2304\(c\)\(2\)](#) or [41 U.S.C. 3304\(a\)\(2\)](#).

(2) When the agency's need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for.

(b) *Application.* This authority applies in those situations where—

(1) An unusual and compelling urgency precludes full and open competition; and

(2) Delay in award of a contract would result in serious injury, financial or other, to the Government.

(c) *Limitations.* (1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in [6.303](#) and [6.304](#). These justifications may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition.

(2) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

(d) *Period of Performance.* (1) The total period of performance of a contract awarded using this authority—

(i) May not exceed the time necessary—

(A) To meet the unusual and compelling requirements of the work to be performed under the contract; and

(B) For the agency to enter into another contract for the required goods and services through the use of competitive procedures; and

(ii) May not exceed one year unless the head of the agency entering into the contract determines that exceptional circumstances apply.

(2) The requirements in paragraph (d)(1) of this section shall apply to any contract in an amount greater than the simplified acquisition threshold.

(3) The determination of exceptional circumstances is in addition to the approval of the justification in [6.304](#).

(4) The determination may be made after contract award when making the determination prior to award would unreasonably delay the acquisition.

### 6.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services.

(a) *Authority.* (1) Citations: [10 U.S.C. 2304\(c\)\(3\)](#) or [41 U.S.C. 3304\(a\)\(3\)](#).

(2) Full and open competition need not be provided for when it is necessary to award the contract to a particular source or sources in order—

(i) To maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency or to achieve industrial mobilization;

(ii) To establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center; or

(iii) To acquire the services of an expert or neutral person for any current or anticipated litigation or dispute.

(b) *Application.*(1) Use of the authority in paragraph (a)(2)(i) of this subsection may be appropriate when it is necessary to—

(i) Keep vital facilities or suppliers in business or make them available in the event of a national emergency;

(ii) Train a selected supplier in the furnishing of critical supplies or services; prevent the loss of a supplier's ability and employees' skills; or maintain active engineering, research, or development work;

(iii) Maintain properly balanced sources of supply for meeting the requirements of acquisition programs in the interest of industrial mobilization (when the quantity required is substantially larger than the quantity that must be awarded in order to meet the objectives of this authority, that portion not required to meet such objectives will be acquired by providing for full and open competition, as appropriate, under this part);

(iv) Create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in—

(A) The United States or its outlying areas; or

(B) The United States, its outlying areas, or Canada.

(v) Continue in production, contractors that are manufacturing critical items, when there would otherwise be a break in production; or

(vi) Divide current production requirements among two or more contractors to provide for an adequate industrial mobilization base.

(2) Use of the authority in paragraph (a)(2)(ii) of this subsection may be appropriate when it is necessary to—

(i) Establish or maintain an essential capability for theoretical analyses, exploratory studies, or experiments in any field of science or technology;

(ii) Establish or maintain an essential capability for engineering or developmental work calling for the practical application of investigative findings and theories of a scientific or technical nature; or

(iii) Contract for supplies or services as are necessary incident to paragraphs (b)(2)(i) or (ii) of this subsection.

(3) Use of the authority in paragraph (a)(2)(iii) of this subsection may be appropriate when it is necessary to acquire the services of either—

(i) An expert to use, in any litigation or dispute (including any reasonably foreseeable litigation or dispute) involving the Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, whether

or not the expert is expected to testify. Examples of such services include, but are not limited to:

(A) Assisting the Government in the analysis, presentation, or defense of any claim or request for adjustment to contract terms and conditions, whether asserted by a contractor or the Government, which is in litigation or dispute, or is anticipated to result in dispute or litigation before any court, administrative tribunal, or agency; or

(B) Participating in any part of an alternative dispute resolution process, including but not limited to evaluators, fact finders, or witnesses, regardless of whether the expert is expected to testify; or

(ii) A neutral person, *e.g.*, mediators or arbitrators, to facilitate the resolution of issues in an alternative dispute resolution process.

(c) *Limitations.* Contracts awarded using this authority shall be supported by the written justifications and approvals described in [6.303](#) and [6.304](#).

#### 6.302-4 International agreement.

(a) *Authority.*(1) Citations: [10 U.S.C. 2304\(c\)\(4\)](#) or [41 U.S.C. 3304\(a\)\(4\)](#).

(2) Full and open competition need not be provided for when precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government.

(b) *Application.* This authority may be used in circumstances such as—

(1) When a contemplated acquisition is to be reimbursed by a foreign country that requires that the product be obtained from a particular firm as specified in official written direction such as a Letter of Offer and Acceptance; or

(2) When a contemplated acquisition is for services to be performed, or supplies to be used, in the sovereign territory of another country and the terms of a treaty or agreement specify or limit the sources to be solicited.

(c) *Limitations.* Except for DoD, NASA, and the Coast Guard, contracts awarded using this authority shall be supported by written justifications and approvals described in [6.303](#) and [6.304](#).

#### 6.302-5 Authorized or required by statute.

(a) *Authority.*(1) Citations: [10 U.S.C. 2304\(c\)\(5\)](#) or [41 U.S.C. 3304\(a\)\(5\)](#).

(2) Full and open competition need not be provided for when—

(i) A statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source; or

(ii) The agency's need is for a brand name commercial item for authorized resale.

(b) *Application.* This authority may be used when statutes, such as the following, expressly authorize or require that acquisition be made from a specified source or through another agency:

(1) Federal Prison Industries (UNICOR)—[18 U.S.C. 4124](#) (see [subpart 8.6](#)).

(2) Qualified nonprofit agencies for the blind or other severely disabled—[41 U.S.C. chapter 85](#), Committee for Purchase From People Who Are Blind or Severely Disabled (see [subpart 8.7](#)).

(3) Government Printing and Binding—[44 U.S.C. 501-504](#), 1121 (see [subpart 8.8](#)).

(4) Sole source awards under the 8(a) Program (15 U.S.C. 637), but see [6.303](#) for requirements for justification and approval of sole-source 8(a) awards over \$20 million. (See [subpart 19.8](#)).

(5) Sole source awards under the HUBZone Act of 1997—[15 U.S.C. 657a](#) (see [19.1306](#)).

(6) Sole source awards under the Veterans Benefits Act of 2003 ([15 U.S.C. 657f](#)).

(c) *Limitations.*(1) This authority shall not be used when a provision of law requires an agency to award a new contract to a specified non-Federal Government entity unless the provision of law specifically—

(i) Identifies the entity involved;

(ii) Refers to [10 U.S.C. 2304\(k\)](#) for armed services acquisitions or [41 U.S.C. 3105](#) for civilian agency acquisitions; and

(iii) States that award to that entity shall be made in contravention of the merit-based selection procedures in [10 U.S.C. 2304\(k\)](#) or [41 U.S.C. 3105](#), as appropriate. However, this limitation does not apply—

(A) When the work provided for in the contract is a continuation of the work performed by the specified entity under a preceding contract; or

(B) To any contract requiring the National Academy of Sciences to investigate, examine, or experiment upon any subject of science or art of significance to an executive agency and to report on those matters to the Congress or any agency of the Federal Government.

(2) Contracts awarded using this authority shall be supported by the written justifications and approvals described in [6.303](#) and [6.304](#), except for—

(i) Contracts awarded under (a)(2)(ii) or (b)(2) of this subsection;

(ii) Contracts awarded under (a)(2)(i) of this subsection when the statute expressly requires that the procurement be made from a specified source. (Justification and approval requirements apply when the statute authorizes, but does not require, that the procurement be made from a specified source); or

(iii) Contracts less than or equal to \$20 million awarded under (b)(4) of this subsection.

(3) The authority in (a)(2)(ii) of this subsection may be used only for purchases of brand-name commercial items for resale through commissaries or other similar facilities. Ordinarily, these purchases will involve articles desired or preferred by customers of the selling activities (but see [6.301\(d\)](#)).

#### 6.302-6 National security.

(a) *Authority.*(1) Citations: [10 U.S.C. 2304\(c\)\(6\)](#) or [41 U.S.C. 3304\(a\)\(6\)](#).

(2) Full and open competition need not be provided for when the disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.

(b) *Application.* This authority may be used for any acquisition when disclosure of the Government's needs would compromise the national security (*e.g.*, would violate security requirements); it shall not be used merely because the acquisition is classified, or merely because access to classified matter will be necessary to submit a proposal or to perform the contract.

(c) *Limitations.*(1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in [6.303](#) and [6.304](#).

(2) See [5.202\(a\)\(1\)](#) for synopsis requirements.

(3) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.

#### 6.302-7 Public interest.

(a) *Authority.*(1) Citations: [10 U.S.C. 2304\(c\)\(7\)](#) or [41 U.S.C. 3304\(a\)\(7\)](#).

(2) Full and open competition need not be provided for when the agency head determines that it is not in the public interest in the particular acquisition concerned.

(b) *Application.* This authority may be used when none of the other authorities in [6.302](#) apply.

(c) *Limitations.*(1) A written determination to use this authority shall be made in accordance with [subpart 1.7](#), by—

(i) The Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Homeland Security for the Coast Guard, or the Administrator of the National Aeronautics and Space Administration; or

(ii) The head of any other executive agency. This authority may not be delegated.

(2) The Congress shall be notified in writing of such determination not less than 30 days before award of the contract.

(3) If required by the head of the agency, the contracting officer shall prepare a justification to support the determination under paragraph (c)(1) of this subsection.

(4) This Determination and Finding (D&F) shall not be made on a class basis.



**6.303 Justifications.****6.303-1 Requirements.**

(a) A contracting officer shall not commence negotiations for a sole source contract, commence negotiations for a contract resulting from an unsolicited proposal, or award any other contract without providing for full and open competition unless the contracting officer—

(1) Justifies, if required in [6.302](#), the use of such actions in writing;

(2) Certifies the accuracy and completeness of the justification; and

(3) Obtains the approval required by [6.304](#).

(b) The contracting officer shall not award a sole-source contract under the 8(a) authority (15 U.S.C. 637(a)) for an amount exceeding \$20 million unless—

(1) The contracting officer justifies the use of a sole-source contract in writing in accordance with [6.303-2](#);

(2) The justification is approved by the appropriate official designated at [6.304](#); and

(3) The justification and related information are made public after award in accordance with [6.305](#).

(c) Technical and requirements personnel are responsible for providing and certifying as accurate and complete necessary data to support their recommendation for other than full and open competition.

(d) Justifications required by paragraph (a) of this section may be made on an individual or class basis. Any justification for contracts awarded under the authority of [6.302-7](#) shall only be made on an individual basis. Whenever a justification is made and approved on a class basis, the contracting officer must ensure that each contract action taken pursuant to the authority of the class justification and approval is within the scope of the class justification and approval and shall document the contract file for each contract action accordingly.

(e) The justifications for contracts awarded under the authority cited in [6.302-2](#) may be prepared and approved within a reasonable time after contract award when preparation and approval prior to award would unreasonably delay the acquisitions.

**6.303-2 Content.**

(a) Each justification shall contain sufficient facts and rationale to justify the use of the specific authority cited.

(b) As a minimum, each justification, except those for sole-source 8(a) contracts over \$20 million (see paragraph (d) of this section), shall include the following information:

(1) Identification of the agency and the contracting activity, and specific identification of the document as a “Justification for other than full and open competition.”

(2) Nature and/or description of the action being approved.

(3) A description of the supplies or services required to meet the agency’s needs (including the estimated value).

(4) An identification of the statutory authority permitting other than full and open competition.

(5) A demonstration that the proposed contractor’s unique qualifications or the nature of the acquisition requires use of the authority cited.

(6) A description of efforts made to ensure that offers are solicited from as many potential sources as is practicable, including whether a notice was or will be publicized as required by [subpart 5.2](#) and, if not, which exception under [5.202](#) applies.

(7) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

(8) A description of the market research conducted (see [Part 10](#)) and the results or a statement of the reason market research was not conducted.

(9) Any other facts supporting the use of other than full and open competition, such as:

(i) Explanation of why technical data packages, specifications, engineering descriptions, statements of work, or purchase descriptions suitable for full and open competition have not been developed or are not available.

(ii) When [6.302-1](#) is cited for follow-on acquisitions as described in [6.302-1\(a\)\(2\)\(ii\)](#), an estimate of the cost to the Government that would be duplicated and how the estimate was derived.

(iii) When [6.302-2](#) is cited, data, estimated cost, or other rationale as to the extent and nature of the harm to the Government.

(10) A listing of the sources, if any, that expressed, in writing, an interest in the acquisition.

(11) A statement of the actions, if any, the agency may take to remove or overcome any barriers to competition before any subsequent acquisition for the supplies or services required.

(12) Contracting officer certification that the justification is accurate and complete to the best of the contracting officer’s knowledge and belief.

(c) Each justification shall include evidence that any supporting data that is the responsibility of technical or requirements personnel (*e.g.*, verifying the Government’s minimum needs or schedule requirements or other rationale for other than full and open competition) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

(d) As a minimum, each justification for a sole-source 8(a) contract over \$20 million shall include the following information:

(1) A description of the needs of the agency concerned for the matters covered by the contract.

(2) A specification of the statutory provision providing the exception from the requirement to use competitive procedures in entering into the contract (see [19.805-1](#)).

(3) A determination that the use of a sole-source contract is in the best interest of the agency concerned.

(4) A determination that the anticipated cost of the contract will be fair and reasonable.

(5) Such other matters as the head of the agency concerned shall specify for purposes of this section.

#### 6.304 Approval of the justification.

(a) Except for paragraph (b) of this section, the justification for other than full and open competition shall be approved in writing—

(1) For a proposed contract not exceeding \$650,000, the contracting officer's certification required by [6.303-2\(b\)\(12\)](#) will serve as approval unless a higher approving level is established in agency procedures.

(2) For a proposed contract over \$650,000 but not exceeding \$12.5 million, by the advocate for competition for the procuring activity designated pursuant to [6.501](#) or an official described in paragraph (a)(3) or (a)(4) of this section. This authority is not delegable.

(3) For a proposed contract over \$12.5 million, but not exceeding \$62.5 million, or, for DoD, NASA, and the Coast Guard, not exceeding \$85.5 million, by the head of the procuring activity, or a designee who—

(i) If a member of the armed forces, is a general or flag officer; or

(ii) If a civilian, is serving in a position in a grade above GS-15 under the General Schedule (or in a comparable or higher position under another schedule).

(4) For a proposed contract over \$62.5 million or, for DoD, NASA, and the Coast Guard, over \$85.5 million, by the senior procurement executive of the agency designated pursuant to [41 U.S.C. 1702\(c\)](#) in accordance with agency procedures. This authority is not delegable except in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting as the senior procurement executive for the Department of Defense.

(b) Any justification for a contract awarded under the authority of [6.302-7](#), regardless of dollar amount, shall be considered approved when the determination required by [6.302-7\(c\)\(1\)](#) is made.

(c) A class justification for other than full and open competition shall be approved in writing in accordance with

agency procedures. The approval level shall be determined by the estimated total value of the class.

(d) The estimated dollar value of all options shall be included in determining the approval level of a justification.

#### 6.305 Availability of the justification.

(a) The agency shall make publicly available the justification required by 6.303-1 as required by [10 U.S.C. 2304\(i\)](#) and [41 U.S.C. 3304\(f\)](#). Except for the circumstances in paragraphs (b) and (c) of this section, the justification shall be made publicly available within 14 days after contract award.

(b) In the case of a contract award permitted under [6.302-2](#), the justification shall be posted within 30 days after contract award.

(c) In the case of a brand name justification under [6.302-1\(c\)](#), the justification shall be posted with the solicitation (see [5.102\(a\)\(6\)](#)).

(d) The justifications shall be made publicly available—

(1) At the Government Point of Entry (GPE) [www.fedbizopps.gov](http://www.fedbizopps.gov);

(2) On the website of the agency, which may provide access to the justifications by linking to the GPE; and

(3) Must remain posted for a minimum of 30 days.

(e) Contracting officers shall carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act ([5 U.S.C. 552](#)) and the prohibitions against disclosure in [24.202](#) in determining whether the justification, or portions of it, are exempt from posting. Although the submitter notice process set out in EO 12600, entitled "Predisclosure Notification Procedures for Confidential Commercial Information," does not apply, if the justification appears to contain proprietary data, the contracting officer should provide the contractor that submitted the information an opportunity to review the justification for proprietary data, before making the justification available for public inspection, redacted as necessary. This process must not prevent or delay the posting of the justification in accordance with the timeframes required in paragraphs (a) through (c).

(f) The requirements of paragraphs (a) through (d) do not apply if posting the justification would disclose the executive agency's needs and disclosure of such needs would compromise national security or create other security risks.

**Subpart 6.5—Advocates for Competition**

**6.501 Requirement.**

As required by [41 U.S.C. 1705](#), the head of each executive agency shall designate an advocate for competition for the agency and for each procuring activity of the agency. The advocates for competition shall—

- (a) Be in positions other than that of the agency senior procurement executive;
- (b) Not be assigned any duties or responsibilities that are inconsistent with [6.502](#); and
- (c) Be provided with staff or assistance (*e.g.*, specialists in engineering, technical operations, contract administration, financial management, supply management, and utilization of small business concerns), as may be necessary to carry out the advocate’s duties and responsibilities.

**6.502 Duties and responsibilities.**

(a) Agency and procuring activity advocates for competition are responsible for promoting the acquisition of commercial items, promoting full and open competition, challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics, and challenging barriers to the acquisition of commercial items and full and open competition such as unnecessarily restrictive statements of work, unnecessarily detailed specifications, and unnecessarily burdensome contract clauses.

(b) Agency advocates for competition shall—

- (1) Review the contracting operations of the agency and identify and report to the agency senior procurement executive and the chief acquisition officer—
  - (i) Opportunities and actions taken to acquire commercial items to meet the needs of the agency;
  - (ii) Opportunities and actions taken to achieve full and open competition in the contracting operations of the agency;

- (iii) Actions taken to challenge requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics;

- (iv) Any condition or action that has the effect of unnecessarily restricting the acquisition of commercial items or competition in the contract actions of the agency;

(2) Prepare and submit an annual report to the agency senior procurement executive and the chief acquisition officer in accordance with agency procedures, describing—

- (i) Such advocate’s activities under this subpart;
- (ii) New initiatives required to increase the acquisition of commercial items;
- (iii) New initiatives required to increase competition;

- (iv) New initiatives to ensure requirements are stated in terms of functions to be performed, performance required or essential physical characteristics;

- (v) Any barriers to the acquisition of commercial items or competition that remain;

- (vi) Other ways in which the agency has emphasized the acquisition of commercial items and competition in areas such as acquisition training and research; and

- (vii) Initiatives that ensure task and delivery orders over \$1,000,000 issued under multiple award contracts are properly planned, issued, and comply with [8.405](#) and [16.505](#).

(3) Recommend goals and plans for increasing competition on a fiscal year basis to the agency senior procurement executive and the chief acquisition officer; and

(4) Recommend to the agency senior procurement executive and the chief acquisition officer a system of personal and organizational accountability for competition, which may include the use of recognition and awards to motivate program managers, contracting officers, and others in authority to promote competition in acquisition.

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**7.000 Scope of part.**

This part prescribes policies and procedures for—

- (a) Developing acquisition plans;
- (b) Determining whether to use commercial or Government resources for acquisition of supplies or services;
- (c) Deciding whether it is more economical to lease equipment rather than purchase it; and
- (d) Determining whether functions are inherently governmental.

**Subpart 7.1—Acquisition Plans****7.101 Definitions.**

As used in this subpart—

“Acquisition streamlining” means any effort that results in more efficient and effective use of resources to design and develop, or produce quality systems. This includes ensuring that only necessary and cost-effective requirements are included, at the most appropriate time in the acquisition cycle, in solicitations and resulting contracts for the design, development, and production of new systems, or for modifications to existing systems that involve redesign of systems or subsystems.

“Life-cycle cost” means the total cost to the Government of acquiring, operating, supporting, and (if applicable) disposing of the items being acquired.

“Order” means an order placed under a—

- (1) Federal Supply Schedule contract; or
- (2) Task-order contract or delivery-order contract awarded by another agency, (*i.e.*, Governmentwide acquisition contract or multi-agency contract).

“Planner” means the designated person or office responsible for developing and maintaining a written plan, or for the planning function in those acquisitions not requiring a written plan.

**7.102 Policy.**

(a) Agencies shall perform acquisition planning and conduct market research (see [part 10](#)) for all acquisitions in order to promote and provide for—

- (1) Acquisition of commercial items or, to the extent that commercial items suitable to meet the agency’s needs are not available, nondevelopmental items, to the maximum extent practicable ([10 U.S.C. 2377](#) and [41 U.S.C. 3307](#)); and
- (2) Full and open competition (see [part 6](#)) or, when full and open competition is not required in accordance with [part 6](#), to obtain competition to the maximum extent practicable, with due regard to the nature of the supplies or services to be acquired ([10 U.S.C. 2305\(a\)\(1\)\(A\)](#) and [41 U.S.C. 3306a\(1\)](#)).
- (3) Selection of appropriate contract type in accordance with [part 16](#); and
- (4) Appropriate consideration of the use of pre-existing contracts, including interagency and intra-agency contracts, to fulfill the requirement, before awarding new contracts. (See [8.002](#) through [8.004](#) and [subpart 17.5](#)).

(b) This planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of this planning is to ensure that the Government meets

its needs in the most effective, economical, and timely manner. Agencies that have a detailed acquisition planning system in place that generally meets the requirements of [7.104](#) and [7.105](#) need not revise their system to specifically meet all of these requirements.

**7.103 Agency-head responsibilities.**

The agency head or a designee shall prescribe procedures for—

(a) Promoting and providing for full and open competition (see [part 6](#)) or, when full and open competition is not required in accordance with [part 6](#), for obtaining competition to the maximum extent practicable, with due regard to the nature of the supplies and services to be acquired ([10 U.S.C. 2305\(a\)\(1\)\(A\)](#) and [41 U.S.C. 3306\(a\)\(1\)](#)).

(b) Encouraging offerors to supply commercial items, or to the extent that commercial items suitable to meet the agency needs are not available, nondevelopmental items in response to agency solicitations ([10 U.S.C. 2377](#) and [41 U.S.C. 3307](#)); and

(c) Ensuring that acquisition planners address the requirement to specify needs, develop specifications, and to solicit offers in such a manner to promote and provide for full and open competition with due regard to the nature of the supplies and services to be acquired ([10 U.S.C. 2305\(a\)\(1\)\(A\)](#) and [41 U.S.C. 3306\(a\)\(1\)](#)). (See [part 6](#) and [10.002](#).)

(d) Ensuring that acquisition planners document the file to support the selection of the contract type in accordance with [subpart 16.1](#).

(e) Establishing criteria and thresholds at which increasingly greater detail and formality in the planning process is required as the acquisition becomes more complex and costly, including for cost-reimbursement and other high-risk contracts (*e.g.*, other than firm-fixed-price contracts) requiring a written acquisition plan. A written plan shall be prepared for cost reimbursement and other high-risk contracts other than firm-fixed-price contracts, although written plans may be required for firm-fixed-price contracts as appropriate.

(f) Ensuring that the statement of work is closely aligned with performance outcomes and cost estimates.

(g) Writing plans either on a systems basis, on an individual contract basis, or on an individual order basis, depending upon the acquisition.

(h) Ensuring that the principles of this subpart are used, as appropriate, for those acquisitions that do not require a written plan as well as for those that do.

(i) Designating planners for acquisitions.

(j) Reviewing and approving acquisition plans and revisions to these plans to ensure compliance with FAR requirements including [7.104](#) and [part 16](#). For other than firm-fixed-price contracts, ensuring that the plan is approved and signed at least one level above the contracting officer.

(k) Establishing criteria and thresholds at which design-to-cost and life-cycle-cost techniques will be used.

(l) Establishing standard acquisition plan formats, if desired, suitable to agency needs; and

(m) Waiving requirements of detail and formality, as necessary, in planning for acquisitions having compressed deliv-

ery or performance schedules because of the urgency of the need.

(n) Assuring that the contracting officer, prior to contracting, reviews:

(1) The acquisition history of the supplies and services; and

(2) A description of the supplies, including, when necessary for adequate description, a picture, drawing, diagram, or other graphic representation.

(o) Ensuring that agency planners include use of the metric system of measurement in proposed acquisitions in accordance with [15 U.S.C. 205b](#) (see [11.002\(b\)](#)) and agency metric plans and guidelines.

(p) Ensuring that agency planners—

(1) Specify needs for printing and writing paper consistent with the 30 percent postconsumer fiber minimum content standards specified in section 2(d)(ii) of Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management, and section 2(e)(iv) of Executive Order 13514 of October 5, 2009 (see [11.303](#))

(2) Comply with the policy in [11.002\(d\)](#) regarding procurement of: biobased products, products containing recovered materials, environmentally preferable products and services (including Electronic Product Environmental Assessment Tool (EPEAT)-registered electronic products, nontoxic or low-toxic alternatives), ENERGY STAR® and Federal Energy Management Program-designated products, renewable energy, water-efficient products, and non-ozone depleting products;

(3) Comply with the Guiding Principles for Federal Leadership in High-Performance and Sustainable Buildings (Guiding Principles), for the design, construction, renovation, repair, or deconstruction of Federal buildings. The Guiding Principles can be accessed at [http://www.wbdg.org/pdfs/hpsb\\_guidance.pdf](http://www.wbdg.org/pdfs/hpsb_guidance.pdf); and

(4) Require contractor compliance with Federal environmental requirements, when the contractor is operating Government-owned facilities or vehicles, to the same extent as the agency would be required to comply if the agency operated the facilities or vehicles.

(q) Ensuring that acquisition planners specify needs and develop plans, drawings, work statements, specifications, or other product descriptions that address Electronic and Information Technology Accessibility Standards (see 36 CFR Part 1194) in proposed acquisitions (see [11.002\(e\)](#)) and that these standards are included in requirements planning, as appropriate (see [subpart 39.2](#)).

(r) Making a determination, prior to issuance of a solicitation for advisory and assistance services involving the analysis and evaluation of proposals submitted in response to a solicitation, that a sufficient number of covered personnel with the training and capability to perform an evaluation and analysis of proposals submitted in response to a solicitation are not readily available within the agency or from another Federal agency in accordance with the guidelines at [37.204](#).

(s) Ensuring that no purchase request is initiated or contract entered into that would result in the performance of an inherently governmental function by a contractor and that all con-

tracts or orders are adequately managed so as to ensure effective official control over contract or order performance.

(t) Ensuring that knowledge gained from prior acquisitions is used to further refine requirements and acquisition strategies. For services, greater use of performance-based acquisition methods should occur for follow-on acquisitions.

(u) Ensuring that acquisition planners, to the maximum extent practicable—

(1) Structure contract requirements to facilitate competition by and among small business concerns; and

(2) Avoid unnecessary and unjustified bundling that precludes small business participation as contractors (see [7.107](#)) ([15 U.S.C. 631\(j\)](#)).

(v) Ensuring that agency planners on information technology acquisitions comply with the capital planning and investment control requirements in [40 U.S.C. 11312](#) and OMB Circular A-130.

(w) Ensuring that agency planners on information technology acquisitions comply with the information technology security requirements in the Federal Information Security Management Act ([44 U.S.C. 3544](#)), OMB's implementing policies including Appendix III of OMB Circular A-130, and guidance and standards from the Department of Commerce's National Institute of Standards and Technology.

(x) Encouraging agency planners to consider the use of a project labor agreement (see subpart [22.5](#)).

(y) Ensuring that contracting officers consult the Disaster Response Registry via <https://www.acquisition.gov> as a part of acquisition planning for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See [26.205](#)).

#### 7.104 General procedures.

(a) Acquisition planning should begin as soon as the agency need is identified, preferably well in advance of the fiscal year in which contract award or order placement is necessary. In developing the plan, the planner shall form a team consisting of all those who will be responsible for significant aspects of the acquisition, such as contracting, fiscal, legal, and technical personnel. If contract performance is to be in a designated operational area or supporting a diplomatic or consular mission, the planner shall also consider inclusion of the combatant commander or chief of mission, as appropriate. The planner should review previous plans for similar acquisitions and discuss them with the key personnel involved in those acquisitions. At key dates specified in the plan or whenever significant changes occur, and no less often than annually, the planner shall review the plan and, if appropriate, revise it.

(b) Requirements and logistics personnel should avoid issuing requirements on an urgent basis or with unrealistic delivery or performance schedules, since it generally restricts competition and increases prices. Early in the planning process, the planner should consult with requirements and logistics personnel who determine type, quality, quantity, and delivery requirements.

(c) The planner shall coordinate with and secure the concurrence of the contracting officer in all acquisition planning.

If the plan proposes using other than full and open competition when awarding a contract, the plan shall also be coordinated with the cognizant advocate for competition.

(d)(1) The planner shall coordinate the acquisition plan or strategy with the cognizant small business specialist when the strategy contemplates an acquisition meeting the dollar amounts in paragraph (d)(2) of this section unless the contract or order is entirely reserved or set-aside for small business under [part 19](#). The small business specialist shall notify the agency Office of Small and Disadvantaged Business Utilization if the strategy involves contract bundling that is unnecessary, unjustified, or not identified as bundled by the agency. If the strategy involves substantial bundling, the small business specialist shall assist in identifying alternative strategies that would reduce or minimize the scope of the bundling.

(2)(i) The strategy shall be coordinated with the cognizant small business specialist in accordance with paragraph (d)(1) of this section if the estimated contract or order value is—

(A) \$8 million or more for the Department of Defense;

(B) \$6 million or more for the National Aeronautics and Space Administration, the General Services Administration, and the Department of Energy; and

(C) \$2.5 million or more for all other agencies.

(ii) If the strategy contemplates the award of multiple contracts or orders, the thresholds in paragraph (d)(2)(i) of this section apply to the cumulative maximum potential value, including options, of the contracts and orders.

(e) The planner shall ensure that a COR is nominated as early as practicable in the acquisition process by the requirements official or in accordance with agency procedures. The contracting officer shall designate and authorize a COR as early as practicable after the nomination. See [1.602-2\(d\)](#).

### 7.105 Contents of written acquisition plans.

In order to facilitate attainment of the acquisition objectives, the plan must identify those milestones at which decisions should be made (see paragraph (b)(21) of this section). The plan must address all the technical, business, management, and other significant considerations that will control the acquisition. The specific content of plans will vary, depending on the nature, circumstances, and stage of the acquisition. In preparing the plan, the planner must follow the applicable instructions in paragraphs (a) and (b) of this section, together with the agency's implementing procedures. Acquisition plans for service contracts or orders must describe the strategies for implementing performance-based acquisition methods or must provide rationale for not using those methods (see [subpart 37.6](#)).

(a) *Acquisition background and objectives—*(1) *Statement of need.* Introduce the plan by a brief statement of need. Summarize the technical and contractual history of the acquisition. Discuss feasible acquisition alternatives, the impact of

prior acquisitions on those alternatives, and any related in-house effort.

(2) *Applicable conditions.* State all significant conditions affecting the acquisition, such as—

(i) Requirements for compatibility with existing or future systems or programs; and

(ii) Any known cost, schedule, and capability or performance constraints.

(3) *Cost.* Set forth the established cost goals for the acquisition and the rationale supporting them, and discuss related cost concepts to be employed, including, as appropriate, the following items:

(i) *Life-cycle cost.* Discuss how life-cycle cost will be considered. If it is not used, explain why. If appropriate, discuss the cost model used to develop life-cycle-cost estimates.

(ii) *Design-to-cost.* Describe the design-to-cost objective(s) and underlying assumptions, including the rationale for quantity, learning-curve, and economic adjustment factors. Describe how objectives are to be applied, tracked, and enforced. Indicate specific related solicitation and contractual requirements to be imposed.

(iii) *Application of should-cost.* Describe the application of should-cost analysis to the acquisition (see [15.407-4](#)).

(4) *Capability or performance.* Specify the required capabilities or performance characteristics of the supplies or the performance standards of the services being acquired and state how they are related to the need.

(5) *Delivery or performance-period requirements.* Describe the basis for establishing delivery or performance-period requirements (see [subpart 11.4](#)). Explain and provide reasons for any urgency if it results in concurrency of development and production or constitutes justification for not providing for full and open competition.

(6) *Trade-offs.* Discuss the expected consequences of trade-offs among the various cost, capability or performance, and schedule goals.

(7) *Risks.* Discuss technical, cost, and schedule risks and describe what efforts are planned or underway to reduce risk and the consequences of failure to achieve goals. If concurrency of development and production is planned, discuss its effects on cost and schedule risks.

(8) *Acquisition streamlining.* If specifically designated by the requiring agency as a program subject to acquisition streamlining, discuss plans and procedures to—

(i) Encourage industry participation by using draft solicitations, presolicitation conferences, and other means of stimulating industry involvement during design and development in recommending the most appropriate application and tailoring of contract requirements;

(ii) Select and tailor only the necessary and cost-effective requirements; and

(iii) State the timeframe for identifying which of those specifications and standards, originally provided for guidance only, shall become mandatory.

(b) *Plan of action*—(1) *Sources*. Indicate the prospective sources of supplies or services that can meet the need. Consider required sources of supplies or services (see [part 8](#)) and sources identifiable through databases including the Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies available at <https://www.contractdirectory.gov/contractdirectory/>. Include consideration of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns (see [part 19](#)), and the impact of any bundling that might affect their participation in the acquisition (see [7.107](#)) ([15 U.S.C. 644\(e\)](#)). When the proposed acquisition strategy involves bundling, identify the incumbent contractors and contracts affected by the bundling. Address the extent and results of the market research and indicate their impact on the various elements of the plan (see [part 10](#)).

(2) *Competition*. (i) Describe how competition will be sought, promoted, and sustained throughout the course of the acquisition. If full and open competition is not contemplated, cite the authority in [6.302](#), discuss the basis for the application of that authority, identify the source(s), and discuss why full and open competition cannot be obtained.

(ii) Identify the major components or subsystems. Discuss component breakout plans relative to these major components or subsystems. Describe how competition will be sought, promoted, and sustained for these components or subsystems.

(iii) Describe how competition will be sought, promoted, and sustained for spares and repair parts. Identify the key logistic milestones, such as technical data delivery schedules and acquisition method coding conferences, that affect competition.

(iv) When effective subcontract competition is both feasible and desirable, describe how such subcontract competition will be sought, promoted, and sustained throughout the course of the acquisition. Identify any known barriers to increasing subcontract competition and address how to overcome them.

(3) *Contract type selection*. Discuss the rationale for the selection of contract type. For other than firm-fixed-price contracts, see [16.103\(d\)](#) for additional documentation guidance. Acquisition personnel shall document the acquisition plan with findings that detail the particular facts and circumstances, (e.g., complexity of the requirements, uncertain duration of the work, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection. The contracting officer shall ensure that requirements and technical personnel provide the necessary documentation to support the contract type selection.

(4) *Source-selection procedures*. Discuss the source-selection procedures for the acquisition, including the timing for submission and evaluation of proposals, and the relationship of evaluation factors to the attainment of the acquisition objectives (see [subpart 15.3](#)). When an EVMS is required (see

[FAR 34.202\(a\)](#)) and a pre-award IBR is contemplated, the acquisition plan must discuss—

(i) How the pre-award IBR will be considered in the source selection decision;

(ii) How it will be conducted in the source selection process (see [FAR 15.306](#)); and

(iii) Whether offerors will be directly compensated for the costs of participating in a pre-award IBR.

(5) *Acquisition considerations*. (i) For each contract contemplated, discuss use of multiyear contracting, options, or other special contracting methods (see [part 17](#)); any special clauses, special solicitation provisions, or FAR deviations required (see [subpart 1.4](#)); whether sealed bidding or negotiation will be used and why; whether equipment will be acquired by lease or purchase (see [subpart 7.4](#)) and why; and any other contracting considerations. Provide rationale if a performance-based acquisition will not be used or if a performance-based acquisition for services is contemplated on other than a firm-fixed-price basis (see [37.102\(a\)](#), [16.103\(d\)](#), and [16.505\(a\)\(3\)](#)).

(ii) For each order contemplated, discuss—

(A) For information technology acquisitions, how the capital planning and investment control requirements of [40 U.S.C. 11312](#) and OMB Circular A-130 will be met (see [7.103\(v\)](#) and [part 39](#)); and

(B) Why this action benefits the Government, such as when—

(1) The agency can accomplish its mission more efficiently and effectively (e.g., take advantage of the servicing agency's specialized expertise; or gain access to contractors with needed expertise); or

(2) Ordering through an indefinite delivery contract facilitates access to small business concerns, including small disadvantaged business concerns, 8(a) contractors, women-owned small business concerns, HUBZone small business concerns, veteran-owned small business concerns, or service-disabled veteran-owned small business concerns.

(iii) For information technology acquisitions using Internet Protocol, discuss whether the requirements documents include the Internet Protocol compliance requirements specified in [11.002\(g\)](#) or a waiver of these requirements has been granted by the agency's Chief Information Officer.

(iv) For each contract (and order) contemplated, discuss the strategy to transition to firm-fixed-price contracts to the maximum extent practicable. During the requirements development stage, consider structuring the contract requirements, e.g., contract line items (CLINS), in a manner that will permit some, if not all, of the requirements to be awarded on a firm-fixed-price basis, either in the current contract, future option years, or follow-on contracts. This will facilitate an easier transition to a firm-fixed-price contract because a cost history will be developed for a recurring definitive requirement.

(6) *Budgeting and funding*. Include budget estimates, explain how they were derived, and discuss the schedule for obtaining adequate funds at the time they are required (see [subpart 32.7](#)).

(7) *Product or service descriptions*. Explain the choice of product or service description types (including perfor-



mance-based acquisition descriptions) to be used in the acquisition.

(8) *Priorities, allocations, and allotments.* When urgency of the requirement dictates a particularly short delivery or performance schedule, certain priorities may apply. If so, specify the method for obtaining and using priorities, allocations, and allotments, and the reasons for them (see [subpart 11.6](#)).

(9) *Contractor versus Government performance.* Address the consideration given to OMB Circular No. A-76 (see [subpart 7.3](#)).

(10) *Inherently governmental functions.* Address the consideration given to [subpart 7.5](#).

(11) *Management information requirements.* Discuss, as appropriate, what management system will be used by the Government to monitor the contractor's effort. If an Earned Value Management System is to be used, discuss the methodology the Government will employ to analyze and use the earned value data to assess and monitor contract performance. In addition, discuss how the offeror's/contractor's EVMS will be verified for compliance with the American National Standards Institute/Electronics Industries Alliance (ANSI/EIA) Standard-748, Earned Value Management Systems, and the timing and conduct of integrated baseline reviews (whether prior to or post award). (See [34.202](#).)

(12) *Make or buy.* Discuss any consideration given to make-or-buy programs (see [15.407-2](#)).

(13) *Test and evaluation.* To the extent applicable, describe the test program of the contractor and the Government. Describe the test program for each major phase of a major system acquisition. If concurrency is planned, discuss the extent of testing to be accomplished before production release.

(14) *Logistics considerations.* Describe—

(i) The assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency maintenance and servicing (see [subpart 7.3](#)), support for contracts to be performed in a designated operational area or supporting a diplomatic or consular mission (see [25.301-3](#)); and distribution of commercial items;

(ii) The reliability, maintainability, and quality assurance requirements, including any planned use of warranties (see [part 46](#));

(iii) The requirements for contractor data (including repurchase data) and data rights, their estimated cost, and the use to be made of the data (see [part 27](#)); and

(iv) Standardization concepts, including the necessity to designate, in accordance with agency procedures, technical equipment as “standard” so that future purchases of the equipment can be made from the same manufacturing source.

(15) *Government-furnished property.* Indicate any Government property to be furnished to contractors, and discuss any associated considerations, such as its availability or the schedule for its acquisition (see [45.102](#)).

(16) *Government-furnished information.* Discuss any Government information, such as manuals, drawings, and test data, to be provided to prospective offerors and contractors. Indicate which information that requires additional controls to monitor access and distribution (*e.g.*, technical specifications,

maps, building designs, schedules, etc.), as determined by the agency, is to be posted via the enhanced controls of the GPE at <http://www.fedbizopps.gov> (see [5.102\(a\)](#)).

(17) *Environmental and energy conservation objectives.* Discuss all applicable environmental and energy conservation objectives associated with the acquisition (see [part 23](#)), the applicability of an environmental assessment or environmental impact statement (see 40 CFR 1502), the proposed resolution of environmental issues, and any environmentally-related requirements to be included in solicitations and contracts (see [11.002](#) and [11.303](#)).

(18) *Security considerations.* For acquisitions dealing with classified matters, discuss how adequate security will be established, maintained, and monitored (see [subpart 4.4](#)). For information technology acquisitions, discuss how agency information security requirements will be met. For acquisitions requiring routine contractor physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system, discuss how agency requirements for personal identity verification of contractors will be met (see [subpart 4.13](#)).

(19) *Contract administration.* Describe how the contract will be administered. In contracts for services, include how inspection and acceptance corresponding to the work statement's performance criteria will be enforced.

(20) *Other considerations.* Discuss, as applicable:

(i) Standardization concepts;

(ii) The industrial readiness program;

(iii) The Defense Production Act;

(iv) The Occupational Safety and Health Act;

(v) Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act) (see [subpart 50.2](#));

(vi) Foreign sales implications;

(vii) Special requirements for contracts to be performed in a designated operational area or supporting a diplomatic or consular mission; and

(viii) Any other matters germane to the plan not covered elsewhere.

(21) *Milestones for the acquisition cycle.* Address the following steps and any others appropriate:

Acquisition plan approval.

Statement of work.

Specifications.

Data requirements.

Completion of acquisition-package preparation.

Purchase request.

Justification and approval for other than full and open competition where applicable and/or any required D&F approval.

Issuance of synopsis.

Issuance of solicitation.

Evaluation of proposals, audits, and field reports.

Beginning and completion of negotiations.

Contract preparation, review, and clearance.

Contract award.

(22) *Identification of participants in acquisition plan preparation.* List the individuals who participated in preparing the acquisition plan, giving contact information for each.

**7.106 Additional requirements for major systems.**

(a) In planning for the solicitation of a major system (see [part 34](#)) development contract, planners shall consider requiring offerors to include, in their offers, proposals to incorporate in the design of a major system—

(1) Items which are currently available within the supply system of the agency responsible for the major system, available elsewhere in the national supply system, or commercially available from more than one source; and

(2) Items which the Government will be able to acquire competitively in the future if they are likely to be needed in substantial quantities during the system's service life.

(b) In planning for the solicitation of a major system (see [part 34](#)) production contract, planners shall consider requiring offerors to include, in their offers, proposals identifying opportunities to assure that the Government will be able to obtain, on a competitive basis, items acquired in connection with the system that are likely to be acquired in substantial quantities during the service life of the system. Proposals submitted in response to such requirements may include the following:

(1) Proposals to provide the Government the right to use technical data to be provided under the contract for competitive future acquisitions, together with the cost to the Government, if any, of acquiring such technical data and the right to use such data.

(2) Proposals for the qualification or development of multiple sources of supply for competitive future acquisitions.

(c) In determining whether to apply paragraphs (a) and (b) of this section, planners shall consider the purposes for which the system is being acquired and the technology necessary to meet the system's required capabilities. If such proposals are required, the contracting officer shall consider them in evaluating competing offers. In noncompetitive awards, the factors in paragraphs (a) and (b) of this section, may be considered by the contracting officer as objectives in negotiating the contract.

**7.107 Additional requirements for acquisitions involving bundling.**

(a) Bundling may provide substantial benefits to the Government. However, because of the potential impact on small business participation, the head of the agency must conduct market research to determine whether bundling is necessary and justified ([15 U.S.C. 644\(e\)\(2\)](#)). Market research may indicate that bundling is necessary and justified if an agency or the Government would derive measurably substantial benefits (see [10.001\(a\)\(2\)\(iv\)](#) and [\(a\)\(3\)\(vi\)](#)).

(b) Measurably substantial benefits may include, individually or in any combination or aggregate, cost savings or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits. The agency must quantify the identified benefits and explain how their impact would be measurably substantial. Except as provided in paragraph (d) of this section, the agency may determine bundling to be necessary and justified if, as compared to the benefits that it would derive from contracting to meet those requirements if not bundled, it would derive measurably substantial benefits equivalent to—

(1) Ten percent of the estimated contract or order value (including options) if the value is \$94 million or less; or

(2) Five percent of the estimated contract or order value (including options) or \$9.4 million, whichever is greater, if the value exceeds \$94 million.

(c) Without power of delegation, the service acquisition executive for the military departments, the Under Secretary of Defense for Acquisition, Technology and Logistics for the defense agencies, or the Deputy Secretary or equivalent for the civilian agencies may determine that bundling is necessary and justified when—

(1) The expected benefits do not meet the thresholds in paragraphs (b)(1) and (b)(2) of this section but are critical to the agency's mission success; and

(2) The acquisition strategy provides for maximum practicable participation by small business concerns.

(d) Reduction of administrative or personnel costs alone is not sufficient justification for bundling unless the cost savings are expected to be at least 10 percent of the estimated contract or order value (including options) of the bundled requirements.

(e) Substantial bundling is any bundling that results in a contract or order that meets the dollar amounts specified in [7.104\(d\)\(2\)](#). When the proposed acquisition strategy involves substantial bundling, the acquisition strategy must additionally—

(1) Identify the specific benefits anticipated to be derived from bundling;

(2) Include an assessment of the specific impediments to participation by small business concerns as contractors that result from bundling;

(3) Specify actions designed to maximize small business participation as contractors, including provisions that encourage small business teaming;

(4) Specify actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract, or order, that may be awarded to meet the requirements;

(5) Include a specific determination that the anticipated benefits of the proposed bundled contract or order justify its use; and

(6) Identify alternative strategies that would reduce or minimize the scope of the bundling, and the rationale for not choosing those alternatives.

(f) The contracting officer must justify bundling in acquisition strategy documentation.

(g) In assessing whether cost savings would be achieved through bundling, the contracting officer must consider the cost that has been charged or, where data is available, could be charged by small business concerns for the same or similar work.

(h) The requirements of this section, except for paragraph (e), do not apply if a cost comparison analysis will be performed in accordance with OMB Circular A-76.

**7.108 Additional requirements for telecommuting.**

In accordance with [41 U.S.C. 3306\(f\)](#), an agency shall generally not discourage a contractor from allowing its employees to telecommute in the performance of Government contracts. Therefore, agencies shall not—

## Subpart 7.2—Planning for the Purchase of Supplies in Economic Quantities

### 7.200 Scope of subpart.

This subpart prescribes policies and procedures for gathering information from offerors to assist the Government in planning the most advantageous quantities in which supplies should be purchased.

### 7.201 [Reserved]

### 7.202 Policy.

(a) Agencies are required by [10 U.S.C. 2384a](#) and [41 U.S.C. 3310](#) to procure supplies in such quantity as—

- (1) Will result in the total cost and unit cost most advantageous to the Government, where practicable; and
- (2) Does not exceed the quantity reasonably expected to be required by the agency.

(b) Each solicitation for a contract for supplies is required, if practicable, to include a provision inviting each offeror responding to the solicitation—

- (1) To state an opinion on whether the quantity of the supplies proposed to be acquired is economically advantageous to the Government; and
- (2) If applicable, to recommend a quantity or quantities which would be more economically advantageous to the Government. Each such recommendation is required to include a quotation of the total price and the unit price for supplies procured in each recommended quantity.

### 7.203 Solicitation provision.

Contracting officers shall insert the provision at [52.207-4](#), Economic Purchase Quantity—Supplies, in solicitations for

supplies. The provision need not be inserted if the solicitation is for a contract under the General Services Administration's multiple award schedule contract program, or if the contracting officer determines that—

- (a) The Government already has the data;
- (b) The data is otherwise readily available; or
- (c) It is impracticable for the Government to vary its future requirements.

### 7.204 Responsibilities of contracting officers.

(a) Contracting officers are responsible for transmitting offeror responses to the solicitation provision at [52.207-4](#) to appropriate inventory management/requirements development activities in accordance with agency procedures. The economic purchase quantity data so obtained are intended to assist inventory managers in establishing and evaluating economic order quantities for supplies under their cognizance.

(b) In recognition of the fact that economic purchase quantity data furnished by offerors are only one of many data inputs required for determining the most economical order quantities, contracting officers should generally take no action to revise quantities to be acquired in connection with the instant procurement. However, if a significant price variation is evident from offeror responses, and the potential for significant savings is apparent, the contracting officer shall consult with the cognizant inventory manager or requirements development activity before proceeding with an award or negotiations. If this consultation discloses that the Government should be ordering an item of supply in different quantities and the inventory manager/requirements development activity concurs, the solicitation for the item should be amended or canceled and a new requisition should be obtained.

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## Subpart 8.4—Federal Supply Schedules

### 8.401 Definitions.

As used in this subpart—

“Ordering activity” means an activity that is authorized to place orders, or establish blanket purchase agreements (BPA), against the General Services Administration’s (GSA) Multiple Award Schedule contracts. A list of eligible ordering activities is available at <http://www.gsa.gov/schedules> (click “For Customers Ordering from Schedules” and then “Eligibility to Use GSA Sources”).

“Multiple Award Schedule (MAS)” means contracts awarded by GSA or the Department of Veterans Affairs (VA) for similar or comparable supplies, or services, established with more than one supplier, at varying prices. The primary statutory authorities for the MAS program are [41 U.S.C. 152\(3\)](#), *Competitive Procedures*, and [40 U.S.C. 501](#), Services for Executive Agencies.

“Requiring agency” means the agency needing the supplies or services.

“Schedules e-Library” means the on-line source for GSA and VA Federal Supply Schedule contract award information. Schedules e-Library may be accessed at <http://www.gsa.gov/e-library>.

“Special Item Number (SIN)” means a group of generically similar (but not identical) supplies or services that are intended to serve the same general purpose or function.

### 8.402 General.

(a) The Federal Supply Schedule program is also known as the GSA Schedules Program or the Multiple Award Schedule Program. The Federal Supply Schedule program is directed and managed by GSA and provides Federal agencies (see [8.004](#)) with a simplified process for obtaining commercial supplies and services at prices associated with volume buying. Indefinite delivery contracts are awarded to provide supplies and services at stated prices for given periods of time. GSA may delegate certain responsibilities to other agencies (*e.g.*, GSA has delegated authority to the VA to procure medical supplies under the VA Federal Supply Schedules program). Orders issued under the VA Federal Supply Schedule program are covered by this subpart. Additionally, the Department of Defense (DoD) manages similar systems of schedule-type contracting for military items; however, DoD systems are not covered by this subpart.

(b) GSA schedule contracts require all schedule contractors to publish an “Authorized Federal Supply Schedule Pricelist” (pricelist). The pricelist contains all supplies and services offered by a schedule contractor. In addition, each pricelist contains the pricing and the terms and conditions pertaining to each Special Item Number that is on schedule. The schedule contractor is required to provide one copy of its pricelist to any ordering activity upon request. Also, a copy of

the pricelist may be obtained from the Federal Supply Service by submitting a written e-mail request to [schedules.infocenter@gsa.gov](mailto:schedules.infocenter@gsa.gov) or by telephone at 1-800-488-3111. This subpart, together with the pricelists, contain necessary information for placing delivery or task orders with schedule contractors. In addition, the GSA schedule contracting office issues Federal Supply Schedules publications that contain a general overview of the Federal Supply Schedule (FSS) program and address pertinent topics. Ordering activities may request copies of schedules publications by contacting the Centralized Mailing List Service through the Internet at <http://www.gsa.gov/cmls>, submitting written e-mail requests to [CMLS@gsa.gov](mailto:CMLS@gsa.gov); or by completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the GSA Centralized Mailing List Service (7SM), P.O. Box 6477, Fort Worth, TX 76115. Copies of GSA Form 457 may also be obtained from the above-referenced points of contact.

(c)(1) GSA offers an on-line shopping service called “GSA Advantage!” through which ordering activities may place orders against Schedules. (Ordering activities may also use GSA Advantage! to place orders through GSA’s Global Supply System, a GSA wholesale supply source, formerly known as “GSA Stock” or the “Customer Supply Center.” FAR [subpart 8.4](#) is not applicable to orders placed through the GSA Global Supply System.) Ordering activities may access GSA Advantage! through the GSA Federal Supply Service Home Page (<http://www.gsa.gov/fas>) or the GSA Federal Supply Schedule Home Page at <http://www.gsa.gov/schedules>.

(2) GSA Advantage! enables ordering activities to search specific information (*i.e.*, national stock number, part number, common name), review delivery options, place orders directly with Schedule contractors (except see [8.405-6](#)) and pay for orders using the Governmentwide commercial purchase card.

(d)(1) *e-Buy*, GSA’s electronic Request for Quotation (RFQ) system, is a part of a suite of on-line tools which complement GSA Advantage!. *E-Buy* allows ordering activities to post requirements, obtain quotes, and issue orders electronically. Posting an RFQ on *e-Buy*—

(i) Is one medium for providing fair notice to all schedule contractors offering such supplies and services as required by [8.405-1](#), [8.405-2](#), and [8.405-3](#); and

(ii) Is required when an order contains brand-name specifications (see [8.405-6](#)).

(2) Ordering activities may access *e-Buy* at <http://www.ebuy.gsa.gov>. For more information or assistance on either GSA Advantage! or *e-Buy*, contact GSA at Internet e-mail address [gsa.advantage@gsa.gov](mailto:gsa.advantage@gsa.gov).

(e) For more information or assistance regarding the Federal Supply Schedule Program, review the following website: <http://www.gsa.gov/schedules>. Additionally, for on-line

training courses regarding the Schedules Program, review the following website: <http://www.gsa.gov/training>.

(f) For administrative convenience, an ordering activity contracting officer may add items not on the Federal Supply Schedule (also referred to as open market items) to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order only if—

(1) All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (*e.g.*, publicizing ([Part 5](#)), competition requirements ([Part 6](#)), acquisition of commercial items ([Part 12](#)), contracting methods ([Parts 13](#), [14](#), and [15](#)), and small business programs ([Part 19](#)));

(2) The ordering activity contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;

(3) The items are clearly labeled on the order as items not on the Federal Supply Schedule; and

(4) All clauses applicable to items not on the Federal Supply Schedule are included in the order.

(g) When using the Governmentwide commercial purchase card as a method of payment, orders at or below the micro-purchase threshold are exempt from verification in the System for Award Management database as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP).

#### 8.403 Applicability.

(a) Procedures in this subpart apply to—

(1) Individual orders for supplies or services placed against Federal Supply Schedules contracts; and

(2) BPAs established against Federal Supply Schedule contracts.

(b) GSA may establish special ordering procedures for a particular schedule. In this case, that schedule will specify those special ordering procedures. Unless otherwise noted, special ordering procedures established for a Federal Supply Schedule take precedence over the procedures in [8.405](#).

(c) In accordance with section 1427(b) of Public Law 108-136 ([40 U.S.C. 1103](#) note), for requirements that substantially or to a dominant extent specify performance of architect-engineer services (as defined in [2.101](#)), agencies—

(1) Shall use the procedures at [subpart 36.6](#); and

(2) Shall not place orders for such requirements under a Federal Supply Schedule.

#### 8.404 Use of Federal Supply Schedules.

(a) *General.* [Parts 13](#) (except [13.303-2\(c\)\(3\)](#)), [14](#), [15](#), and [19](#) (except for the requirement at [19.202-1\(e\)\(1\)\(iii\)](#)) do not apply to BPAs or orders placed against Federal Supply Schedules contracts (but see [8.405-5](#)). BPAs and orders placed against a MAS, using the procedures in this subpart, are con-

sidered to be issued using full and open competition (see [6.102\(d\)\(3\)](#)). Therefore, when establishing a BPA (as authorized by [13.303-2\(c\)\(3\)](#)), or placing orders under Federal Supply Schedule contracts using the procedures of [8.405](#), ordering activities shall not seek competition outside of the Federal Supply Schedules or synopsise the requirement; but see paragraph (g) of this section.

(b)(1) The contracting officer, when placing an order or establishing a BPA, is responsible for applying the regulatory and statutory requirements applicable to the agency for which the order is placed or the BPA is established. The requiring agency shall provide the information on the applicable regulatory and statutory requirements to the contracting officer responsible for placing the order.

(2) For orders over \$500,000, see subpart [17.5](#) for additional requirements for interagency acquisitions. For example, the requiring agency shall make a determination that use of the Federal Supply Schedule is the best procurement approach, in accordance with [17.502-1\(a\)](#).

(c) *Acquisition planning.* Orders placed under a Federal Supply Schedule contract—

(1) Are not exempt from the development of acquisition plans (see [subpart 7.1](#)), and an information technology acquisition strategy (see [Part 39](#));

(2) Must comply with all FAR requirements for a bundled contract when the order meets the definition of “bundled contract” (see [2.101\(b\)](#)); and

(3) Must, whether placed by the requiring agency, or on behalf of the requiring agency, be consistent with the requiring agency’s statutory and regulatory requirements applicable to the acquisition of the supply or service.

(d) *Pricing.* Supplies offered on the schedule are listed at fixed prices. Services offered on the schedule are priced either at hourly rates, or at a fixed price for performance of a specific task (*e.g.*, installation, maintenance, and repair). GSA has already determined the prices of supplies and fixed-price services, and rates for services offered at hourly rates, under schedule contracts to be fair and reasonable. Therefore, ordering activities are not required to make a separate determination of fair and reasonable pricing, except for a price evaluation as required by [8.405-2\(d\)](#). By placing an order against a schedule contract using the procedures in [8.405](#), the ordering activity has concluded that the order represents the best value (as defined in FAR [2.101](#)) and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government’s needs. Although GSA has already negotiated fair and reasonable pricing, ordering activities may seek additional discounts before placing an order (see [8.405-4](#)).

(e) The procedures under subpart [33.1](#) are applicable to the issuance of an order or the establishment of a BPA against a schedule contract.

(B) Only one source is capable of providing the supplies or services required at the level of quality required because the supplies or services are unique or highly specialized; or

(C) In the interest of economy and efficiency, the new work is a logical follow-on to an original Federal Supply Schedule order provided that the original order was placed in accordance with the applicable Federal Supply Schedule ordering procedures. The original order or BPA must not have been previously issued under sole-source or limited-sources procedures.

(ii) See [8.405-6\(c\)](#) for the content of the justification for an order or BPA exceeding the simplified acquisition threshold.

(2) *Posting.*(i) Within 14 days after placing an order or establishing a BPA exceeding the simplified acquisition threshold that is supported by a limited-sources justification permitted under any of the circumstances under paragraph (a)(1) of this section, the ordering activity shall—

(A) Publish a notice in accordance with [5.301](#); and

(B) Post the justification—

(1) At the GPE [www.fedbizopps.gov](http://www.fedbizopps.gov);

(2) On the Web site of the ordering activity agency, which may provide access to the justification by linking to the GPE; and

(3) For a minimum of 30 days.

(ii) In the case of an order or BPA permitted under paragraph (a)(1)(i)(A) of this section, the justification shall be posted within 30 days after award.

(iii) Contracting officers shall carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act ([5 U.S.C. 552](#)) and the prohibitions against disclosure in [24.202](#) in determining whether other data should be removed. Although the submitter notice process set out in Executive Order 12600 “Predisclosure Notification Procedures for Confidential Commercial Information” does not apply, if the justification appears to contain proprietary data, the contracting officer should provide the contractor that submitted the information an opportunity to review the justification for proprietary data before making the justification available for public inspection, redacted as necessary. This process must not prevent or delay the posting of the justification in accordance with the timeframes required in paragraphs (a)(2)(i) and (ii) of this section.

(iv) This posting requirement does not apply when disclosure would compromise the national security (e.g.,

would result in disclosure of classified information) or create other security risks.

(b) *Items peculiar to one manufacturer.* An item peculiar to one manufacturer can be a particular brand name, product, or a feature of a product, peculiar to one manufacturer). A brand name item, whether available on one or more schedule contracts, is an item peculiar to one manufacturer.

(1) Brand name specifications shall not be used unless the particular brand name, product, or feature is essential to the Government’s requirements, and market research indicates other companies’ similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency’s needs.

(2) *Documentation.*(i) For proposed orders or BPAs with an estimated value exceeding the micro-purchase threshold, but not exceeding the simplified acquisition threshold, the ordering activity contracting officer shall document the basis for restricting consideration to an item peculiar to one manufacturer.

(ii) For proposed orders or BPAs with an estimated value exceeding the simplified acquisition threshold, see paragraph (c) of this section.

(iii) The documentation or justification must be completed and approved at the time the requirement for a brand-name item is determined. In addition, the justification for a brand-name item is required at the order level when a justification for the brand-name item was not completed for the BPA or does not adequately cover the requirements in the order.

(3) *Posting.*(i) The ordering activity shall post the following information along with the Request for Quotation (RFQ) to e-Buy (<http://www.ebuy.gsa.gov>):

(A) For proposed orders or BPAs with an estimated value exceeding \$25,000, but not exceeding the simplified acquisition threshold, the documentation required by paragraph (b)(2)(i) of this section.

(B) For proposed orders or BPAs with an estimated value exceeding the simplified acquisition threshold, the justification required by paragraph (c) of this section.

(C) The documentation in paragraph (b)(2)(i) and the justification in paragraph (c) of this subsection is subject to the screening requirement in paragraph (a)(2)(iii) of this section.

(ii) The posting requirement of paragraph (b)(3)(i) of this section does not apply when—

(A) Disclosure would compromise the national security (e.g., would result in disclosure of classified information) or create other security risks. The fact that access to classified matter may be necessary to submit a proposal or perform the contract does not, in itself, justify use of this exception;

(B) The nature of the file (*e.g.*, size, format) does not make it cost-effective or practicable for contracting officers to provide access through e-Buy; or

(C) The agency's senior procurement executive makes a written determination that access through e-Buy is not in the Government's interest.

(4) When applicable, the documentation and posting requirements in paragraphs (b)(2) and (3) of this subsection apply only to the portion of the order or BPA that requires a brand-name item. If the justification and approval is to cover only the portion of the acquisition which is brand-name, then it should so state; the approval level requirements will then only apply to that portion.

(c) *An order or BPA with an estimated value exceeding the simplified acquisition threshold.* (1) For a proposed order or BPA exceeding the simplified acquisition threshold, the requiring activity shall assist the ordering activity contracting officer in the preparation of the justification. The justification shall cite that the acquisition is conducted under the authority of the Multiple-Award Schedule Program (see [8.401](#)).

(2) At a minimum, each justification shall include the following information:

(i) Identification of the agency and the contracting activity, and specific identification of the document as a "Limited-Sources Justification."

(ii) Nature and/or description of the action being approved.

(iii) A description of the supplies or services required to meet the agency's needs (including the estimated value).

(iv) The authority and supporting rationale (see [8.405-6\(a\)\(1\)\(i\)](#) and (b)(1)) and, if applicable, a demonstration of the proposed contractor's unique qualifications to provide the required supply or service.

(v) A determination by the ordering activity contracting officer that the order represents the best value consistent with [8.404\(d\)](#).

(vi) A description of the market research conducted among schedule holders and the results or a statement of the reason market research was not conducted.

(vii) Any other facts supporting the justification.

(viii) A statement of the actions, if any, the agency may take to remove or overcome any barriers that led to the restricted consideration before any subsequent acquisition for the supplies or services is made.

(ix) The ordering activity contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

(x) Evidence that any supporting data that is the responsibility of technical or requirements personnel (*e.g.*, verifying the Government's minimum needs or requirements or other rationale for limited sources) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

(xi) For justifications under [8.405-6\(a\)\(1\)](#), a written determination by the approving official identifying the circumstance that applies.

(d) *Justification approvals.* (1) For a proposed order or BPA with an estimated value exceeding the simplified acquisition threshold, but not exceeding \$650,000, the ordering activity contracting officer's certification that the justification is accurate and complete to the best of the ordering activity contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(2) For a proposed order or BPA with an estimated value exceeding \$650,000, but not exceeding \$12.5 million, the justification must be approved by the advocate for competition of the activity placing the order, or by an official named in paragraph (d)(3) or (d)(4) of this section. This authority is not delegable.

(3) For a proposed order or BPA with an estimated value exceeding \$12.5 million, but not exceeding \$62.5 million (or, for DoD, NASA, and the Coast Guard, not exceeding \$85.5 million), the justification must be approved by—

(i) The head of the procuring activity placing the order;

(ii) A designee who—

(A) If a member of the armed forces, is a general or flag officer;

(B) If a civilian, is serving in a position in a grade above GS-15 under the General Schedule (or in a comparable or higher position under another schedule); or

(iii) An official named in paragraph (d)(4) of this section.

(4) For a proposed order or BPA with an estimated value exceeding \$62.5 million (or, for DoD, NASA, and the Coast Guard, over \$85.5 million), the justification must be approved by the senior procurement executive of the agency placing the order. This authority is not delegable, except in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting as the senior procurement executive for the Department of Defense.

#### **8.405-7 Payment.**

Agencies may make payments for oral or written orders by any authorized means, including the Governmentwide commercial purchase card (but see [32.1108\(b\)\(2\)](#)).

#### **8.406 Ordering activity responsibilities.**

##### **8.406-1 Order placement.**

(a) Ordering activities may place orders orally, except for—

(1) Supplies and services not requiring a statement of work exceeding the simplified acquisition threshold;

(2) Services requiring a statement of work (SOW); and



## Subpart 8.6—Acquisition from Federal Prison Industries, Inc.

### 8.601 General.

(a) Federal Prison Industries, Inc. (FPI), also referred to as UNICOR, is a self-supporting, wholly owned Government corporation of the District of Columbia.

(b) FPI provides training and employment for prisoners confined in Federal penal and correctional institutions through the sale of its supplies and services to Government agencies ([18 U.S.C. 4121-4128](#)).

(c) FPI diversifies its supplies and services to minimize adverse impact on private industry.

(d) Supplies manufactured and services performed by FPI are listed in the FPI Schedule, which can be accessed at <http://www.unicor.gov> or by submitting a written request to Federal Prison Industries, Inc., Department of Justice, Washington, DC 20534.

(e) Agencies are encouraged to purchase FPI supplies and services to the maximum extent practicable.

### 8.602 Policy.

(a) In accordance with [10 U.S.C. 2410n](#) and Section 637 of Division H of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447) ([18 U.S.C. 4124 note](#)), and except as provided in paragraph (b) of this section, agencies shall—

(1) Before purchasing an item of supply listed in the FPI Schedule, conduct market research to determine whether the FPI item is comparable to supplies available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery. This is a unilateral determination made at the discretion of the contracting officer. The arbitration provisions of [18 U.S.C. 4124\(b\)](#) do not apply.

(2) Prepare a written determination that includes supporting rationale explaining the assessment of price, quality, and time of delivery, based on the results of market research comparing the FPI item to supplies available from the private sector.

(3) If the FPI item is comparable, purchase the item from FPI following the ordering procedures at <http://www.unicor.gov>, unless a waiver is obtained in accordance with [8.604](#).

(4) If the FPI item is not comparable in one or more of the areas of price, quality, and time of delivery—

(i) Acquire the item using—

(A) Competitive procedures (*e.g.*, the procedures in [6.102](#), the set-aside procedures in [Subpart 19.5](#), or competition conducted in accordance with [Part 13](#)); or

(B) The fair opportunity procedures in [16.505](#), if placing an order under a multiple award delivery-order contract;

(ii) Include FPI in the solicitation process and consider a timely offer from FPI for award in accordance with the

item description or specifications, and evaluation factors in the solicitation—

(A) If the solicitation is available through the Governmentwide point of entry (FedBizOpps), it is not necessary to provide a separate copy of the solicitation to FPI;

(B) If the solicitation is not available through FedBizOpps, provide a copy of the solicitation to FPI;

(iii) When using a multiple award schedule issued under the procedures in [Subpart 8.4](#) or when using the fair opportunity procedures in [16.505](#)—

(A) Establish and communicate to FPI the item description or specifications, and evaluation factors that will be used as the basis for selecting a source, so that an offer from FPI can be evaluated on the same basis as the contract or schedule holder; and

(B) Consider a timely offer from FPI;

(iv) Award to the source offering the item determined by the agency to provide the best value to the Government; and

(v) When the FPI item is determined to provide the best value to the Government as a result of FPI's response to a competitive solicitation, follow the ordering procedures at <http://www.unicor.gov>.

(b) The procedures in paragraph (a) of this section do not apply if an exception in [8.605\(b\)](#) through (g) applies.

(c) In some cases where FPI and an AbilityOne participating nonprofit agency produce identical items (see [8.603](#)), FPI grants a waiver to permit the Government to purchase a portion of its requirement from the AbilityOne participating nonprofit agency. When this occurs, the portion of the requirement for which FPI has granted a waiver—

(1) Shall be purchased from the AbilityOne participating nonprofit agency using the procedures in [Subpart 8.7](#); and

(2) Shall not be subject to the procedures in paragraph (a) of this section.

(d) Disputes regarding price, quality, character, or suitability of supplies produced by FPI, except for determinations under paragraph (a)(1) of this section, are subject to arbitration as specified in [18 U.S.C. 4124](#). The statute provides that the arbitration shall be conducted by a board consisting of the Comptroller General of the United States, the Administrator of General Services, and the President, or their representatives. The decisions of the board are final and binding on all parties.

### 8.603 Purchase priorities.

FPI and nonprofit agencies participating in the AbilityOne Program under [41 U.S.C. chapter 85](#), Committee for Purchase from People Who Are Blind or Severely Disabled (see [Subpart 8.7](#)) may produce identical supplies or services. When this occurs, ordering offices shall purchase supplies and services in the following priorities:

(a) *Supplies.* (1) Federal Prison Industries, Inc. ([41 U.S.C. 8504](#)).

(2) AbilityOne participating nonprofit agencies.

(3) Commercial sources.

(b) *Services.* (1) AbilityOne participating nonprofit agencies.

(2) Federal Prison Industries, Inc., or commercial sources.

#### 8.604 Waivers.

FPI may grant a waiver for purchase of supplies in the FPI Schedule from another source. FPI waivers ordinarily are of the following types:

(a) General or blanket waivers issued when classes of supplies are not available from FPI.

(b) Formal waivers issued in response to requests from offices desiring to acquire, from other sources, supplies listed in the FPI Schedule and not covered by a general waiver. Agencies shall process waiver requests in accordance with the procedures at <http://www.unicor.gov>.

#### 8.605 Exceptions.

Purchase from FPI is not mandatory and a waiver is not required if—

(a)(1) The contracting officer makes a determination that the FPI item of supply is not comparable to supplies available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery; and

(2) The item is acquired in accordance with [8.602\(a\)\(4\)](#);

(b) Public exigency requires immediate delivery or performance;

(c) Suitable used or excess supplies are available;

(d) The supplies are acquired and used outside the United States;

(e) Acquiring listed items totaling \$3,000 or less;

(f) Acquiring items that FPI offers exclusively on a competitive (non-mandatory) basis, as identified in the FPI Schedule; or

(g) Acquiring services.

#### 8.606 Evaluating FPI performance.

Agencies shall evaluate FPI contract performance in accordance with [Subpart 42.15](#). Performance evaluations do not negate the requirements of [8.602](#) and [8.604](#), but they may be used to support a waiver request in accordance with [8.604](#).

#### 8.607 Performance as a subcontractor.

Agencies shall not require a contractor, or subcontractor at any tier, to use FPI as a subcontractor for performance of a contract by any means, including means such as—

(a) A solicitation provision requiring a potential contractor to offer to make use of FPI supplies or services;

(b) A contract specification requiring the contractor to use specific supplies or services (or classes of supplies or services) offered by FPI; or

(c) Any contract modification directing the use of FPI supplies or services.

#### 8.608 Protection of classified and sensitive information.

Agencies shall not enter into any contract with FPI that allows an inmate worker access to any—

(a) Classified data;

(b) Geographic data regarding the location of—

(1) Surface and subsurface infrastructure providing communications or water or electrical power distribution;

(2) Pipelines for the distribution of natural gas, bulk petroleum products, or other commodities; or

(3) Other utilities; or

(c) Personal or financial information about any individual private citizen, including information relating to such person's real property however described, without the prior consent of the individual.

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

#### 8.700 Scope of subpart.

This subpart prescribes the policies and procedures for implementing—

(a) [41 U.S.C. chapter 85](#), Committee for Purchase from People Who Are Blind or Severely Disabled; and

(b) The rules of the Committee for Purchase from People Who Are Blind or Severely Disabled (41 CFR Chapter 51), which implements the AbilityOne program.

#### 8.701 Definitions.

As used in this subpart—

“Allocation” means an action taken by a central nonprofit agency to designate the AbilityOne participating nonprofit agencies that will furnish definite quantities of supplies or perform specific services upon receipt of orders from ordering offices.

“Central nonprofit agency” means National Industries for the Blind (NIB), which has been designated to represent people who are blind; or NISH, which has been designated to represent AbilityOne participating nonprofit agencies serving people with severe disabilities other than blindness.

“Committee” means the Committee for Purchase from People Who Are Blind or Severely Disabled.

“Government” or “entity of the Government” means any entity of the legislative or judicial branch, any executive agency, military department, Government corporation, or independent establishment, the U.S. Postal Service, or any nonappropriated-fund instrumentality of the Armed Forces.

“Ordering office” means any activity in an entity of the Government that places orders for the purchase of supplies or services under the AbilityOne Program.

“Procurement List” means a list of supplies (including military resale commodities) and services that the Committee has determined are suitable for purchase by the Government under the [41 U.S.C. chapter 85](#).

“Nonprofit agency serving people who are blind” or “nonprofit agency serving people with other severe disabilities” (referred to jointly as AbilityOne participating nonprofit agencies) means a qualified nonprofit agency employing people who are blind or have other severe disabilities approved by the Committee to furnish a commodity or a service to the Government under [41 U.S.C. chapter 85](#).

#### 8.702 General.

The Committee is an independent Government activity with members appointed by the President of the United States. It is responsible for—

(a) Determining those supplies and services to be purchased by all entities of the Government from AbilityOne participating nonprofit agencies;

(b) Establishing prices for the supplies and services; and

(c) Establishing rules and regulations to implement the [41 U.S.C. chapter 85](#).

#### 8.703 Procurement List.

The Committee maintains a Procurement List of all supplies and services required to be purchased from AbilityOne participating nonprofit agencies. The Procurement List may be accessed at: <http://www.abilityone.gov>. Questions concerning whether a supply item or service is on the Procurement List may be submitted at Internet e-mail address [info@abilityone.gov](mailto:info@abilityone.gov) or referred to the Committee offices at the following address and telephone number:

Committee for Purchase From People  
Who Are Blind or Severely Disabled,  
1401 S. Clark Street, Suite 10800,  
Arlington, VA 22202-3259,  
(703) 603-7740.

Many items on the Procurement List are identified in the General Services Administration (GSA) Supply Catalog and GSA’s Customer Service Center Catalogs with a black square and the words “NIB/NISH Mandatory Source,” and in similar catalogs issued by the Defense Logistics Agency (DLA) and the Department of Veterans Affairs (VA). GSA, DLA, and VA are central supply agencies from which other Federal agencies are required to purchase certain supply items on the Procurement List.

#### 8.704 Purchase priorities.

(a) The [41 U.S.C. chapter 85](#) requires the Government to purchase supplies or services on the Procurement List, at prices established by the Committee, from AbilityOne participating nonprofit agencies if they are available within the period required. When identical supplies or services are on the Procurement List and the Schedule of Products issued by Federal Prison Industries, Inc., ordering offices shall purchase supplies and services in the following priorities:

(1) Supplies:

(i) Federal Prison Industries, Inc. ([41 U.S.C. chapter 8504](#)).

(ii) AbilityOne participating nonprofit agencies.

(iii) Commercial sources.

(2) Services:

(i) AbilityOne participating nonprofit agencies.

(ii) Federal Prison Industries, Inc., or commercial sources.

(b) No other provision of the FAR shall be construed as permitting an exception to the mandatory purchase of items on the Procurement List.

(c) The Procurement List identifies those supplies for which the ordering office must obtain a formal waiver ([8.604](#)) from Federal Prison Industries, Inc., before making any purchases from AbilityOne participating nonprofit agencies.

**8.705 Procedures.****8.705-1 General.**

(a) Ordering offices shall obtain supplies and services on the Procurement List from the central nonprofit agency or its designated AbilityOne participating nonprofit agencies, except that supplies identified on the Procurement List as available from DLA, GSA, or VA supply distribution facilities shall be obtained through DLA, GSA, or VA procedures. If a distribution facility cannot provide the supplies, it shall inform the ordering office, which shall then order from the AbilityOne participating nonprofit agency designated by the Committee.

(b) Supply distribution facilities in DLA and GSA shall obtain supplies on the Procurement List from the central nonprofit agency identified or its designated AbilityOne participating nonprofit agency.

**8.705-2 Direct-order process.**

Central nonprofit agencies may authorize ordering offices to transmit orders for specific supplies or services directly to an AbilityOne participating nonprofit agency. The written authorization remains valid until it is revoked by the central nonprofit agency or the Committee. The central nonprofit agency shall specify the normal delivery or performance lead time required by the nonprofit agency. The ordering office shall reflect this lead time in its orders.

**8.705-3 Allocation process.**

(a) When the direct order process has not been authorized, the ordering office shall submit a letter request for allocation (requesting the designation of the AbilityOne participating nonprofit agency to produce the supplies or perform the service) to the central nonprofit agency designated in the Procurement List. Ordering offices shall request allocations in sufficient time for a reply, for orders to be placed, and for the nonprofit agency to produce the supplies or provide the service within the required delivery or performance schedule.

(b) The ordering office's request to the central nonprofit agency for allocation shall include the following information:

(1) For supplies—Item name, stock number, latest specification, quantity, unit price, date delivery is required, and destination to which delivery is to be made.

(2) For services—Type and location of service required, latest specification, work to be performed, estimated volume, and required date or dates for completion.

(3) Other requirements; *e.g.*, packing, marking, as necessary.

(c) When an allocation is received, the ordering office shall promptly issue an order to the specified AbilityOne participating nonprofit agency or to the central nonprofit agency, as instructed by the allocation. If the issuance of an order is to be delayed for more than 15 days beyond receipt of the alloca-

tion, or canceled, the ordering office shall advise the central nonprofit agency immediately.

(d) Ordering offices may issue orders without limitation as to dollar amount and shall record them upon issuance as obligations. Each order shall include, as a minimum, the information contained in the request for allocation. Ordering offices shall also include additional instructions necessary for performance under the order; *e.g.*, on the handling of Government-furnished property, reports required, and notification of shipment.

**8.705-4 Compliance with orders.**

(a) The central nonprofit agency shall inform the ordering office of changes in lead time experienced by its AbilityOne participating nonprofit agencies to minimize requests for extension once the ordering office places an order.

(b) The ordering office shall grant a request by a central nonprofit agency or AbilityOne participating nonprofit agency for revision in the delivery or completion schedule, if feasible. If extension of the delivery or completion date is not feasible, the ordering office shall notify the appropriate central nonprofit agency and request that it reallocate the order, or grant a purchase exception authorizing acquisition from commercial sources.

(c) When an AbilityOne participating nonprofit agency fails to perform under the terms of an order, the ordering office shall make every effort to resolve the noncompliance with the nonprofit agency involved and to negotiate an adjustment before taking action to cancel the order. If the problem cannot be resolved with the nonprofit agency, the ordering office shall refer the matter for resolution first to the central nonprofit agency and then, if necessary, to the Committee.

(d) When, after complying with [8.705-4\(c\)](#), the ordering office determines that it must cancel an order, it shall notify the central nonprofit agency and, if practical, request a reallocation of the order. When the central nonprofit agency cannot reallocate the order, it shall grant a purchase exception permitting use of commercial sources, subject to approval by the Committee when the value of the purchase exception is \$25,000 or more.

**8.706 Purchase exceptions.**

(a) Ordering offices may acquire supplies or services on the Procurement List from commercial sources only if the acquisition is specifically authorized in a purchase exception granted by the designated central nonprofit agency.

(b) The central nonprofit agency shall promptly grant purchase exceptions when—

(1) The AbilityOne participating nonprofit agencies cannot provide the supplies or services within the time required, and commercial sources can provide them significantly sooner in the quantities required; or

**Subpart 8.11—Leasing of Motor Vehicles**

**8.1100 Scope of subpart.**

This subpart covers the procedures for the leasing, from commercial concerns, of motor vehicles that comply with Federal Motor Vehicle Safety Standards and applicable State motor vehicle safety regulations. It does not apply to motor vehicles leased outside the United States and its outlying areas.

**8.1101 Definitions.**

As used in this subpart—

“Leasing” means the acquisition of motor vehicles, other than by purchase from private or commercial sources, and includes the synonyms “hire” and “rent.”

“Motor vehicle” means an item of equipment, mounted on wheels and designed for highway and/or land use, that—

- (1) Derives power from a self-contained power unit; or
- (2) Is designed to be towed by and used in conjunction with self-propelled equipment.

**8.1102 Presolicitation requirements.**

(a) Except as specified in [8.1102\(b\)](#), before preparing solicitations for leasing of motor vehicles, contracting officers shall obtain from the requiring activity a written certification that—

- (1) The vehicles requested are of maximum fuel efficiency and minimum body size, engine size, and equipment (if any) necessary to fulfill operational needs, and meet prescribed fuel economy standards;
- (2) The head of the requiring agency, or a designee, has certified that the requested passenger automobiles (sedans and station wagons) larger than Type IA, IB, or II (small, subcompact, or compact) are essential to the agency’s mission;
- (3) Internal approvals have been received; and
- (4) The General Services Administration has advised that it cannot furnish the vehicles.

(b) With respect to requirements for leasing motor vehicles for a period of less than 60 days, the contracting officer need not obtain the certification specified in [8.1102\(a\)](#)—

- (1) If the requirement is for type IA, IB, or II vehicles, which are by definition fuel efficient; or
- (2) If the requirement is for passenger vehicles larger than IA, IB, or II, and the agency has established procedures for advance approval, on a case-by-case basis, of such requirements.

(c) Generally, solicitations shall not be limited to current year production models. However, with the prior approval of the head of the contracting office, solicitations may be limited to current models on the basis of overall economy.

**8.1103 Contract requirements.**

Contracting officers shall include the following items in each contract for leasing motor vehicles:

- (a) Scope of contract.
- (b) Method of computing payments.
- (c) A listing of the number and type of vehicles required, and the equipment and accessories to be provided with each vehicle.
- (d) Responsibilities of the contractor or the Government for furnishing gasoline, motor oil, antifreeze, and similar items.
- (e) Unless it is determined that it will be more economical for the Government to perform the work, a statement that the contractor shall perform all maintenance on the vehicles.
- (f) A statement as to the applicability of pertinent State and local laws and regulations, and the responsibility of each party for compliance with them.
- (g) Responsibilities of the contractor or the Government for emergency repairs and services.

**8.1104 Contract clauses.**

Insert the following clauses in solicitations and contracts for leasing of motor vehicles, unless the motor vehicles are leased in foreign countries:

- (a) The clause at [52.208-4](#), Vehicle Lease Payments.
- (b) The clause at [52.208-5](#), Condition of Leased Vehicles.
- (c) The clause at [52.208-6](#), Marking of Leased Vehicles.
- (d) A clause substantially the same as the clause at [52.208-7](#), Tagging of Leased Vehicles, for vehicles leased over 60 days (see Subpart B of 41 CFR Part 102-34).
- (e) The provisions and clauses prescribed elsewhere in the FAR for solicitations and contracts for supplies when a fixed-price contract is contemplated, but excluding—
  - (1) The clause at [52.211-16](#), Variation in Quantity;
  - (2) The clause at [52.232-1](#), Payments;
  - (3) The clause at [52.222-20](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000; and
  - (4) The clause at [52.246-16](#), Responsibility for Supplies.

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**PART 9—CONTRACTOR QUALIFICATIONS**

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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 Definitions.**

“Administrative proceeding” means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceedings at the Federal and state level but only in connections with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

“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 people who are blind or severely disabled (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 performance 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 [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)(1) *Small business concerns.* Upon making a determination of nonresponsibility with regard to a small business

concern, the contracting officer shall refer the matter to the Small Business Administration, which will decide whether 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 subcontractors (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 Federal Awardee Performance and Integrity Information System.

(a) Before awarding a contract in excess of the simplified acquisition threshold, the contracting officer shall review the Federal Awardee Performance and Integrity Information Sys-

(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 responsibility. 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 (also see subpart [17.5](#)).

#### 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.

(a) The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee), as authorized by [41 U.S.C. chapter 85](#), 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 elements 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 nonprofit 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 Definitions.**

As used in this section—

“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\(c\)](#). An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at [26 U.S.C. 7874](#).

“Subsidiary” means an entity in which more than 50 percent of the entity is owned—

- (1) Directly by a parent corporation; or
- (2) Through another subsidiary of a parent corporation.

#### **9.108-2 Prohibition.**

(a) Section 738 of Division C of the Consolidated Appropriations Act, 2012 (Pub. L. 112-74) prohibits the use of 2012 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 Governmentwide restriction was also contained in the Fiscal Year 2008 through 2010 appropriations acts. Agency-specific restrictions on contracting with inverted domestic corporations also existed in FY 2006 and FY 2007 appropriations for United States Departments of Transportation and Treasury, Housing and Urban Development, the Judiciary and Independent Agencies (including Public Laws 109-115 and 109-289).

(b) This prohibition does not apply as follows:

(1) When using Fiscal Year 2008 funds for any contract entered into before December 26, 2007, or for any order issued pursuant to such contract.

(2) When using Fiscal Year 2009 funds for any contract entered into before March 11, 2009, or for any order issued pursuant to such contract.

(3) When using Fiscal Year 2010 funds for any contract entered into before December 16, 2009, or for any order issued pursuant to such contract.

(4) When using Fiscal Year 2012 funds for any contract entered into before December 23, 2011, or for any order issued pursuant to such contract.

#### **9.108-3 Representation by the offeror.**

(a) In order to be eligible for contract award when using Fiscal Year 2008 through Fiscal Year 2010 funds or Fiscal Year 2012 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) The contracting officer may rely on an offeror’s representation that it is not an inverted domestic corporation unless the contracting officer has reason to question the representation.

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

Any agency head may waive the prohibition in subsection [9.108-2](#) and 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 and contract clause.**

When using funds appropriated in Fiscal Year 2008 through Fiscal Year 2010 or in Fiscal Year 2012, unless waived in accordance with FAR [9.108-4](#), the contracting officer shall—

(a) Include the provision at [52.209-2](#), Prohibition on Contracting with Inverted Domestic Corporations—Representation, in each solicitation for the acquisition of products or services (including construction); and

(b) Include the clause at [52.209-10](#), Prohibition on Contracting with Inverted Domestic Corporations, in each solicitation and contract for the acquisition of products or services (including construction).

## Subpart 9.2—Qualifications Requirements

### 9.200 Scope of subpart.

This subpart implements [10 U.S.C. 2319](#) and [41 U.S.C. 3311](#) and prescribes policies and procedures regarding qualification requirements and the acquisitions that are subject to such requirements.

### 9.201 Definitions.

As used in this subpart—

“Qualified bidders list (QBL)” means a list of bidders who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product or have otherwise satisfied all applicable qualification requirements.

“Qualified manufacturers list (QML)” means a list of manufacturers who have had their products examined and tested and who have satisfied all applicable qualification requirements for that product.

### 9.202 Policy.

(a)(1) The head of the agency or designee shall, before establishing a qualification requirement, prepare a written justification—

(i) Stating the necessity for establishing the qualification requirement and specifying why the qualification requirement must be demonstrated before contract award;

(ii) Estimating the likely costs for testing and evaluation which will be incurred by the potential offeror to become qualified; and

(iii) Specifying all requirements that a potential offeror (or its product) must satisfy in order to become qualified. Only those requirements which are the least restrictive to meet the purposes necessitating the establishment of the qualification requirements shall be specified.

(2) Upon request to the contracting activity, potential offerors shall be provided—

(i) All requirements that they or their products must satisfy to become qualified; and

(ii) At their expense (but see [9.204\(a\)\(2\)](#) with regard to small businesses), a prompt opportunity to demonstrate their abilities to meet the standards specified for qualification using qualified personnel and facilities of the agency concerned, or of another agency obtained through interagency agreements or under contract, or other methods approved by the agency (including use of approved testing and evaluation services not provided under contract to the agency).

(3) If the services in (a)(2)(ii) of this section are provided by contract, the contractors selected to provide testing and evaluation services shall be—

(i) Those that are not expected to benefit from an absence of additional qualified sources; and

(ii) Required by their contracts to adhere to any restriction on technical data asserted by the potential offeror seeking qualification.

(4) A potential offeror seeking qualification shall be promptly informed as to whether qualification is attained and, in the event it is not, promptly furnished specific reasons why qualification was not attained.

(b) When justified under the circumstances, the agency activity responsible for establishing a qualification requirement shall submit to the advocate for competition for the procuring activity responsible for purchasing the item subject to the qualification requirement, a determination that it is unreasonable to specify the standards for qualification which a prospective offeror (or its product) must satisfy. After considering any comments of the advocate for competition reviewing the determination, the head of the procuring activity may waive the requirements of [9.202\(a\)\(1\)\(ii\)](#) through (4) for up to 2 years with respect to the item subject to the qualification requirement. A copy of the waiver shall be furnished to the head of the agency or other official responsible for actions under [9.202\(a\)\(1\)](#). The waiver authority provided in this paragraph does not apply with respect to qualification requirements contained in a QPL, QML, or QBL.

(c) If a potential offeror can demonstrate to the satisfaction of the contracting officer that the potential offeror (or its product) meets the standards established for qualification or can meet them before the date specified for award of the contract, a potential offeror may not be denied the opportunity to submit and have considered an offer for a contract solely because the potential offeror—

(1) Is not on a QPL, QML, or QBL maintained by the Department of Defense (DoD) or the National Aeronautics and Space Administration (NASA); or

(2) Has not been identified as meeting a qualification requirement established after October 19, 1984, by DoD or NASA; or

(3) Has not been identified as meeting a qualification requirement established by a civilian agency (not including NASA).

(d) The procedures in [Subpart 19.6](#) for referring matters to the Small Business Administration are not mandatory on the contracting officer when the basis for a referral would involve a challenge by the offeror to either the validity of the qualification requirement or the offeror’s compliance with such requirement.

(e) The contracting officer need not delay a proposed award in order to provide a potential offeror with an opportunity to demonstrate its ability to meet the standards specified for qualification. In addition, when approved by the head of an agency or designee, a procurement need not be delayed in order to comply with [9.202\(a\)](#).

(f) Within 7 years following enforcement of a QPL, QML, or QBL by DoD or NASA, or within 7 years after any quali-

qualification requirement was originally established by a civilian agency other than NASA, the qualification requirement shall be examined and revalidated in accordance with the requirements of [9.202\(a\)](#). For DoD and NASA, qualification requirements other than QPL's, QML's and QBL's shall be examined and revalidated within 7 years after establishment of the requirement under [9.202\(a\)](#). Any periods for which a waiver under [9.202\(b\)](#) is in effect shall be excluded in computing the 7 years within which review and revalidation must occur.

### 9.203 QPL's, QML's, and QBL's.

(a) Qualification and listing in a QPL, QML, or QBL is the process by which products are obtained from manufacturers or distributors, examined and tested for compliance with specification requirements, or manufacturers or potential offerors, are provided an opportunity to demonstrate their abilities to meet the standards specified for qualification. The names of successful products, manufacturers, or potential offerors are included on lists evidencing their status. Generally, qualification is performed in advance and independently of any specific acquisition action. After qualification, the products, manufacturers, or potential offerors are included in a Federal or Military QPL, QML, or QBL. (See [9.202\(a\)\(2\)](#) with regard to any product, manufacturer, or potential offeror not yet included on an applicable list.)

(b) Specifications requiring a qualified product are included in the following publications:

(1) GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR 101-29.1.

(2) Department of Defense Acquisition Streamlining and Standardization Information System (ASSIST) at (<https://assist.dla.mil/online/start/>).

(c) Instructions concerning qualification procedures are included in the following publications:

(1) Federal Standardization Manual, FSPM-0001.

(2) Defense Standardization Manual 4120.24-M, Appendix 2, as amended by Military Standards 961 and 962.

(d) The publications listed in paragraphs (b) and (c) of this section are sold to the public. The publications in paragraphs (b)(1) and (c)(1) of this section may be obtained from the addressee in [11.201\(d\)\(1\)](#). The publications in paragraphs (b)(2) and (c)(2) of this section may be obtained from the addressee in [11.201\(d\)\(2\)](#).

### 9.204 Responsibilities for establishment of a qualification requirement.

The responsibilities of agency activities that establish qualification requirements include the following:

(a) Arranging publicity for the qualification requirements. If active competition on anticipated future qualification requirements is likely to be fewer than two manufacturers or

the products of two manufacturers, the activity responsible for establishment of the qualification requirements must—

(1) Periodically furnish through the Governmentwide point of entry (GPE) a notice seeking additional sources or products for qualification unless the contracting officer determines that such publication would compromise the national security.

(2) Bear the cost of conducting the specified testing and evaluation (excluding the costs associated with producing the item or establishing the production, quality control, or other system to be tested and evaluated) for a small business concern or a product manufactured by a small business concern which has met the standards specified for qualification and which could reasonably be expected to compete for a contract for that requirement. However, such costs may be borne only if it is determined in accordance with agency procedures that such additional qualified sources or products are likely to result in cost savings from increased competition for future requirements sufficient to amortize the costs incurred by the agency within a reasonable period of time, considering the duration and dollar value of anticipated future requirements. A prospective contractor requesting the United States to bear testing and evaluation costs must certify as to its status as a small business concern under Section 3 of the Small Business Act in order to receive further consideration.

(b) Qualifying products that meet specification requirements.

(c) Listing manufacturers and suppliers whose products are qualified in accordance with agency procedures.

(d) Furnishing QPL's, QML's, or QBL's or the qualification requirements themselves to prospective offerors and the public upon request (see [9.202\(a\)\(2\)\(i\)](#)).

(e) Clarifying, as necessary, qualification requirements.

(f) In appropriate cases, when requested by the contracting officer, providing concurrence in a decision not to enforce a qualification requirement for a solicitation.

(g) Withdrawing or omitting qualification of a listed product, manufacturer or offeror, as necessary.

(h) Advising persons furnished any list of products, manufacturers or offerors meeting a qualification requirement and suppliers whose products are on any such list that—

(1) The list does not constitute endorsement of the product, manufacturer, or other source by the Government;

(2) The products or sources listed have been qualified under the latest applicable specification;

(3) The list may be amended without notice;

(4) The listing of a product or source does not release the supplier from compliance with the specification; and

(5) Use of the list for advertising or publicity is permitted. However, it must not be stated or implied that a particular product or source is the only product or source of that type

## 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) ([31 U.S.C. 6101](#), note), 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 System for Award Management Exclusions.

(a) The General Services Administration (GSA)—

(1) Operates the web-based System for Award Management (SAM) Exclusions; and

(2) Provides technical assistance to Federal agencies in the use of SAM.

(b) The SAM Exclusions contains 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) Data Universal Numbering System number;

(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 SAM 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 3 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 SAM Exclusions, 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 SAM Exclusions, 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 SAM, via the support e-mail address or on the technical support phone line available at the SAM web site provided in paragraph (d) of this section.

(d) SAM is available via <https://www.acquisition.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 SAM Exclusions 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 SAM Exclusions.

(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



reason to do so. If the period of ineligibility expires or is terminated prior to award, the contracting officer may, but is not required to, consider such proposals, quotations, or offers.

(4) Immediately prior to award, the contracting officer shall again review SAM Exclusions to ensure that no award is made to a listed contractor.

#### **9.405-1 Continuation of current contracts.**

(a) Notwithstanding the debarment, suspension, or proposed debarment of a contractor, agencies may continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment unless the agency head directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after review by agency contracting and technical personnel and by counsel to ensure the propriety of the proposed action.

(b) For contractors debarred, suspended, or proposed for debarment, unless the agency head makes a written determination of the compelling reasons for doing so, ordering activities shall not—

(1) Place orders exceeding the guaranteed minimum under indefinite quantity contracts;

(2) Place orders under Federal Supply Schedule contracts, blanket purchase agreements, or basic ordering agreements; or

(3) Add new work, exercise options, or otherwise extend the duration of current contracts or orders.

#### **9.405-2 Restrictions on subcontracting.**

(a) When a contractor debarred, suspended, or proposed for debarment is proposed as a subcontractor for any subcontract subject to Government consent (see [Subpart 44.2](#)), contracting officers shall not consent to subcontracts with such contractors unless the agency head states in writing the compelling reasons for this approval action. (See [9.405\(b\)](#) concerning declarations of ineligibility affecting sub-contracting.)

(b) The Government suspends or debar contractors to protect the Government's interests. By operation of the clause at [52.209-6](#), Protecting the Government's Interests When Subcontracting with Contractors Debarred, Suspended or Proposed for Debarment, contractors shall not enter into any subcontract in excess of \$30,000, other than a subcontract for a commercially available off-the-shelf item, with a contractor that has been debarred, suspended, or proposed for debarment unless there is a compelling reason to do so. If a contractor intends to enter into a subcontract in excess of \$30,000, other than a subcontract for a commercially available off-the-shelf item, with a party that is debarred, suspended, or proposed for debarment as evidenced by the parties' listing in SAM Exclusions (see [9.404](#)), a corporate officer or designee of the contractor is required by operation of the clause at [52.209-6](#), Protecting the Government's Interests when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment, to notify the contracting officer, in writing, before

entering into such subcontract. For contracts for the acquisition of commercial items, the notification requirement applies only for first-tier subcontracts. For all other contracts, the notification requirement applies to subcontracts at any tier. The notice must provide the following:

(1) The name of the subcontractor;

(2) The contractor's knowledge of the reasons for the subcontractor being listed in SAM Exclusions;

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its listed in SAM Exclusions; and

(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.

(c) The contractor's compliance with the requirements of [52.209-6](#) will be reviewed during Contractor Purchasing System Reviews (see [Subpart 44.3](#)).

#### **9.406 Debarment.**

##### **9.406-1 General.**

(a) It is the debarring official's responsibility to determine whether debarment is in the Government's interest. The debarring official may, in the public interest, debar a contractor for any of the causes in [9.406-2](#), using the procedures in [9.406-3](#). The existence of a cause for debarment, however, does not necessarily require that the contractor be debarred; the seriousness of the contractor's acts or omissions and any remedial measures or mitigating factors should be considered in making any debarment decision. Before arriving at any debarment decision, the debarring official should consider factors such as the following:

(1) Whether the contractor had effective standards of conduct and internal control systems in place at the time of the activity which constitutes cause for debarment or had adopted such procedures prior to any Government investigation of the activity cited as a cause for debarment.

(2) Whether the contractor brought the activity cited as a cause for debarment to the attention of the appropriate Government agency in a timely manner.

(3) Whether the contractor has fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

(4) Whether the contractor cooperated fully with Government agencies during the investigation and any court or administrative action.

(5) Whether the contractor has paid or has agreed to pay all criminal, civil, and administrative liability for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.

(6) Whether the contractor has taken appropriate disciplinary action against the individuals responsible for the activity which constitutes cause for debarment.

(7) Whether the contractor has implemented or agreed to implement remedial measures, including any identified by the Government.

(8) Whether the contractor has instituted or agreed to institute new or revised review and control procedures and ethics training programs.

(9) Whether the contractor has had adequate time to eliminate the circumstances within the contractor's organization that led to the cause for debarment.

(10) Whether the contractor's management recognizes and understands the seriousness of the misconduct giving rise to the cause for debarment and has implemented programs to prevent recurrence.

The existence or nonexistence of any mitigating factors or remedial measures such as set forth in this paragraph (a) is not necessarily determinative of a contractor's present responsibility. Accordingly, if a cause for debarment exists, the contractor has the burden of demonstrating, to the satisfaction of the debarring official, its present responsibility and that debarment is not necessary.

(b) Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the debarment decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarring official may extend the debarment decision to include any affiliates of the contractor if they are—

(1) Specifically named; and

(2) Given written notice of the proposed debarment and an opportunity to respond (see [9.406-3\(c\)](#)).

(c) A contractor's debarment, or proposed debarment, shall be effective throughout the executive branch of the Government, unless the agency head or a designee (except see [23.506\(e\)](#)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(d)(1) When the debarring official has authority to debar contractors from both acquisition contracts pursuant to this regulation and contracts for the purchase of Federal personal property pursuant to the Federal Property Management Regulations (FPMR) 101-45.6, that official shall consider simultaneously debarring the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

(2) When debarring a contractor from the award of acquisition contracts and from the purchase of Federal personal property, the debarment notice shall so indicate and the appropriate FAR and FPMR citations shall be included.

#### 9.406-2 Causes for debarment.

The debarring official may debar—

(a) A contractor for a conviction of or civil judgment for—

(1) Commission of fraud or a criminal offense in connection with—

(i) Obtaining;

(ii) Attempting to obtain; or

(iii) Performing a public contract or subcontract.

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) 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;

(4) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102-558)); or

(5) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b)(1) A contractor, based upon a preponderance of the evidence, for any of the following—

(i) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—

(A) Willful failure to perform in accordance with the terms of one or more contracts; or

(B) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.

(ii) Violations of [41 U.S.C. chapter 81](#), Drug-Free Workplace, as indicated by—

(A) Failure to comply with the requirements of the clause at [52.223-6](#), Drug-Free Workplace; or

(B) Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see [23.504](#)).

(iii) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102-558)).

(iv) Commission of an unfair trade practice as defined in [9.403](#) (see Section 201 of the Defense Production Act (Pub. L. 102-558)).

(v) Delinquent Federal taxes in an amount that exceeds \$3,000.

(A) Federal taxes are considered delinquent for purposes of this provision if both of the following criteria apply:

(b) The fraudulent, criminal, or other seriously improper conduct of a contractor may be imputed to any officer, director, shareholder, partner, employee, or other individual associated with the contractor who participated in, knew of, or had reason to know of the contractor's conduct.

(c) The fraudulent, criminal, or other seriously improper conduct of one contractor participating in a joint venture or similar arrangement may be imputed to other participating contractors if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of these contractors. Acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

### 9.407 Suspension.

#### 9.407-1 General.

(a) The suspending official may, in the public interest, suspend a contractor for any of the causes in [9.407-2](#), using the procedures in [9.407-3](#).

(b)(1) Suspension is a serious action to be imposed on the basis of adequate evidence, pending the completion of investigation or legal proceedings, when it has been determined that immediate action is necessary to protect the Government's interest. In assessing the adequacy of the evidence, agencies should consider how much information is available, how credible it is given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result. This assessment should include an examination of basic documents such as contracts, inspection reports, and correspondence.

(2) The existence of a cause for suspension does not necessarily require that the contractor be suspended. The suspending official should consider the seriousness of the contractor's acts or omissions and may, but is not required to, consider remedial measures or mitigating factors, such as those set forth in [9.406-1\(a\)](#). A contractor has the burden of promptly presenting to the suspending official evidence of remedial measures or mitigating factors when it has reason to know that a cause for suspension exists. The existence or non-existence of any remedial measures or mitigating factors is not necessarily determinative of a contractor's present responsibility.

(c) Suspension constitutes suspension of all divisions or other organizational elements of the contractor, unless the suspension decision is limited by its terms to specific divisions, organizational elements, or commodities. The suspending official may extend the suspension decision to include any affiliates of the contractor if they are—

- (1) Specifically named; and
- (2) Given written notice of the suspension and an opportunity to respond (see [9.407-3\(c\)](#)).

(d) A contractor's suspension shall be effective throughout the executive branch of the Government, unless the agency head or a designee (except see [23.506\(e\)](#)) states in writing the compelling reasons justifying continued business dealings between that agency and the contractor.

(e)(1) When the suspending official has authority to suspend contractors from both acquisition contracts pursuant to this regulation and contracts for the purchase of Federal personal property pursuant to FPMR 101-45.6, that official shall consider simultaneously suspending the contractor from the award of acquisition contracts and from the purchase of Federal personal property.

(2) When suspending a contractor from the award of acquisition contracts and from the purchase of Federal personal property, the suspension notice shall so indicate and the appropriate FAR and FPMR citations shall be included.

#### 9.407-2 Causes for suspension.

(a) The suspending official may suspend a contractor suspected, upon adequate evidence, of—

(1) Commission of fraud or a criminal offense in connection with—

- (i) Obtaining;
- (ii) Attempting to obtain; or
- (iii) Performing a public contract or subcontract.

(2) Violation of Federal or State antitrust statutes relating to the submission of offers;

(3) 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;

(4) Violations of [41 U.S.C. chapter 81](#), Drug-Free Workplace, as indicated by—

(i) Failure to comply with the requirements of the clause at [52.223-6](#), Drug-Free Workplace; or

(ii) Such a number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see [23.504](#));

(5) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in or shipped to the United States or its outlying areas, when the product was not made in the United States or its outlying areas (see Section 202 of the Defense Production Act (Public Law 102-558));

(6) Commission of an unfair trade practice as defined in [9.403](#) (see section 201 of the Defense Production Act (Pub. L. 102-558));

(7) Delinquent Federal taxes in an amount that exceeds \$3,000. See the criteria at [9.406-2\(b\)\(1\)\(v\)](#) for determination of when taxes are delinquent;

(8) Knowing failure by a principal, until 3 years after final payment on any Government contract awarded to the contractor, to timely disclose to the Government, in connection with the award, performance, or closeout of the contract or a subcontract thereunder, credible evidence of—

(i) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;

(ii) Violation of the civil False Claims Act (31 U.S.C. 3729-3733); or

(iii) Significant overpayment(s) on the contract, other than overpayments resulting from contract financing payments as defined in [32.001](#); or

(9) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a Government contractor or subcontractor.

(b) Indictment for any of the causes in paragraph (a) of this section constitutes adequate evidence for suspension.

(c) The suspending official may upon adequate evidence also suspend a contractor for any other cause of so serious or compelling a nature that it affects the present responsibility of a Government contractor or subcontractor.

### 9.407-3 Procedures.

(a) *Investigation and referral.* Agencies shall establish procedures for the prompt reporting, investigation, and referral to the suspending official of matters appropriate for that official's consideration.

(b) *Decisionmaking process.* (1) Agencies shall establish procedures governing the suspension decisionmaking process that are as informal as is practicable, consistent with principles of fundamental fairness. These procedures shall afford the contractor (and any specifically named affiliates) an opportunity, following the imposition of suspension, to submit, in person, in writing, or through a representative, information and argument in opposition to the suspension.

(2) In actions not based on an indictment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the suspension and if no determination has been made, on the basis of Department of Justice advice, that substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced, agencies shall also—

(i) Afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents; and

(ii) Make a transcribed record of the proceedings and make it available at cost to the contractor upon request, unless the contractor and the agency, by mutual agreement, waive the requirement for a transcript.

(c) *Notice of suspension.* When a contractor and any specifically named affiliates are suspended, they shall be immediately advised by certified mail, return receipt requested—

(1) That they have been suspended and that the suspension is based on an indictment or other adequate evidence that the contractor has committed irregularities—

(i) Of a serious nature in business dealings with the Government or

(ii) Seriously reflecting on the propriety of further Government dealings with the contractor—any such irregularities shall be described in terms sufficient to place the contractor on notice without disclosing the Government's evidence;

(2) That the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue;

(3) Of the cause(s) relied upon under [9.407-2](#) for imposing suspension;

(4) Of the effect of the suspension;

(5) That, within 30 days after receipt of the notice, the contractor may submit, in person, in writing, or through a representative, information and argument in opposition to the suspension, including any additional specific information that raises a genuine dispute over the material facts; and

(6) That additional proceedings to determine disputed material facts will be conducted unless—

(i) The action is based on an indictment; or

(ii) A determination is made, on the basis of Department of Justice advice, that the substantial interests of the Government in pending or contemplated legal proceedings based on the same facts as the suspension would be prejudiced.

(d) *Suspending official's decision.* (1) In actions—

(i) Based on an indictment;

(ii) In which the contractor's submission does not raise a genuine dispute over material facts; or

(iii) In which additional proceedings to determine disputed material facts have been denied on the basis of Department of Justice advice, the suspending official's decision shall be based on all the information in the administrative record, including any submission made by the contractor.

(2)(i) In actions in which additional proceedings are necessary as to disputed material facts, written findings of fact shall be prepared. The suspending official shall base the decision on the facts as found, together with any information and argument submitted by the contractor and any other information in the administrative record.

(ii) The suspending official may refer matters involving disputed material facts to another official for findings of fact. The suspending official may reject any such findings, in whole or in part, only after specifically determining them to be arbitrary and capricious or clearly erroneous.

**10.000 Scope of part.**

This part prescribes policies and procedures for conducting market research to arrive at the most suitable approach to acquiring, distributing, and supporting supplies and services. This part implements the requirements of [41 U.S.C. 3306\(a\)\(1\)](#), [41 U.S.C. 3307](#), [10 U.S.C. 2377](#), and [6 U.S.C. 796](#).

**10.001 Policy.**

(a) Agencies must—

(1) Ensure that legitimate needs are identified and trade-offs evaluated to acquire items that meet those needs;

(2) Conduct market research appropriate to the circumstances—

(i) Before developing new requirements documents for an acquisition by that agency;

(ii) Before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold;

(iii) Before soliciting offers for acquisitions with an estimated value less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost;

(iv) Before soliciting offers for acquisitions that could lead to a bundled contract ([15 U.S.C. 644\(e\)\(2\)\(A\)](#));

(v) Before awarding a task or delivery order under an indefinite-delivery/indefinite-quantity (ID/IQ) contract (e.g., GWACs, MACs) for a noncommercial item in excess of the simplified acquisition threshold ([10 U.S.C. 2377\(c\)](#)); and

(vi) On an ongoing basis, take advantage (to the maximum extent practicable) of commercially available market research methods in order to effectively identify the capabilities of small businesses and new entrants into Federal contracting that are available in the marketplace for meeting the requirements of the agency in furtherance of—

(A) A contingency operation or defense against or recovery from nuclear, biological, chemical, or radiological attack; and

(B) Disaster relief to include debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities. (See [26.205](#)).

(3) Use the results of market research to—

(i) Determine if sources capable of satisfying the agency's requirements exist;

(ii) Determine if commercial items or, to the extent commercial items suitable to meet the agency's needs are not available, nondevelopmental items are available that—

(A) Meet the agency's requirements;

(B) Could be modified to meet the agency's requirements; or

(C) Could meet the agency's requirements if those requirements were modified to a reasonable extent;

(iii) Determine the extent to which commercial items or nondevelopmental items could be incorporated at the component level;

(iv) Determine the practices of firms engaged in producing, distributing, and supporting commercial items, such as type of contract, terms for warranties, buyer financing, maintenance and packaging, and marking;

(v) Ensure maximum practicable use of recovered materials (see [Subpart 23.4](#)) and promote energy conservation and efficiency; and

(vi) Determine whether bundling is necessary and justified (see [7.107](#)) ([15 U.S.C. 644\(e\)\(2\)\(A\)](#)).

(vii) Assess the availability of electronic and information technology that meets all or part of the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR Part 1194 (see [Subpart 39.2](#)).

(b) When conducting market research, agencies should not request potential sources to submit more than the minimum information necessary.

(c) If an agency contemplates awarding a bundled contract, the agency—

(1) When performing market research, should consult with the local Small Business Administration procurement center representative (PCR). If a PCR is not assigned, see [19.402\(a\)](#); and

(2) At least 30 days before release of the solicitation or 30 days prior to placing an order without a solicitation—

(i) Must notify any affected incumbent small business concerns of the Government's intention to bundle the requirement; and

(ii) Should notify any affected incumbent small business concerns of how the concerns may contact the appropriate Small Business Administration representative.

(d) See [10.003](#) for the requirement for a prime contractor to perform market research in contracts in excess of \$5 million for the procurement of items other than commercial items in accordance with section 826 of Public Law 110-181.

**10.002 Procedures.**

(a) Acquisitions begin with a description of the Government's needs stated in terms sufficient to allow conduct of market research.

(b) Market research is then conducted to determine if commercial items or nondevelopmental items are available to meet the Government's needs or could be modified to meet the Government's needs.

(1) The extent of market research will vary, depending on such factors as urgency, estimated dollar value, complexity, and past experience. The contracting officer may use market research conducted within 18 months before the award of any task or delivery order if the information is still current, accurate, and relevant. Market research involves obtaining

information specific to the item being acquired and should include—

(i) Whether the Government's needs can be met by—

(A) Items of a type customarily available in the commercial marketplace;

(B) Items of a type customarily available in the commercial marketplace with modifications; or

(C) Items used exclusively for governmental purposes;

(ii) Customary practices regarding customizing, modifying or tailoring of items to meet customer needs and associated costs;

(iii) Customary practices, including warranty, buyer financing, discounts, contract type considering the nature and risk associated with the requirement, etc., under which commercial sales of the products or services are made;

(iv) The requirements of any laws and regulations unique to the item being acquired;

(v) The availability of items that contain recovered materials and items that are energy efficient;

(vi) The distribution and support capabilities of potential suppliers, including alternative arrangements and cost estimates; and

(vii) Size and status of potential sources (see [Part 19](#)).

(2) Techniques for conducting market research may include any or all of the following:

(i) Contacting knowledgeable individuals in Government and industry regarding market capabilities to meet requirements.

(ii) Reviewing the results of recent market research undertaken to meet similar or identical requirements.

(iii) Publishing formal requests for information in appropriate technical or scientific journals or business publications.

(iv) Querying the Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies available at <https://www.contractdirectory.gov/contractdirectory/> and other

Government and commercial databases that provide information relevant to agency acquisitions.

(v) Participating in interactive, on-line communication among industry, acquisition personnel, and customers.

(vi) Obtaining source lists of similar items from other contracting activities or agencies, trade associations or other sources.

(vii) Reviewing catalogs and other generally available product literature published by manufacturers, distributors, and dealers or available on-line.

(viii) Conducting interchange meetings or holding presolicitation conferences to involve potential offerors early in the acquisition process.

(c) If market research indicates commercial or nondevelopmental items might not be available to satisfy agency needs, agencies shall reevaluate the need in accordance with [10.001\(a\)\(3\)\(ii\)](#) and determine whether the need can be restated to permit commercial or nondevelopmental items to satisfy the agency's needs.

(d)(1) If market research establishes that the Government's need may be met by a type of item or service customarily available in the commercial marketplace that would meet the definition of a commercial item at [Subpart 2.1](#), the contracting officer shall solicit and award any resultant contract using the policies and procedures in [Part 12](#).

(2) If market research establishes that the Government's need cannot be met by a type of item or service customarily available in the marketplace, [Part 12](#) shall not be used. When publication of the notice at [5.201](#) is required, the contracting officer shall include a notice to prospective offerors that the Government does not intend to use [Part 12](#) for the acquisition.

(e) Agencies should document the results of market research in a manner appropriate to the size and complexity of the acquisition.

#### **10.003 Contract clause.**

The contracting officer shall insert the clause at [52.210-1](#), Market Research, in solicitations and contracts over \$5 million for the procurement of items other than commercial items.

**11.000 Scope of part.**

This part prescribes policies and procedures for describing agency needs.

**11.001 Definitions.**

As used in this part—

“Reconditioned” means restored to the original normal operating condition by readjustments and material replacement.

“Remanufactured” means factory rebuilt to original specifications.

**11.002 Policy.**

(a) In fulfilling requirements of [10 U.S.C. 2305\(a\)\(1\)](#), [10 U.S.C. 2377](#), [41 U.S.C. 3306\(a\)](#), and [41 U.S.C. 3307](#), agencies shall—

(1) Specify needs using market research in a manner designed to—

(i) Promote full and open competition (see [Part 6](#)), or maximum practicable competition when using simplified acquisition procedures, with due regard to the nature of the supplies or services to be acquired; and

(ii) Only include restrictive provisions or conditions to the extent necessary to satisfy the needs of the agency or as authorized by law.

(2) To the maximum extent practicable, ensure that acquisition officials—

(i) State requirements with respect to an acquisition of supplies or services in terms of—

(A) Functions to be performed;

(B) Performance required; or

(C) Essential physical characteristics;

(ii) Define requirements in terms that enable and encourage offerors to supply commercial items, or, to the extent that commercial items suitable to meet the agency’s needs are not available, nondevelopmental items, in response to the agency solicitations;

(iii) Provide offerors of commercial items and nondevelopmental items an opportunity to compete in any acquisition to fill such requirements;

(iv) Require prime contractors and subcontractors at all tiers under the agency contracts to incorporate commercial items or nondevelopmental items as components of items supplied to the agency; and

(v) Modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the agency’s needs are not available, nondevelopmental items.

(b) The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 ([15 U.S.C. 205a](#), *et seq.*), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, and it requires that each

agency use the metric system of measurement in its acquisitions, except to the extent that such use is impracticable or is likely to cause significant inefficiencies or loss of markets to United States firms. Requiring activities are responsible for establishing guidance implementing this policy in formulating their requirements for acquisitions.

(c) To the extent practicable and consistent with [Subpart 9.5](#), potential offerors should be given an opportunity to comment on agency requirements or to recommend application and tailoring of requirements documents and alternative approaches. Requiring agencies should apply specifications, standards, and related documents initially for guidance only, making final decisions on the application and tailoring of these documents as a product of the design and development process. Requiring agencies should not dictate detailed design solutions prematurely (see [7.101](#) and [7.105\(a\)\(8\)](#)).

(d)(1) When agencies acquire products and services, various statutes and executive orders (identified in part [23](#)) require consideration of sustainable acquisition (see subpart [23.1](#)) including—

(i) Energy-efficient and water-efficient services and products (including products containing energy-efficient standby power devices) (subpart [23.2](#));

(ii) Products and services that utilize renewable energy technologies (subpart [23.2](#));

(iii) Products containing recovered materials (subpart [23.4](#));

(iv) Biobased products (subpart [23.4](#));

(v) Environmentally preferable products and services, including EPEAT-registered electronic products and non-toxic or low-toxic alternatives (subpart [23.7](#)); and

(vi) Non-ozone depleting substances (subpart [23.8](#)).

(2) Unless an exception applies and is documented by the requiring activity, Executive agencies shall, to the maximum practicable, require the use of products and services listed in paragraph (d)(1) of this section when—

(i) Developing, reviewing, or revising Federal and military specifications, product descriptions (including commercial item descriptions) and standards;

(ii) Describing Government requirements for products and services; and

(iii) Developing source-selection factors.

(e) Some or all of the performance levels or performance specifications in a solicitation may be identified as targets rather than as fixed or minimum requirements.

(f) In accordance with Section 508 of the Rehabilitation Act of 1973 ([29 U.S.C. 794d](#)), requiring activities must prepare requirements documents for electronic and information technology that comply with the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR Part 1194 (see [Subpart 39.2](#)).

(g) Unless the agency Chief Information Officer waives the requirement, when acquiring information technology using Internet Protocol, the requirements documents must include reference to the appropriate technical capabilities defined in the USGv6 Profile (NIST Special Publication 500-267) and the corresponding declarations of conformance defined in the USGv6 Test Program. The applicability of IPv6 to agency networks, infrastructure, and applications specific to individual acquisitions will be in accordance with the agency's Enterprise Architecture (see OMB Memorandum M-05-22 dated August 2, 2005).

(h) Agencies shall not include in a solicitation a requirement that prohibits an offeror from permitting its employees to telecommute unless the contracting officer executes a written determination in accordance with FAR [7.108\(a\)](#).

### Subpart 11.1—Selecting and Developing Requirements Documents

#### 11.101 Order of precedence for requirements documents.

(a) Agencies may select from existing requirements documents, modify or combine existing requirements documents, or create new requirements documents to meet agency needs, consistent with the following order of precedence:

- (1) Documents mandated for use by law.
- (2) Performance-oriented documents (*e.g.*, a PWS or SOO). (See [2.101](#).)
- (3) Detailed design-oriented documents.
- (4) Standards, specifications and related publications issued by the Government outside the Defense or Federal series for the non-repetitive acquisition of items.

(b) In accordance with OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities," and Section 12(d) of the National Technology Transfer and Advancement Act of 1995, Pub. L. 104-113 ([15 U.S.C. 272](#) note), agencies must use voluntary consensus standards, when they exist, in lieu of Government-unique standards, except where inconsistent with law or otherwise impractical. The private sector manages and administers voluntary consensus standards. Such standards are not mandated by law (*e.g.*, industry standards such as ISO 9000, and IEEE 1680).

#### 11.102 Standardization program.

Agencies shall select existing requirements documents or develop new requirements documents that meet the needs of the agency in accordance with the guidance contained in the Federal Standardization Manual, FSPM-0001; for DoD components, DoD 4120.24-M, Defense Standardization Program Policies and Procedures; and for IT standards and guidance, the Federal Information Processing Standards Publications (FIPS PUBS). The Federal Standardization Manual may be obtained from the General Services Administration (see

address in [11.201\(d\)\(1\)](#)). DoD 4120.24-M may be obtained from DoD (see [11.201\(d\)\(2\)](#) or [11.201\(d\)\(3\)](#)). FIPS PUBS may be obtained from the Government Printing Office (GPO), or the Department of Commerce's National Technical Information Service (NTIS) (see address in [11.201\(d\)\(4\)](#)).

#### 11.103 Market acceptance.

(a) [41 U.S.C. 3307\(e\)](#) provides that, in accordance with agency procedures, the head of an agency may, under appropriate circumstances, require offerors to demonstrate that the items offered—

- (1) Have either—
  - (i) Achieved commercial market acceptance; or
  - (ii) Been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements; and
- (2) Otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation.

(b) Appropriate circumstances may, for example, include situations where the agency's minimum need is for an item that has a demonstrated reliability, performance or product support record in a specified environment. Use of market acceptance is inappropriate when new or evolving items may meet the agency's needs.

(c) In developing criteria for demonstrating that an item has achieved commercial market acceptance, the contracting officer shall ensure the criteria in the solicitation—

- (1) Reflect the minimum need of the agency and are reasonably related to the demonstration of an item's acceptability to meet the agency's minimum need;
- (2) Relate to an item's performance and intended use, not an offeror's capability;
- (3) Are supported by market research;
- (4) Include consideration of items supplied satisfactorily under recent or current Government contracts, for the same or similar items; and
- (5) Consider the entire relevant commercial market, including small business concerns.

(d) Commercial market acceptance shall not be used as a sole criterion to evaluate whether an item meets the Government's requirements.

(e) When commercial market acceptance is used, the contracting officer shall document the file to—

- (1) Describe the circumstances justifying the use of commercial market acceptance criteria; and
- (2) Support the specific criteria being used.

#### 11.104 Use of brand name or equal purchase descriptions.

(a) While the use of performance specifications is preferred to encourage offerors to propose innovative solutions, the use of brand name or equal purchase descriptions may be advantageous under certain circumstances.



## Subpart 11.5—Liquidated Damages

### 11.500 Scope.

This subpart prescribes policies and procedures for using liquidated damages clauses in solicitations and contracts for supplies, services, research and development, and construction. This subpart does not apply to liquidated damages for subcontracting plans (see [19.705-7](#)) or liquidated damages related to the Contract Work Hours and Safety Standards statute (see [Subpart 22.3](#)).

### 11.501 Policy.

(a) The contracting officer must consider the potential impact on pricing, competition, and contract administration before using a liquidated damages clause. Use liquidated damages clauses only when—

- (1) The time of delivery or timely performance is so important that the Government may reasonably expect to suffer damage if the delivery or performance is delinquent; and
- (2) The extent or amount of such damage would be difficult or impossible to estimate accurately or prove.

(b) Liquidated damages are not punitive and are not negative performance incentives (see [16.402-2](#)). Liquidated damages are used to compensate the Government for probable damages. Therefore, the liquidated damages rate must be a reasonable forecast of just compensation for the harm that is caused by late delivery or untimely performance of the particular contract. Use a maximum amount or a maximum period for assessing liquidated damages if these limits reflect the maximum probable damage to the Government. Also, the contracting officer may use more than one liquidated damages rate when the contracting officer expects the probable damage to the Government to change over the contract period of performance.

(c) The contracting officer must take all reasonable steps to mitigate liquidated damages. If the contract contains a liquidated damages clause and the contracting officer is considering terminating the contract for default, the contracting officer should seek expeditiously to obtain performance by the contractor or terminate the contract and repurchase (see [Subpart 49.4](#)). Prompt contracting officer action will prevent

excessive loss to defaulting contractors and protect the interests of the Government.

(d) The head of the agency may reduce or waive the amount of liquidated damages assessed under a contract, if the Commissioner, Financial Management Service, or designee approves (see Treasury Order 145-10).

### 11.502 Procedures.

(a) Include the applicable liquidated damages clause and liquidated damages rates in solicitations when the contract will contain liquidated damages provisions.

(b) Construction contracts with liquidated damages provisions must describe the rate(s) of liquidated damages assessed per day of delay. The rate(s) should include the estimated daily cost of Government inspection and superintendence. The rate(s) should also include an amount for other expected expenses associated with delayed completion such as—

- (1) Renting substitute property; or
- (2) Paying additional allowance for living quarters.

### 11.503 Contract clauses.

(a) Use the clause at [52.211-11](#), Liquidated Damages—Supplies, Services, or Research and Development, in fixed-price solicitations and contracts for supplies, services, or research and development when the contracting officer determines that liquidated damages are appropriate (see [11.501\(a\)](#)).

(b) Use the clause at [52.211-12](#), Liquidated Damages—Construction, in solicitations and contracts for construction, other than cost-plus-fixed-fee, when the contracting officer determines that liquidated damages are appropriate (see [11.501\(a\)](#)). If the contract specifies more than one completion date for separate parts or stages of the work, revise paragraph (a) of the clause to state the amount of liquidated damages for delay of each separate part or stage of the work.

(c) Use the clause at [52.211-13](#), Time Extensions, in solicitations and contracts for construction that use the clause at [52.211-12](#), Liquidated Damages—Construction, when that clause has been revised as provided in paragraph (b) of this section.

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**12.000 Scope of part.**

This part prescribes policies and procedures unique to the acquisition of commercial items. It implements the Federal Government's preference for the acquisition of commercial items contained in [41 U.S.C. 1906](#), [1907](#), and [3307](#) and [10 U.S.C. 2375-2377](#) by establishing acquisition policies more closely resembling those of the commercial marketplace and encouraging the acquisition of commercial items and components.

**12.001 Definition.**

“Subcontract,” as used in this part, includes, but is not limited to, a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

### **Subpart 12.1—Acquisition of Commercial Items—General**

**12.101 Policy.**

Agencies shall—

(a) Conduct market research to determine whether commercial items or nondevelopmental items are available that could meet the agency's requirements;

(b) Acquire commercial items or nondevelopmental items when they are available to meet the needs of the agency; and

(c) Require prime contractors and subcontractors at all tiers to incorporate, to the maximum extent practicable, commercial items or nondevelopmental items as components of items supplied to the agency.

**12.102 Applicability.**

(a) This part shall be used for the acquisition of supplies or services that meet the definition of commercial items at [2.101](#).

(b) Contracting officers shall use the policies in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in [Part 13](#), Simplified Acquisition Procedures; [Part 14](#), Sealed Bidding; or [Part 15](#), Contracting by Negotiation, as appropriate for the particular acquisition.

(c) Contracts for the acquisition of commercial items are subject to the policies in other parts of the FAR. When a policy in another part of the FAR is inconsistent with a policy in this part, this part [12](#) shall take precedence for the acquisition of commercial items.

(d) The definition of commercial item in section [2.101](#) uses the phrase “purposes other than governmental purposes.” These purposes are those that are not unique to a government.

(e) This part shall not apply to the acquisition of commercial items—

(1) At or below the micro-purchase threshold;

(2) Using the [Standard Form 44](#) (see [13.306](#));

(3) Using the imprest fund (see [13.305](#));

(4) Using the Governmentwide commercial purchase card as a method of purchase rather than only as a method of payment; or

(5) Directly from another Federal agency.

(f)(1) Contracting officers may treat any acquisition of supplies or services that, as determined by the head of the agency, are to be used to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, as an acquisition of commercial items.

(2) A contract in an amount greater than \$17.5 million that is awarded on a sole source basis for an item or service treated as a commercial item under paragraph (f)(1) of this section but does not meet the definition of a commercial item as defined at FAR [2.101](#) shall not be exempt from—

(i) Cost accounting standards (see [subpart 30.2](#)); or

(ii) Certified cost or pricing data requirements (see [15.403](#)).

(g)(1) In accordance with [41 U.S.C. 2310](#), the contracting officer also may use [Part 12](#) for any acquisition for services that does not meet the definition of commercial item in FAR [2.101](#), if the contract or task order—

(i) Is entered into on or before November 24, 2013;

(ii) Has a value of \$29.5 million or less;

(iii) Meets the definition of performance-based acquisition at FAR [2.101](#);

(iv) Uses a quality assurance surveillance plan;

(v) Includes performance incentives where appropriate;

(vi) Specifies a firm-fixed price for specific tasks to be performed or outcomes to be achieved; and

(vii) Is awarded to an entity that provides similar services to the general public under terms and conditions similar to those in the contract or task order.

(2) In exercising the authority specified in paragraph (g)(1) of this section, the contracting officer may tailor paragraph (a) of the clause at FAR [52.212-4](#) as may be necessary to ensure the contract's remedies adequately protect the Government's interests.

**12.103 Commercially available off-the-shelf (COTS) items.**

Commercially available off-the-shelf (COTS) items are defined in [2.101](#). Unless indicated otherwise, all of the policies that apply to commercial items also apply to COTS items. Section [12.505](#) lists the laws that are not applicable to COTS (in addition to [12.503](#) and [12.504](#)); the components test of the Buy American statute, and the two recovered materials certifications in [subpart 23.4](#), do not apply to COTS.

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## Subpart 12.2—Special Requirements for the Acquisition of Commercial Items

### 12.201 General.

This subpart identifies special requirements for the acquisition of commercial items intended to more closely resemble those customarily used in the commercial marketplace, as well as other considerations necessary for proper planning, solicitation, evaluation, and award of contracts for commercial items.

### 12.202 Market research and description of agency need.

(a) Market research (see [10.001](#)) is an essential element of building an effective strategy for the acquisition of commercial items and establishes the foundation for the agency description of need (see [Part 11](#)), the solicitation, and resulting contract.

(b) The description of agency need must contain sufficient detail for potential offerors of commercial items to know which commercial products or services may be suitable. Generally, for acquisitions in excess of the simplified acquisition threshold, an agency's statement of need for a commercial item will describe the type of product or service to be acquired and explain how the agency intends to use the product or service in terms of function to be performed, performance requirement or essential physical characteristics. Describing the agency's needs in these terms allows offerors to propose methods that will best meet the needs of the Government.

(c) Follow the procedures in [Subpart 11.2](#) regarding the identification and availability of specifications, standards and commercial item descriptions.

(d) Requirements documents for electronic and information technology must comply with the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR Part 1194 (see [Subpart 39.2](#)).

(e) When acquiring information technology using Internet Protocol, agencies must include the appropriate Internet Protocol compliance requirements in accordance with [11.002\(g\)](#).

### 12.203 Procedures for solicitation, evaluation, and award.

Contracting officers shall use the policies unique to the acquisition of commercial items prescribed in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in [Part 13](#), Simplified Acquisition Procedures; [Part 14](#), Sealed Bidding; or [Part 15](#), Contracting by Negotiation, as appropriate for the particular acquisition. The contracting officer may use the streamlined procedure for soliciting offers for commercial items prescribed in [12.603](#). For acquisitions of commercial items exceeding the simplified acquisition threshold but not exceed-

ing \$6.5 million (\$12 million for acquisitions as described in [13.500\(e\)](#)), including options, contracting activities shall employ the simplified procedures authorized by [Subpart 13.5](#) to the maximum extent practicable.

### 12.204 Solicitation/contract form.

(a) The contracting officer shall use the [Standard Form 1449](#), Solicitation/Contract/Order for Commercial Items, if (1) the acquisition is expected to exceed the simplified acquisition threshold; (2) a paper solicitation or contract is being issued; and (3) procedures at [12.603](#) are not being used. Use of the [SF 1449](#) is nonmandatory but encouraged for commercial acquisitions not exceeding the simplified acquisition threshold.

(b) Consistent with the requirements at [5.203\(a\)](#) and (h), the contracting officer may allow fewer than 15 days before issuance of the solicitation.

### 12.205 Offers.

(a) Where technical information is necessary for evaluation of offers, agencies should, as part of market research, review existing product literature generally available in the industry to determine its adequacy for purposes of evaluation. If adequate, contracting officers shall request existing product literature from offerors of commercial items in lieu of unique technical proposals.

(b) Contracting officers should allow offerors to propose more than one product that will meet a Government need in response to solicitations for commercial items. The contracting officer shall evaluate each product as a separate offer.

(c) Consistent with the requirements at [5.203\(b\)](#), the contracting officer may allow fewer than 30 days response time for receipt of offers for commercial items, unless the acquisition is covered by the World Trade Organization Government Procurement Agreement or a Free Trade Agreement (see [5.203\(h\)](#)).

### 12.206 Use of past performance.

Past performance should be an important element of every evaluation and contract award for commercial items. Contracting officers should consider past performance data from a wide variety of sources both inside and outside the Federal Government in accordance with the policies and procedures contained in [Subpart 9.1](#), [13.106](#), or [Subpart 15.3](#), as applicable.

### 12.207 Contract type.

(a) Except as provided in paragraph (b) of this section, agencies shall use firm-fixed-price contracts or fixed-price contracts with economic price adjustment for the acquisition of commercial items.

(b) (1) A time-and-materials contract or labor-hour contract (see [Subpart 16.6](#)) may be used for the acquisition of commercial services when—

(i) The service is acquired under a contract awarded using—

(A) Competitive procedures (*e.g.*, the procedures in [6.102](#), the set-aside procedures in [Subpart 19.5](#), or competition conducted in accordance with [Part 13](#));

(B) The procedures for other than full and open competition in 6.3 provided the agency receives offers that satisfy the Government's expressed requirement from two or more responsible offerors; or

(C) The fair opportunity procedures in [16.505](#) (including discretionary small business set-asides under [16.505\(b\)\(2\)\(i\)\(F\)](#)), if placing an order under a multiple-award delivery-order contract; and

(ii) The contracting officer—

(A) Executes a determination and findings (D&F) for the contract, in accordance with paragraph (b)(2) of this section (but see paragraph (c) of this section for indefinite-delivery contracts), that no other contract type authorized by this subpart is suitable;

(B) Includes a ceiling price in the contract or order that the contractor exceeds at its own risk; and

(C) Prior to increasing the ceiling price of a time-and-materials or labor-hour contract or order, shall—

(1) Conduct an analysis of pricing and other relevant factors to determine if the action is in the best interest of the Government;

(2) Document the decision in the contract or order file; and

(3) When making a change that modifies the general scope of—

(i) A contract, follow the procedures at 6.303;

(ii) An order issued under the Federal Supply Schedules, follow the procedures at 8.405-6; or

(iii) An order issued under multiple award task and delivery order contracts, follow the procedures at [16.505\(b\)\(2\)](#).

(2) Each D&F required by paragraph (b)(1)(ii)(A) of this section shall contain sufficient facts and rationale to justify that no other contract type authorized by this subpart is suitable. At a minimum, the D&F shall—

(i) Include a description of the market research conducted (see [10.002\(e\)](#));

(ii) Establish that it is not possible at the time of placing the contract or order to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence;

(iii) Establish that the requirement has been structured to maximize the use of firm-fixed-price or fixed-price with economic price adjustment contracts (*e.g.*, by limiting

the value or length of the time-and-material/labor-hour contract or order; establishing fixed prices for portions of the requirement) on future acquisitions for the same or similar requirements; and

(iv) Describe actions planned to maximize the use of firm-fixed-price or fixed-price with economic price adjustment contracts on future acquisitions for the same requirements.

(3) See [16.601\(d\)\(1\)](#) for additional approval required for contracts expected to extend beyond three years.

(4) See [8.404\(h\)](#) for the requirement for determination and findings when using Federal Supply Schedules.

(c)(1) Indefinite-delivery contracts (see [Subpart 16.5](#)) may be used when—

(i) The prices are established based on a firm-fixed-price or fixed-price with economic price adjustment; or

(ii) Rates are established for commercial services acquired on a time-and-materials or labor-hour basis.

(2) When an indefinite-delivery contract is awarded with services priced on a time-and-materials or labor-hour basis, contracting officers shall, to the maximum extent practicable, also structure the contract to allow issuance of orders on a firm-fixed-price or fixed-price with economic price adjustment basis. For such contracts, the contracting officer shall execute the D&F required by paragraph (b)(2) of this section, for each order placed on a time-and-materials or labor-hour basis. Placement of orders shall be in accordance with [Subpart 8.4](#) or 16.5, as applicable.

(3) If an indefinite-delivery contract only allows for the issuance of orders on a time-and-materials or labor-hour basis, the D&F required by paragraph (b)(2) of this section shall be executed to support the basic contract and shall also explain why providing for an alternative firm-fixed-price or fixed-price with economic price adjustment pricing structure is not practicable. The D&F for this contract shall be approved one level above the contracting officer. Placement of orders shall be in accordance with [Subpart 16.5](#).

(d) The contract types authorized by this subpart may be used in conjunction with an award fee and performance or delivery incentives when the award fee or incentive is based solely on factors other than cost (see [16.202-1](#) and [16.203-1](#)).

(e) Use of any contract type other than those authorized by this subpart to acquire commercial items is prohibited.

### 12.208 Contract quality assurance.

Contracts for commercial items shall rely on contractors' existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired include in-process inspection. Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice.

## Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

### 12.300 Scope of subpart.

This subpart establishes provisions and clauses to be used when acquiring commercial items.

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

(a) In accordance with [41 U.S.C. 3307](#), contracts for the acquisition of commercial items shall, to the maximum extent practicable, include only those clauses—

(1) Required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or

(2) Determined to be consistent with customary commercial practice.

(b) Insert the following provisions in solicitations for the acquisition of commercial items, and clauses in solicitations and contracts for the acquisition of commercial items:

(1) *The provision at [52.212-1](#), Instructions to Offerors—Commercial Items.* This provision provides a single, streamlined set of instructions to be used when soliciting offers for commercial items and is incorporated in the solicitation by reference (see Block 27a, [SF 1449](#)). The contracting officer may tailor these instructions or provide additional instructions tailored to the specific acquisition in accordance with [12.302](#).

(2) *The provision at [52.212-3](#), Offeror Representations and Certifications—Commercial Items.* This provision provides a single, consolidated list of representations and certifications for the acquisition of commercial items and is attached to the solicitation for offerors to complete. This provision may not be tailored except in accordance with [Subpart 1.4](#). Use the provision with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard. Use the provision with its Alternate II in solicitations for acquisitions for which small disadvantaged business procurement mechanisms are authorized on a regional basis.

(3) *The clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items.* This clause includes terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practices and is incorporated in the solicitation and contract by reference (see Block 27, [SF 1449](#)). Use this clause with its Alternate I when a time-and-materials or labor-hour contract will be awarded. The contracting officer may tailor this clause in accordance with [12.302](#).

(4) *The clause at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.* This clause incorporates by reference only

those clauses required to implement provisions of law or Executive orders applicable to the acquisition of commercial items. The contracting officer shall attach this clause to the solicitation and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in [52.212-5](#)(b) or (c) are applicable to the specific acquisition. Some of the clauses require fill-in; the fill-in language should be inserted as directed by [52.104](#)(d). When cost information is obtained pursuant to [Part 15](#) to establish the reasonableness of prices for commercial items, the contracting officer shall insert the clauses prescribed for this purpose in an addendum to the solicitation and contract. This clause may not be tailored.

(i) Use the clause with its Alternate I when the head of the agency has waived the examination of records by the Comptroller General in accordance with [25.1001](#).

(ii)(A) If the acquisition will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), the contracting officer shall use the clause with its Alternate II.

(B) (1) In the case of a bilateral contract modification that will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify applicability of Alternate II to that modification.

(2) In the case of a task- or delivery-order contract in which not all orders will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify the task or delivery orders to which Alternate II applies.

(C) The contracting officer may not use Alternate I when Alternate II applies.

(c) When the use of evaluation factors is appropriate, the contracting officer may—

(1) Insert the provision at [52.212-2](#), Evaluation—Commercial Items, in solicitations for commercial items (see [12.602](#)); or

(2) Include a similar provision containing all evaluation factors required by [13.106](#), [Subpart 14.2](#) or [Subpart 15.3](#), as an addendum (see [12.302](#)(d)).

(d) *Other required provisions and clauses.* (1) Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the acquisition of commercial items.

(2) Insert the clause at [52.225-19](#), Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, as prescribed in [25.301-4](#).

(3) Insert the provision at [52.209-7](#), Information Regarding Responsibility Matters, as prescribed in [9.104-7\(b\)](#).

(4) Insert the clause at [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors, as prescribed in [32.009-2](#).

(e) *Discretionary use of FAR provisions and clauses.* The contracting officer may include in solicitations and contracts by addendum other FAR provisions and clauses when their use is consistent with the limitations contained in [12.302](#). For example:

(1) The contracting officer may include appropriate clauses when an indefinite-delivery type of contract will be used. The clauses prescribed at [16.506](#) may be used for this purpose.

(2) The contracting officer may include appropriate provisions and clauses when the use of options is in the Government's interest. The provisions and clauses prescribed in [17.208](#) may be used for this purpose. If the provision at [52.212-2](#) is used, paragraph (b) provides for the evaluation of options.

(3) The contracting officer may use the provisions and clauses contained in [Part 23](#) regarding the use of products containing recovered materials and biobased products when appropriate for the item being acquired.

(4) When setting aside under the Stafford Act ([Subpart 26.2](#)), include the provision at [52.226-3](#), Disaster or Emergency Area Representation, in the solicitation. The representation in this provision is not in the System for Award Management database.

(f) Agencies may supplement the provisions and clauses prescribed in this part (to require use of additional provisions and clauses) only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items or as may be approved by the agency senior procurement executive, or the individual responsible for representing the agency on the FAR Council, without power of delegation.

### 12.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(a) *General.* The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, commercial market practices for a wide range of potential Government acquisitions of commercial items. However, because of the broad range of commercial items acquired by the Government, variations in commercial practices, and the relative volume of the Government's acquisitions in the specific market, contracting officers may, within the limitations of this subpart, and after conducting appropriate market research, tailor the provision at [52.212-1](#), Instructions to Offerors—Commercial Items, and the clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items, to adapt to the market conditions for each acquisition.

(b) *Tailoring [52.212-4](#), Contract Terms and Conditions—Commercial Items.* The following paragraphs of the clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items, implement statutory requirements and shall not be tailored—

- (1) Assignments;
- (2) Disputes;
- (3) Payment (except as provided in [Subpart 32.11](#));
- (4) Invoice;
- (5) Other compliances;
- (6) Compliance with laws unique to Government contracts; and
- (7) Unauthorized obligations.

(c) *Tailoring inconsistent with customary commercial practice.* The contracting officer shall not tailor any clause or otherwise include any additional terms or conditions in a solicitation or contract for commercial items in a manner that is inconsistent with customary commercial practice for the item being acquired unless a waiver is approved in accordance with agency procedures. The request for waiver must describe the customary commercial practice found in the marketplace, support the need to include a term or condition that is inconsistent with that practice and include a determination that use of the customary commercial practice is inconsistent with the needs of the Government. A waiver may be requested for an individual or class of contracts for that specific item.

(d) Tailoring shall be by addenda to the solicitation and contract. The contracting officer shall indicate in Block 27a of the [SF 1449](#) if addenda are attached. These addenda may include, for example, a continuation of the schedule of supplies/services to be acquired from blocks 18 through 21 of the [SF 1449](#); a continuation of the description of the supplies/services being acquired; further elaboration of any other item(s) on the [SF 1449](#); any other terms or conditions necessary for the performance of the proposed contract (such as options, ordering procedures for indefinite-delivery type contracts, warranties, contract financing arrangements, etc.).

### 12.303 Contract format.

Solicitations and contracts for the acquisition of commercial items prepared using this [Part 12](#) shall be assembled, to the maximum extent practicable, using the following format:

- (a) [Standard Form \(SF\) 1449](#);
- (b) Continuation of any block from [SF 1449](#), such as—
  - (1) Block 10 if a price evaluation adjustment for small disadvantaged business concerns is applicable (the contracting officer shall indicate the percentage(s) and applicable line item(s)), if an incentive subcontracting clause is used (the contracting officer shall indicate the applicable percentage);
  - (2) Block 18B for remittance address;
  - (3) Block 19 for contract line item numbers;
  - (4) Block 20 for schedule of supplies/services; or
  - (5) Block 25 for accounting data;



## Subpart 12.4—Unique Requirements Regarding Terms and Conditions for Commercial Items

### 12.401 General.

This subpart provides—

(a) Guidance regarding tailoring of the paragraphs in the clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items, when the paragraphs do not reflect the customary practice for a particular market; and

(b) Guidance on the administration of contracts for commercial items in those areas where the terms and conditions in [52.212-4](#) differ substantially from those contained elsewhere in the FAR.

### 12.402 Acceptance.

(a) The acceptance paragraph in [52.212-4](#) is based upon the assumption that the Government will rely on the contractor's assurances that the commercial item tendered for acceptance conforms to the contract requirements. The Government inspection of commercial items will not prejudice its other rights under the acceptance paragraph. Additionally, although the paragraph does not address the issue of rejection, the Government always has the right to refuse acceptance of nonconforming items. This paragraph is generally appropriate when the Government is acquiring noncomplex commercial items.

(b) Other acceptance procedures may be more appropriate for the acquisition of complex commercial items or commercial items used in critical applications. In such cases, the contracting officer shall include alternative inspection procedure(s) in an addendum and ensure these procedures and the postaward remedies adequately protect the interests of the Government. The contracting officer must carefully examine the terms and conditions of any express warranty with regard to the effect it may have on the Government's available postaward remedies (see [12.404](#)).

(c) The acquisition of commercial items under other circumstances such as on an "as is" basis may also require acceptance procedures different from those contained in [52.212-4](#). The contracting officer should consider the effect the specific circumstances will have on the acceptance paragraph as well as other paragraphs of the clause.

### 12.403 Termination.

(a) *General.* The clause at [52.212-4](#) permits the Government to terminate a contract for commercial items either for the convenience of the Government or for cause. However, the paragraphs in [52.212-4](#) entitled "Termination for the Government's Convenience" and "Termination for Cause" contain concepts which differ from those contained in the termination clauses prescribed in [Part 49](#). Consequently, the requirements of [Part 49](#) do not apply when terminating contracts for commercial items and contracting officers shall fol-

low the procedures in this section. Contracting officers may continue to use [Part 49](#) as guidance to the extent that [Part 49](#) does not conflict with this section and the language of the termination paragraphs in [52.212-4](#).

(b) *Policy.* The contracting officer should exercise the Government's right to terminate a contract for commercial items either for convenience or for cause only when such a termination would be in the best interests of the Government. The contracting officer should consult with counsel prior to terminating for cause.

(c) *Termination for cause.* (1) The paragraph in [52.212-4](#) entitled "Excusable Delay" requires contractors notify the contracting officer as soon as possible after commencement of any excusable delay. In most situations, this requirement should eliminate the need for a show cause notice prior to terminating a contract. The contracting officer shall send a cure notice prior to terminating a contract for a reason other than late delivery.

(2) The Government's rights after a termination for cause shall include all the remedies available to any buyer in the marketplace. The Government's preferred remedy will be to acquire similar items from another contractor and to charge the defaulted contractor with any excess reprocurement costs together with any incidental or consequential damages incurred because of the termination.

(3) When a termination for cause is appropriate, the contracting officer shall send the contractor a written notification regarding the termination. At a minimum, this notification shall—

(i) Indicate the contract is terminated for cause;

(ii) Specify the reasons for the termination;

(iii) Indicate which remedies the Government intends to seek or provide a date by which the Government will inform the contractor of the remedy; and

(iv) State that the notice constitutes a final decision of the contracting officer and that the contractor has the right to appeal under the Disputes clause (see [33.211](#)).

(4) The contracting officer, in accordance with agency procedures, shall ensure that information related to termination for cause notices and any amendments are reported. In the event the termination for cause is subsequently converted to a termination for convenience, or is otherwise withdrawn, the contracting officer shall ensure that a notice of the conversion or withdrawal is reported. All reporting shall be in accordance with [42.1503\(h\)](#).

(d) *Termination for the Government's convenience.* (1) When the contracting officer terminates a contract for commercial items for the Government's convenience, the contractor shall be paid—

(i) (A) The percentage of the contract price reflecting the percentage of the work performed prior to the notice of the termination for fixed-price or fixed-price with economic price adjustment contracts; or

(B) An amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the Schedule; and

(ii) Any charges the contractor can demonstrate directly resulted from the termination. The contractor may demonstrate such charges using its standard record keeping system and is not required to comply with the cost accounting standards or the contract cost principles in [Part 31](#). The Government does not have any right to audit the contractor's records solely because of the termination for convenience.

(2) Generally, the parties should mutually agree upon the requirements of the termination proposal. The parties must balance the Government's need to obtain sufficient documentation to support payment to the contractor against the goal of having a simple and expeditious settlement.

#### 12.404 Warranties.

(a) *Implied warranties.* The Government's post award rights contained in [52.212-4](#) are the implied warranty of merchantability, the implied warranty of fitness for particular purpose and the remedies contained in the acceptance paragraph.

(1) The implied warranty of merchantability provides that an item is reasonably fit for the ordinary purposes for which such items are used. The items must be of at least average, fair or medium-grade quality and must be comparable in quality to those that will pass without objection in the trade or market for items of the same description.

(2) The implied warranty of fitness for a particular purpose provides that an item is fit for use for the particular purpose for which the Government will use the items. The Government can rely upon an implied warranty of fitness for particular purpose when—

(i) The seller knows the particular purpose for which the Government intends to use the item; and

(ii) The Government relied upon the contractor's skill and judgment that the item would be appropriate for that particular purpose.

(3) Contracting officers should consult with legal counsel prior to asserting any claim for a breach of an implied warranty.

(b) *Express warranties.* [41 U.S.C. 3307\(e\)\(5\)\(B\)](#) requires contracting officers to take advantage of commercial warranties. To the maximum extent practicable, solicitations for commercial items shall require offerors to offer the Government at least the same warranty terms, including offers of extended warranties, offered to the general public in customary commercial practice. Solicitations may specify minimum warranty terms, such as minimum duration, appropriate for the Government's intended use of the item.

(1) Any express warranty the Government intends to rely upon must meet the needs of the Government. The contracting officer should analyze any commercial warranty to determine if—

(i) The warranty is adequate to protect the needs of the Government, *e.g.*, items covered by the warranty and length of warranty;

(ii) The terms allow the Government effective post-award administration of the warranty to include the identification of warranted items, procedures for the return of warranted items to the contractor for repair or replacement, and collection of product performance information; and

(iii) The warranty is cost-effective.

(2) In some markets, it may be customary commercial practice for contractors to exclude or limit the implied warranties contained in [52.212-4](#) in the provisions of an express warranty. In such cases, the contracting officer shall ensure that the express warranty provides for the repair or replacement of defective items discovered within a reasonable period of time after acceptance.

(3) Express warranties shall be included in the contract by addendum (see [12.302](#)).

## Subpart 12.5—Applicability of Certain Laws to the Acquisition of Commercial Items and Commercially Available Off-The-Shelf Items

### 12.500 Scope of subpart.

(a) As required by [41 U.S.C. 1906](#) and [1907](#), this subpart lists provisions of law that are not applicable to—

- (1) Contracts for the acquisition of commercial items;
- (2) Subcontracts, at any tier, for the acquisition of commercial items; and
- (3) Contracts and subcontracts, at any tier, for the acquisition of COTS items.

(b) This subpart also lists provisions of law that have been amended to eliminate or modify their applicability to either contracts or subcontracts for the acquisition of commercial items.

### 12.501 Applicability.

(a) This subpart applies to any contract or subcontract at any tier for the acquisition of commercial items.

(b) Nothing in this subpart shall be construed to authorize the waiver of any provision of law with respect to any subcontract if the prime contractor is reselling or distributing commercial items of another contractor without adding value. This limitation is intended to preclude establishment of unusual contractual arrangements solely for the purpose of Government sales.

(c) For purposes of this subpart, contractors awarded subcontracts under [subpart 19.8](#), Contracting with the Small Business Administration (the 8(a) Program), shall be considered prime contractors.

### 12.502 Procedures.

(a) The FAR prescription for the provision or clause for each of the laws listed in [12.503](#) has been revised in the appropriate part to reflect its proper application to prime contracts for the acquisition of commercial items.

(b) For subcontracts for the acquisition of commercial items or commercial components, the clauses at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and [52.244-6](#), Subcontracts for Commercial Items, reflect the applicability of the laws listed in [12.504](#) by identifying the only provisions and clauses that are required to be included in a subcontract at any tier for the acquisition of commercial items or commercial components.

(c) The FAR prescription for the provision or clause for each of the laws listed in [12.505](#) has been revised in the appropriate part to reflect its proper application to contracts and subcontracts for the acquisition of COTS items.

### 12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

(a) The following laws are not applicable to Executive agency contracts for the acquisition of commercial items:

(1) [41 U.S.C. chapter 65](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (see [subpart 22.6](#)).

(2) [41 U.S.C. 3901\(b\)](#) and [10 U.S.C. 2306\(b\)](#), Contingent Fees (see [3.404](#)).

(3) [41 U.S.C. 1708\(e\)\(3\)](#), Minimum Response Time for Offers (see [5.203](#)).

(4) [41 U.S.C. chapter 81](#), Drug-Free Workplace (see [23.501](#)).

(5) [31 U.S.C. 1354\(a\)](#), Limitation on use of appropriated funds for contracts with entities not meeting veterans' employment reporting requirements (see [22.1302](#)).

(6) [Reserved]

(7) Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, ([10 U.S.C. 2302](#) note), Payment Protections for Subcontractors and Suppliers (see [28.106-6](#)).

(8) [41 U.S.C. 4706\(d\)\(1\)](#) and [10 U.S.C. 2313\(c\)\(1\)](#), GAO Access to Contractor Employees, Section 871 of Pub. L. 110-417 (see [52.214-26](#) and [52.215-2](#)).

(9) [41 U.S.C. 2303](#), Policy on Personal Conflicts of Interest by Contractor Employees (see subpart [3.11](#)).

(b) Certain requirements of the following laws are not applicable to executive agency contracts for the acquisition of commercial items:

(1) [40 U.S.C. chapter 37](#), Requirement for a certificate and clause under the Contract Work Hours and Safety Standards statute (see [22.305](#)).

(2) [41 U.S.C. 8703](#) and [8703](#), Requirement for a clause and certain other requirements related to kickbacks (see [3.502](#)).

(3) [49 U.S.C. 40118](#), Requirement for a clause under the Fly American provisions (see [47.405](#)).

(c) The applicability of the following laws have been modified in regards to Executive agency contracts for the acquisition of commercial items:

(1) [41 U.S.C. 4704](#) and [10 U.S.C. 2402](#), Prohibition on Limiting Subcontractor Direct Sales to the United States (see [3.503](#)).

(2) [41 U.S.C. chapter 35](#), Truthful Cost or Pricing Data, and [10 U.S.C. 2306a](#), Truth in Negotiations Act (see [15.403](#)).

(3) [41 U.S.C. chapter 15](#), Cost Accounting Standards (48 CFR Chapter 99) (see [12.214](#)).

### 12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components at any tier:

(1) [10 U.S.C. 2631](#), Transportation of Supplies by Sea (except for the types of subcontracts listed at [47.504\(d\)](#)).

(2) [15 U.S.C. 644\(d\)](#), Requirements relative to labor surplus areas under the Small Business Act (see [subpart 19.2](#)).

(3) [Reserved]

(4) [41 U.S.C. 6505](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (see [subpart 22.6](#)).

(5) [41 U.S.C. 4703](#), Validation of Proprietary Data restrictions (see [subpart 27.4](#)).

(6) [41 U.S.C. 3901\(b\)](#) and [10 U.S.C. 2306\(b\)](#), Contingent Fees (see [subpart 3.4](#)).

(7) [41 U.S.C. 4706\(d\)](#) and [10 U.S.C. 2313\(c\)](#), Examination of Records of Contractor, when a subcontractor is not required to provide certified cost or pricing data (see [15.209\(b\)](#)), unless using funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(8) [41 U.S.C. 1708\(e\)\(3\)](#), Minimum Response Time for Offers (see [subpart 5.2](#)).

(9) [41 U.S.C. 2302](#), Rights in Technical Data (see [subpart 27.4](#)).

(10) [41 U.S.C. chapter 81](#), Drug-Free Workplace Act (see [subpart 23.5](#)).

(11) [46 U.S.C. App. 1241\(b\)](#), Transportation in American Vessels of Government Personnel and Certain Cargo (see [subpart 47.5](#)) (except for the types of subcontracts listed at [47.504\(d\)](#)).

(12) [49 U.S.C. 40118](#), Fly American provisions (see [subpart 47.4](#)).

(13) Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355 ([10 U.S.C. 2302](#) note), Payment Protections for Subcontractors and Suppliers (see [28.106-6](#)).

(b) The requirements for a certificate and clause under the Contract Work Hours and Safety Standards statute,

[40 U.S.C. 37](#), (see [subpart 22.3](#)) are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components.

(c) The applicability of the following laws has been modified in regards to subcontracts at any tier for the acquisition of commercial items or commercial components:

(1) [41 U.S.C. 4704](#) and [10 U.S.C. 2402](#), Prohibition on Limiting Subcontractor Direct Sales to the United States (see [subpart 3.5](#)).

(2) [41 U.S.C. chapter 35](#), Truthful Cost or Pricing Data, and [10 U.S.C. 2306a](#), Truth in Negotiations (see [subpart 15.4](#)).

(3) [41 U.S.C. chapter 15](#), Cost Accounting Standards (48 CFR Chapter 99) (see [12.214](#)).

### **12.505 Applicability of certain laws to contracts for the acquisition of COTS items.**

COTS items are a subset of commercial items. Therefore, any laws listed in sections [12.503](#) and [12.504](#) are also inapplicable or modified in their applicability to contracts or subcontracts for the acquisition of COTS items. In addition, the following laws are not applicable to contracts for the acquisition of COTS items:

(a)(1) [41 U.S.C. 10a](#), portion of first sentence that reads “substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States,” Buy American Act-Supplies, component test (see [52.225-1](#) and [52.225-3](#)).

(2) [41 U.S.C. 10b](#), portion of first sentence that reads “substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States,” Buy American Act-Construction Materials, component test (see [52.225-9](#) and [52.225-11](#)).

(b) [42 U.S.C. 6962\(c\)\(3\)\(A\)](#), Certification and Estimate of Percentage of Recovered Material.

**PART 13—SIMPLIFIED ACQUISITION PROCEDURES**

*Sec.*

- |        |   |          |  |
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- 13.106-1 Soliciting competition.
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**Subpart 13.2—Actions At or Below the Micro-Purchase Threshold**

- 13.201 General.
- 13.202 Unenforceability of unauthorized obligations in micro-purchases.
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**Subpart 13.3—Simplified Acquisition Methods**

- 13.301 Governmentwide commercial purchase card.
- 13.302 Purchase orders.
- 13.302-1 General.
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**13.000 Scope of part.**

This part prescribes policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed the simplified acquisition threshold (see [2.101](#)). [Subpart 13.5](#) provides special authority for acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding \$6.5 million (\$12 million for acquisitions as described in [13.500\(e\)](#)), including options. See [Part 12](#) for policies applicable to the acquisition of commercial items exceeding the micro-purchase threshold. See [36.602-5](#) for simplified procedures to be used when acquiring architect-engineer services.

**13.001 Definitions.**

As used in this part—

“Authorized individual” means a person who has been granted authority, in accordance with agency procedures, to acquire supplies and services in accordance with this part.

“Governmentwide commercial purchase card” means a purchase card, similar in nature to a commercial credit card, issued to authorized agency personnel to use to acquire and to pay for supplies and services.

“Imprest fund” means a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small amounts.

“Third party draft” means an agency bank draft, similar to a check, that is used to acquire and to pay for supplies and services. (See Treasury Financial Management Manual, Section 3040.70.)

**13.002 Purpose.**

The purpose of this part is to prescribe simplified acquisition procedures in order to—

- (a) Reduce administrative costs;
- (b) Improve opportunities for small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns to obtain a fair proportion of Government contracts;
- (c) Promote efficiency and economy in contracting; and
- (d) Avoid unnecessary burdens for agencies and contractors.

**13.003 Policy.**

(a) Agencies shall use simplified acquisition procedures to the maximum extent practicable for all purchases of supplies or services not exceeding the simplified acquisition threshold (including purchases at or below the micro-purchase thresh-

old). This policy does not apply if an agency can meet its requirement using—

(1) Required sources of supply under [Part 8](#) (e.g., Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts);

(2) Existing indefinite delivery/indefinite quantity contracts; or

(3) Other established contracts.

(b)(1) Acquisitions of supplies or services that have an anticipated dollar value exceeding \$3,000 (\$15,000 for acquisitions as described in [13.201\(g\)\(1\)](#)) but not exceeding \$150,000 (\$300,000 for acquisitions described in paragraph (1) of the simplified acquisition threshold definition at [2.101](#)) are reserved exclusively for small business concerns and shall be set aside (see [19.000](#), [19.203](#), and subpart [19.5](#)).

(2) The contracting officer may make an award to a small business concern under the—

(i) 8(a) Program (see subpart [19.8](#));

(ii) Historically Underutilized Business Zone (HUBZone) Program (but see [19.1305](#) and [19.1306\(a\)\(4\)](#));

(iii) Service-Disabled Veteran-Owned Small Business (SDVOSB) Program (see subpart [19.14](#)); or

(iv) Women-Owned Small Business (WOSB) Program (see subpart [19.15](#)).

(3) The following contracting officer’s decisions for acquisitions at or below the simplified acquisition threshold are not subject to review under subpart [19.4](#):

(i) A decision not to make an award under the 8(a) Program.

(ii) A decision not to set aside an acquisition for HUBZone small business concerns, service-disabled veteran-owned small business concerns, or EDWOSB concerns and WOSB concerns eligible under the WOSB Program.

(4) Each written solicitation under a set-aside shall contain the appropriate provisions prescribed by part [19](#). If the solicitation is oral, however, information substantially identical to that in the provision shall be given to potential quoters.

(c)(1) The contracting officer shall not use simplified acquisition procedures to acquire supplies and services if the anticipated award will exceed—

(i) The simplified acquisition threshold; or

(ii) \$6.5 million (\$12 million for acquisitions as described in [13.500\(e\)](#)), including options, for acquisitions of commercial items using [Subpart 13.5](#).

(2) Do not break down requirements aggregating more than the simplified acquisition threshold (or for commercial items, the threshold in [Subpart 13.5](#)) or the micro-purchase threshold into several purchases that are less than the applicable threshold merely to—

(i) Permit use of simplified acquisition procedures; or

(ii) Avoid any requirement that applies to purchases exceeding the micro-purchase threshold.

(d) An agency that has specific statutory authority to acquire personal services (see [37.104](#)) may use simplified acquisition procedures to acquire those services.

(e) Agencies shall use the Governmentwide commercial purchase card and electronic purchasing techniques to the maximum extent practicable in conducting simplified acquisitions (but see [32.1108\(b\)\(2\)](#)).

(f) Agencies shall maximize the use of electronic commerce when practicable and cost-effective (see [Subpart 4.5](#)). Drawings and lengthy specifications can be provided off-line in hard copy or through other appropriate means.

(g) Authorized individuals shall make purchases in the simplified manner that is most suitable, efficient, and economical based on the circumstances of each acquisition. For acquisitions not expected to exceed—

(1) The simplified acquisition threshold for other than commercial items, use any appropriate combination of the procedures in [Parts 13, 14, 15, 35, or 36](#), including the use of [Standard Form 1442](#), Solicitation, Offer, and Award (Construction, Alteration, or Repair), for construction contracts (see [36.701\(a\)](#)); or

(2) \$6.5 million (\$12 million for acquisitions as described in [13.500\(e\)](#)), for commercial items, use any appropriate combination of the procedures in [Parts 12, 13, 14, and 15](#) (see paragraph (d) of this section).

(h) In addition to other considerations, contracting officers shall—

(1) Promote competition to the maximum extent practicable (see [13.104](#));

(2) Establish deadlines for the submission of responses to solicitations that afford suppliers a reasonable opportunity to respond (see [5.203](#));

(3) Consider all quotations or offers that are timely received. For evaluation of quotations or offers received electronically, see [13.106-2\(b\)\(3\)](#); and

(4) Use innovative approaches, to the maximum extent practicable, in awarding contracts using simplified acquisition procedures.

#### 13.004 Legal effect of quotations.

(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract. Therefore, issuance by the Government of an order in response to a supplier's quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer.

(b) When appropriate, the contracting officer may ask the supplier to indicate acceptance of an order by notification to the Government, preferably in writing, as defined at [2.101](#). In

other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

(c) If the Government issues an order resulting from a quotation, the Government may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer. (See [13.302-4](#) for procedures on termination or cancellation of purchase orders.)

#### 13.005 List of laws inapplicable to contracts and subcontracts at or below the simplified acquisition threshold.

(a) The following laws are inapplicable to all contracts and subcontracts (if otherwise applicable to subcontracts) at or below the simplified acquisition threshold pursuant to [41 U.S.C. 1905](#):

(1) [41 U.S.C. 8703](#) and (Kickbacks statute). (Only the requirement for the incorporation of the contractor procedures for the prevention and detection of violations, and the contractual requirement for contractor cooperation in investigations are inapplicable.)

(2) [40 U.S.C. 3131](#) (Bonds statute). (Although the Bonds statute does not apply to contracts at or below the simplified acquisition threshold, alternative forms of payment protection for suppliers of labor and material (see [28.102](#)) are still required if the contract exceeds \$30,000 ([40 U.S.C. 3132](#)).

(3) [40 U.S.C. chapter 37 et seq.](#) (Contract Work Hours and Safety Standards-Overtime Compensation).

(4) [41 U.S.C. 8102\(a\)\(1\)](#) (Drug-Free Workplace), except for individuals.

(5) [42 U.S.C. 6962](#) (Solid Waste Disposal Act). (The requirement to provide an estimate of recovered material utilized in contract performance does not apply unless the contract value exceeds \$150,000.)

(6) [10 U.S.C. 2306\(b\)](#) and [41 U.S.C. 3901\(b\)](#) (Contract Clause Regarding Contingent Fees).

(7) [10 U.S.C. 2313](#) and [41 U.S.C. 7406](#) (Authority to Examine Books and Records of Contractors).

(8) [10 U.S.C. 2402](#) and [41 U.S.C. 4704](#) (Prohibition on Limiting Subcontractors Direct Sales to the United States).

(9) [15 U.S.C. 631](#) note (HUBZone Act of 1997), except for [15 U.S.C. 657a\(b\)\(2\)\(B\)](#), which is optional for the agencies subject to the requirements of the Act.

(10) [31 U.S.C. 1354\(a\)](#) (Limitation on use of appropriated funds for contracts with entities not meeting veterans' employment reporting requirements).

(b) The Federal Acquisition Regulatory (FAR) Council will include any law enacted after October 13, 1994, that sets forth policies, procedures, requirements, or restrictions for the acquisition of property or services, on the list set forth in paragraph (a) of this section. The FAR Council may make



exceptions when it determines in writing that it is in the best interest of the Government that the enactment should apply to contracts or subcontracts not greater than the simplified acquisition threshold.

(c) The provisions of paragraph (b) of this section do not apply to laws that—

(1) Provide for criminal or civil penalties; or

(2) Specifically state that notwithstanding the language of [41 U.S.C. 1905](#), the enactment will be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) Any individual may petition the Administrator, Office of Federal Procurement Policy (OFPP), to include any applicable provision of law not included on the list set forth in paragraph (a) of this section unless the FAR Council has already determined in writing that the law is applicable. The Administrator, OFPP, will include the law on the list in paragraph (a) of this section unless the FAR Council makes a determination that it is applicable within 60 days of receiving the petition.

#### 13.006 Inapplicable provisions and clauses.

While certain statutes still apply, pursuant to Public Law 103-355, the following provisions and clauses are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold:

(a) [52.203-5](#), Covenant Against Contingent Fees.

(b) [52.203-6](#), Restrictions on Subcontractor Sales to the Government.

(c) [52.203-7](#), Anti-Kickback Procedures.

(d) [52.215-2](#), Audits and Records—Negotiation, except as used with its Alternate I, when using funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(e) [52.222-4](#), Contract Work Hours and Safety Standards—Overtime Compensation.

(f) [52.223-6](#), Drug-Free Workplace, except for individuals.

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

### Subpart 13.1—Procedures

#### 13.101 General.

(a) In making purchases, contracting officers shall—

(1) Comply with the policy in [7.202](#) relating to economic purchase quantities, when practicable;

(2) Satisfy the procedures described in [Subpart 19.6](#) with respect to Certificates of Competency before rejecting a quotation, oral or written, from a small business concern determined to be nonresponsible (see [Subpart 9.1](#)); and

(3) Provide for the inspection of supplies or services as prescribed in [46.404](#).

(b) In making purchases, contracting officers should—

(1) Include related items (such as small hardware items or spare parts for vehicles) in one solicitation and make award on an “all-or-none” or “multiple award” basis provided suppliers are so advised when quotations or offers are requested;

(2) Incorporate provisions and clauses by reference in solicitations and in awards under requests for quotations, provided the requirements in [52.102](#) are satisfied;

(3) Make maximum effort to obtain trade and prompt payment discounts (see [14.408-3](#)). Prompt payment discounts shall not be considered in the evaluation of quotations; and

(4) Use bulk funding to the maximum extent practicable. Bulk funding is a system whereby the contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified period of time rather than obtaining individual obligational authority on each purchase document. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.

#### 13.102 Source list.

(a) Contracting officers should use the System for Award Management database (see subpart [4.11](#)) via <https://www.acquisition.gov> as their primary sources of vendor information. Offices maintaining additional vendor source files or listings should identify the status of each source (when the status is made known to the contracting office) in the following categories:

(1) Small business.

(2) Small disadvantaged business.

(3) Women-owned small business concern, including economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Woman-owned Small Business (WOSB) Program.

(4) HUBZone small business.

(5) Service-disabled veteran-owned small business.

(6) Veteran-owned small business.

(b) The status information may be used as the basis to ensure that small business concerns are provided the maximum practicable opportunities to respond to solicitations issued using simplified acquisition procedures.

#### 13.103 Use of standing price quotations.

Authorized individuals do not have to obtain individual quotations for each purchase. Standing price quotations may be used if—

(a) The pricing information is current; and

(b) The Government obtains the benefit of maximum discounts before award.

#### 13.104 Promoting competition.

The contracting officer must promote competition to the maximum extent practicable to obtain supplies and services

from the source whose offer is the most advantageous to the Government, considering the administrative cost of the purchase.

(a) The contracting officer must not—

- (1) Solicit quotations based on personal preference; or
- (2) Restrict solicitation to suppliers of well-known and widely distributed makes or brands.

(b) If using simplified acquisition procedures and not providing access to the notice of proposed contract action and solicitation information through the Governmentwide point of entry (GPE), maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the local trade area. Unless the contract action requires synopsis pursuant to [5.101](#) and an exception under [5.202](#) is not applicable, consider solicitation of at least three sources to promote competition to the maximum extent practicable. Whenever practicable, request quotations or offers from two sources not included in the previous solicitation.

### 13.105 Synopsis and posting requirements.

(a) The contracting officer must comply with the public display and synopsis requirements of [5.101](#) and [5.203](#) unless an exception in [5.202](#) applies.

(b) When acquiring commercial items or supplies or services procured in accordance with 12.102(f)(1), the contracting officer may use a combined synopsis and solicitation. In these cases, a separate solicitation is not required. The contracting officer must include enough information to permit suppliers to develop quotations or offers.

(c) See [5.102\(a\)\(6\)](#) for the requirement to post a brand name justification or documentation required by [13.106-1\(b\)](#) or [13.501](#).

(d) When publicizing contract actions funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5):

- (1) Notices of proposed contract actions shall follow the procedures in [5.704](#) for posting orders.
- (2) Award notices shall follow the procedures in [5.705](#).

### 13.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

#### 13.106-1 Soliciting competition.

(a) *Considerations.* In soliciting competition, the contracting officer shall consider the guidance in [13.104](#) and the following before requesting quotations or offers:

- (1)(i) The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.
- (ii) An electronic commerce method that employs widespread electronic public notice is not available; and
- (iii) The urgency of the proposed purchase.
- (iv) The dollar value of the proposed purchase.

(v) Past experience concerning specific dealers' prices.

(2) When soliciting quotations or offers, the contracting officer shall notify potential quoters or offerors of the basis on which award will be made (price alone or price and other factors, e.g., past performance and quality). Contracting officers are encouraged to use best value. Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors.

(b) *Soliciting from a single source.* (1) *For purchases not exceeding the simplified acquisition threshold.* (i) Contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available (e.g., urgency, exclusive licensing agreements, brand-name or industrial mobilization).

(ii) Where a single source is identified to provide a portion of a purchase because that portion of the purchase specifies a particular brand-name item, the documentation in paragraph (b)(1)(i) of this section only applies to the portion of the purchase requiring the brand-name item. The documentation should state it is covering only the portion of the acquisition which is brand-name.

(2) *For purchases exceeding the simplified acquisition threshold.* The requirements at [13.501\(a\)](#) apply to sole-source (including brand-name) acquisitions of commercial items conducted pursuant to subpart [13.5](#).

(3) See [5.102\(a\)\(6\)](#) for the requirement to post the brand-name justification or documentation.

(c) *Soliciting orally.*(1) The contracting officer shall solicit quotations orally to the maximum extent practicable, if—

- (i) The acquisition does not exceed the simplified acquisition threshold;
- (ii) Oral solicitation is more efficient than soliciting through available electronic commerce alternatives; and
- (iii) Notice is not required under [5.101](#).

(2) However, an oral solicitation may not be practicable for contract actions exceeding \$30,000 unless covered by an exception in [5.202](#).

(d) *Written solicitations.* If obtaining electronic or oral quotations is uneconomical or impracticable, the contracting officer should issue paper solicitations for contract actions likely to exceed \$30,000. The contracting officer shall issue a written solicitation for construction requirements exceeding \$2,000.

(e) *Use of options.* Options may be included in solicitations, provided the requirements of [Subpart 17.2](#) are met and the aggregate value of the acquisition and all options does not exceed the dollar threshold for use of simplified acquisition procedures.

### Subpart 13.3—Simplified Acquisition Methods

#### 13.301 Governmentwide commercial purchase card.

(a) Except as provided in [32.1108\(b\)\(2\)](#), the Governmentwide commercial purchase card is authorized for use in making and/or paying for purchases of supplies, services, or construction. The Governmentwide commercial purchase card may be used by contracting officers and other individuals designated in accordance with [1.603-3](#). The card may be used only for purchases that are otherwise authorized by law or regulation.

(b) Agencies using the Governmentwide commercial purchase card shall establish procedures for use and control of the card that comply with the Treasury Financial Manual for Guidance of Departments and Agencies (TFM 4-4500) and that are consistent with the terms and conditions of the current GSA credit card contract. Agency procedures should not limit the use of the Governmentwide commercial purchase card to micro-purchases. Agency procedures should encourage use of the card in greater dollar amounts by contracting officers to place orders and to pay for purchases against contracts established under [Part 8](#) procedures, when authorized; and to place orders and/or make payment under other contractual instruments, when agreed to by the contractor. See [32.1110\(d\)](#) for instructions for use of the appropriate clause when payment under a written contract will be made through use of the card.

(c) The Governmentwide commercial purchase card may be used to—

- (1) Make micro-purchases;
- (2) Place a task or delivery order (if authorized in the basic contract, basic ordering agreement, or blanket purchase agreement); or
- (3) Make payments, when the contractor agrees to accept payment by the card (but see [32.1108\(b\)\(2\)](#)).

#### 13.302 Purchase orders.

##### 13.302-1 General.

(a) Except as provided under the unpriced purchase order method (see [13.302-2](#)), purchase orders generally are issued on a fixed-price basis. See [12.207](#) for acquisition of commercial items.

(b) Purchase orders shall—

- (1) Specify the quantity of supplies or scope of services ordered;
- (2) Contain a determinable date by which delivery of the supplies or performance of the services is required;
- (3) Provide for inspection as prescribed in [Part 46](#). Generally, inspection and acceptance should be at destination. Source inspection should be specified only if required by [Part 46](#). When inspection and acceptance will be performed at destination, advance copies of the purchase order or equivalent

notice shall be furnished to the consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of supplies;

(4) Specify f.o.b. destination for supplies to be delivered within the United States, except Alaska or Hawaii, unless there are valid reasons to the contrary; and

(5) Include any trade and prompt payment discounts that are offered, consistent with the applicable principles at [14.408-3](#).

(c) The contracting officer's signature on purchase orders shall be in accordance with [4.101](#) and the definitions at [2.101](#). Facsimile and electronic signature may be used in the production of purchase orders by automated methods.

(d) Limit the distribution of copies of purchase orders and related forms to the minimum deemed essential for administration and transmission of contractual information.

(e) In accordance with [31 U.S.C. 3332](#), electronic funds transfer (EFT) is required for payments except as provided in [32.1110](#). See [Subpart 32.11](#) for instructions for use of the appropriate clause in purchase orders. When obtaining oral quotes, the contracting officer shall inform the quoter of the EFT clause that will be in any resulting purchase order.

##### 13.302-2 Unpriced purchase orders.

(a) An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order.

(b) An unpriced purchase order may be used only when—

- (1) It is impractical to obtain pricing in advance of issuance of the purchase order; and
- (2) The purchase is for—
  - (i) Repairs to equipment requiring disassembly to determine the nature and extent of repairs;
  - (ii) Material available from only one source and for which cost cannot readily be established; or
  - (iii) Supplies or services for which prices are known to be competitive, but exact prices are not known (e.g., miscellaneous repair parts, maintenance agreements).

(c) Unpriced purchase orders may be issued on paper or electronically. A realistic monetary limitation, either for each line item or for the total order, shall be placed on each unpriced purchase order. The monetary limitation shall be an obligation subject to adjustment when the firm price is established. The contracting office shall follow up on each order to ensure timely pricing. The contracting officer or the contracting officer's designated representative shall review the invoice price and, if reasonable (see [13.106-3\(a\)](#)), process the invoice for payment.

##### 13.302-3 Obtaining contractor acceptance and modifying purchase orders.

(a) When it is desired to consummate a binding contract between the parties before the contractor undertakes perfor-

mance, the contracting officer shall require written (see [2.101](#)) acceptance of the purchase order by the contractor.

(b) Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.

(c) A contractor's written acceptance of a purchase order modification may be required only if—

(1) Determined by the contracting officer to be necessary to ensure the contractor's compliance with the purchase order as revised; or

(2) Required by agency regulations.

#### **13.302-4 Termination or cancellation of purchase orders.**

(a) If a purchase order that has been accepted in writing by the contractor is to be terminated, the contracting officer shall process the termination in accordance with—

(1) [12.403](#) and [52.212-4](#)(l) or (m) for commercial items; or

(2) [Part 49](#) or [52.213-4](#) for other than commercial items.

(b) If a purchase order that has not been accepted in writing by the contractor is to be canceled, the contracting officer shall notify the contractor in writing that the purchase order has been canceled, request the contractor's written acceptance of the cancellation, and proceed as follows:

(1) If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action is required (*i.e.*, the purchase order shall be considered canceled).

(2) If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall process the action as a termination prescribed in paragraph (a) of this subsection.

#### **13.302-5 Clauses.**

(a) Each purchase order (and each purchase order modification (see [13.302-3](#))) shall incorporate all clauses prescribed for the particular acquisition.

(b) The contracting officer shall insert the clause at [52.213-2](#), Invoices, in purchase orders that authorize advance payments (see [31 U.S.C. 3324\(d\)\(2\)](#)) for subscriptions or other charges for newspapers, magazines, periodicals, or other publications (*i.e.*, any publication printed, microfilmed, photocopied, or magnetically or otherwise recorded for auditory or visual usage).

(c) The contracting officer shall insert the clause at [52.213-3](#), Notice to Supplier, in unpriced purchase orders.

(d)(1) The contracting officer may use the clause at [52.213-4](#), Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), in simplified acquisitions exceeding the micro-purchase threshold that are for other than commercial items (see [12.301](#)).

(2) The clause—

(i) Is a compilation of the most commonly used clauses that apply to simplified acquisitions; and

(ii) May be modified to fit the individual acquisition to add other needed clauses, or those clauses may be added separately. Modifications (*i.e.*, additions, deletions, or substitutions) must not create a void or internal contradiction in the clause. For example, do not add an inspection and acceptance or termination for convenience requirement unless the existing requirement is deleted. Also, do not delete a paragraph without providing for an appropriate substitute.

(3)(i) When an acquisition for supplies for use within the United States cannot be set aside for small business concerns and trade agreements apply (see [Subpart 25.4](#)), substitute the clause at FAR [52.225-3](#), Buy American—Free Trade Agreements—Israeli Trade Act, used with Alternate I or Alternate II, if appropriate, instead of the clause at FAR [52.225-1](#), Buy American—Supplies.

(ii) When acquiring supplies for use outside the United States, delete clause [52.225-1](#) from the clause list at [52.213-4](#)(b).

#### **13.303 Blanket purchase agreements (BPAs).**

##### **13.303-1 General.**

(a) A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services by establishing “charge accounts” with qualified sources of supply (see [Subpart 16.7](#) for additional coverage of agreements).

(b) BPAs should be established for use by an organization responsible for providing supplies for its own operations or for other offices, installations, projects, or functions. Such organizations, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.

(c) The use of BPAs does not exempt an agency from the responsibility for keeping obligations and expenditures within available funds.

##### **13.303-2 Establishment of BPAs.**

(a) The following are circumstances under which contracting officers may establish BPAs:

(1) There is a wide variety of items in a broad class of supplies or services that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.

(2) There is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.

(3) The use of this procedure would avoid the writing of numerous purchase orders.

### Subpart 13.5—Test Program for Certain Commercial Items

#### 13.500 General.

(a) This subpart authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$6.5 million (\$12 million for acquisitions as described in 13.500(e)), including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. Under this test program, contracting officers may use any simplified acquisition procedure in this part, subject to any specific dollar limitation applicable to the particular procedure. The purpose of this test program is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry ([10 U.S.C. 2304\(g\)](#) and 2305 and [41 U.S.C. 3305](#), 3306, and chapter 37, Awarding of Contracts).

(b) For the period of this test, contracting activities must employ the simplified procedures authorized by the test to the maximum extent practicable.

(c) When acquiring commercial items using the procedures in this part, the requirements of [Part 12](#) apply subject to the order of precedence provided at 12.102(c). This includes use of the provisions and clauses in [Subpart 12.3](#).

(d) The authority to issue solicitations under this subpart expires on January 1, 2015. Contracting officers may award contracts after the expiration of this authority for solicitations issued before the expiration of the authority.

(e) Under [41 U.S.C. 1903](#), the simplified acquisition procedures authorized by this test program may be used for acquisitions that do not exceed \$12 million when—

(1) The acquisition is for commercial items that, as determined by the head of the agency, are to be used in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack; or

(2) The acquisition will be treated as an acquisition of commercial items in accordance with 12.102(f)(1).

#### 13.501 Special documentation requirements.

(a) *Sole source (including brand name) acquisitions.*  
(1) Acquisitions conducted under simplified acquisition procedures are exempt from the requirements in [Part 6](#). However, contracting officers must—

(i) Conduct sole source acquisitions, as defined in [2.101](#), (including brand name) under this subpart only if the need to do so is justified in writing and approved at the levels specified in paragraph (a)(2) of this section;

(ii) Prepare sole source (including brand name) justifications using the format at [6.303-2](#), modified to reflect an acquisition under the authority of the test program for commercial items at [41 U.S.C. 1901](#) or the authority of [41 U.S.C. 1903](#)" in its place;

(iii) Make publicly available the justifications (excluding brand name) required by [6.305\(a\)](#) within 14 days after contract award or in the case of unusual and compelling urgency within 30 days after contract award, in accordance with [6.305](#) procedures at paragraphs (b), (d), (e), and (f); and

(iv) Make publicly available brand name justifications with the solicitation, in accordance with [5.102\(a\)\(6\)](#).

(2) Justifications and approvals are required under this subpart for sole-source (including brand-name) acquisitions or portions of an acquisition requiring a brand-name. If the justification is to cover only the portion of the acquisition which is brand-name, then it should so state; the approval level requirements will then only apply to that portion.

(i) For a proposed contract exceeding \$150,000, but not exceeding \$650,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(ii) For a proposed contract exceeding \$650,000, but not exceeding \$12.5 million, the advocate for competition for the procuring activity, designated pursuant to [6.501](#); or an official described in [6.304\(a\)\(3\)](#) or (a)(4) must approve the justification and approval. This authority is not delegable.

(iii) For a proposed contract exceeding \$12.5 million but not exceeding \$62.5 million or, for DoD, NASA, and the Coast Guard, not exceeding \$85.5 million, the head of the procuring activity or the official described in [6.304\(a\)\(3\)](#) or (a)(4) must approve the justification and approval. This authority is not delegable.

(iv) For a proposed contract exceeding \$62.5 million or, for DoD, NASA, and the Coast Guard, \$85.5 million, the official described in [6.304\(a\)\(4\)](#) must approve the justification and approval. This authority is not delegable except as provided in [6.304\(a\)\(4\)](#).

(b) *Contract file documentation.* The contract file must include—

(1) A brief written description of the procedures used in awarding the contract, including the fact that the test procedures in FAR [Subpart 13.5](#) were used;

(2) The number of offers received;

(3) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision; and

(4) Any justification approved under paragraph (a) of this section.

\* \* \* \* \*

same plant in which the product previously acquired or tested was produced, use the provision with its Alternate II.

(3) See [14.202-4\(e\)\(2\)](#) regarding waiving the requirement for all bidders.

(p)(1) Insert the provision at [52.214-21](#), Descriptive Literature, in invitations for bids if—

(i) Descriptive literature is required to evaluate the technical acceptability of an offered product; and

(ii) The required information will not be readily available unless it is submitted by bidders.

(2) Use the basic clause with its Alternate I if the possibility exists that the contracting officer may waive the requirement for furnishing descriptive literature for a bidder offering a previously supplied product that meets specification requirements of the current solicitation.

(3) See [14.202-5\(d\)\(2\)](#) regarding waiving the requirement for all bidders.

(q) Insert the provision at [52.214-22](#), Evaluation of Bids for Multiple Awards, in invitations for bids if the contracting officer determines that multiple awards might be made if doing so is economically advantageous to the government.

(r) Insert the provision at [52.214-23](#), Late Submissions, Modifications, Revisions, and Withdrawals of Technical Proposals Under Two-Step Sealed Bidding, in solicitations for technical proposals in step one of two-step sealed bidding.

(s) Insert the provision at [52.214-24](#), Multiple Technical Proposals, in solicitations for technical proposals in step one of two-step sealed bidding if the contracting officer permits the submission of multiple technical proposals.

(t) Insert the provision at [52.214-25](#), Step Two of Two-Step Sealed Bidding, in invitations for bids issued under step two of two-step sealed bidding.

(u) [Reserved]

(v) Insert the provision at [52.214-31](#), Facsimile Bids, in solicitations if facsimile bids are authorized (see [14.202-7](#)).

(w) Insert the provision at [52.214-34](#), Submission of Offers in the English Language, in solicitations that include any of the clauses prescribed in [25.1101](#) or [25.1102](#). It may be included in other solicitations when the contracting officer decides that it is necessary.

(x) Insert the provision at [52.214-35](#), Submission of Offers in U.S. Currency, in solicitations that include any of the clauses prescribed in [25.1101](#) or [25.1102](#), unless the contracting officer includes the clause at [52.225-17](#), Evaluation of Foreign Currency Offers, as prescribed in [25.1103\(d\)](#). It may be included in other solicitations when the contracting officer decides that it is necessary.

#### 14.201-7 Contract clauses.

(a) When contracting by sealed bidding, the contracting officer shall insert the clause at [52.214-26](#), Audit and Records—Sealed Bidding, in solicitations and contracts as follows:

(1) *Use the basic clause if—*(i) The acquisition will not use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5); and

(ii) The contract amount is expected to exceed the threshold at [15.403-4\(a\)\(1\)](#) for submission of certified cost or pricing data.

(2)(i) If the acquisition will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, use the clause with its Alternate I in all solicitations and contracts.

(ii)(A) In the case of a bilateral contract modification that will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify applicability of Alternate I to that modification.

(B) In the case of a task- or delivery-order contract in which not all orders will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify the task or delivery orders to which Alternate I applies.

(b)(1) When contracting by sealed bidding, the contracting officer shall insert the clause at [52.214-27](#), Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold for submission of certified cost or pricing data at [15.403-4\(a\)\(1\)](#).

(2) In exceptional cases, the head of the contracting activity may waive the requirement for inclusion of the clause in a contract with a foreign government or agency of that government. The authorizations for the waiver and the reasons for granting it shall be in writing.

(c)(1) When contracting by sealed bidding, the contracting officer shall insert the clause at [52.214-28](#), Subcontractor Certified Cost or Pricing Data—Modifications—Sealed Bidding, in solicitations and contracts if the contract amount is expected to exceed the threshold for submission of certified cost or pricing data at [15.403-4\(a\)\(1\)](#).

(2) In exceptional cases, the head of the contracting activity may waive the requirement for inclusion of the clause in a contract with a foreign government or agency of that government. The authorizations for the waiver and the reasons for granting it shall be in writing.

(d) When contracting by sealed bidding the contracting officer shall insert the clause at [52.214-29](#), Order of Precedence—Sealed Bidding, in solicitations and contracts to which the uniform contract format applies.

#### 14.201-8 Price related factors.

The factors set forth in paragraphs (a) through (e) of this subsection may be applicable in evaluation of bids for award and shall be included in the solicitation when applicable. (See [14.201-5\(c\)](#).)

(a) Foreseeable costs or delays to the Government resulting from such factors as differences in inspection, locations of supplies, and transportation. If bids are on an f.o.b. origin basis (see [47.303](#) and [47.305](#)), transportation costs to the designated points shall be considered in determining the lowest cost to the Government.

(b) Changes made, or requested by the bidder, in any of the provisions of the invitation for bids, if the change does not constitute a ground for rejection under [14.404](#).

(c) Advantages or disadvantages to the Government that might result from making more than one award (see [14.201-6\(q\)](#)). The contracting officer shall assume, for the purpose of making multiple awards, that \$500 would be the administrative cost to the Government for issuing and administering each contract awarded under a solicitation. Individual awards shall be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(d) Federal, state, and local taxes (see [Part 29](#)).

(e) Origin of supplies, and, if foreign, the application of the Buy American statute or any other prohibition on foreign purchases (see [Part 25](#)).

#### 14.201-9 Simplified contract format.

*Policy.* For firm-fixed-price or fixed-price with economic price adjustment acquisitions of supplies and services, the contracting officer may use the simplified contract format in lieu of the uniform contract format (see [14.201-1](#)). The contracting officer has flexibility in preparation and organization of the simplified contract format. However, the following format should be used to the maximum practical extent:

(a) *Solicitation/contract form.* [Standard Form \(SF\) 1447](#), Solicitation/Contract, shall be used as the first page of the solicitation.

(b) *Contract schedule.* Include the following for each contract line item:

- (1) Contract line item number.
- (2) Description of supplies or services, or data sufficient to identify the requirement.
- (3) Quantity and unit of issue.
- (4) Unit price and amount.
- (5) Packaging and marking requirements.
- (6) Inspection and acceptance, quality assurance, and reliability requirements.
- (7) Place of delivery, performance and delivery dates, period of performance, and f.o.b. point.
- (8) Other item-peculiar information as necessary (e.g., individual fund citations).

(c) *Clauses.* Include the clauses required by this regulation. Additional clauses shall be incorporated only when considered absolutely necessary to the particular acquisition.

(d) *List of documents and attachments.* Include if necessary.

(e) *Representations and instructions*—(1) *Representations and certifications.* Insert those solicitation provisions that require representations, certifications, or the submission of other information by offerors.

(2) *Instructions, conditions, and notices.* Include the solicitation provisions required by [14.201-6](#). Include any other information/instructions necessary to guide offerors.

(3) *Evaluation factors for award.* Insert all evaluation factors and any significant subfactors for award.

(4) Upon award, the contracting officer need not physically include the provisions in paragraphs (e)(1), (2), and (3) of this subsection in the resulting contract, but shall retain them in the contract file. Award by acceptance of a bid on the award portion of [SF 1447](#) incorporates the representations,

certifications, and other statements of bidders in the resultant contract even though not physically attached.

#### 14.202 General rules for solicitation of bids.

##### 14.202-1 Bidding time.

(a) *Policy.* A reasonable time for prospective bidders to prepare and submit bids shall be allowed in all invitations, consistent with the needs of the Government. (For construction contracts, see [36.213-3\(a\)](#).) A bidding time (i.e., the time between issuance of the solicitation and opening of bids) of at least 30 calendar days shall be provided, when synopsis is required by [Subpart 5.2](#).

(b) *Factors to be considered.* Because of unduly limited bidding time, some potential sources may be precluded from bidding and others may be forced to include amounts for contingencies that, with additional time, could be eliminated. To avoid unduly restricting competition or paying higher-than-necessary prices, consideration shall be given to such factors as the following in establishing a reasonable bidding time:

- (1) Degree of urgency;
- (2) Complexity of requirement;
- (3) Anticipated extent of subcontracting;
- (4) Whether use was made of presolicitation notices;
- (5) Geographic distribution of bidders; and
- (6) Normal transmittal time for both invitations and bids.

##### 14.202-2 Telegraphic bids.

(a) Telegraphic bids and mailgrams shall be authorized only when—

- (1) The date for the opening of bids will not allow bidders sufficient time to submit bids in the prescribed format; or
- (2) Prices are subject to frequent changes.

(b) If telegraphic bids are to be authorized, see [14.201-6\(g\)](#). Unauthorized telegraphic bids shall not be considered (see [14.301\(b\)](#)).

##### 14.202-3 Bid envelopes.

(a) Postage or envelopes bearing “Postage and Fees Paid” indicia shall not be distributed with the invitation for bids or otherwise supplied to prospective bidders.

(b) To provide for ready identification and proper handling of bids, [Optional Form 17](#), Offer Label, may be furnished with each bid set. The form may be obtained from the General Services Administration (see [53.107](#)).

##### 14.202-4 Bid samples.

(a) *Policy.*(1) Bidders shall not be required to furnish bid samples unless there are characteristics of the product that cannot be described adequately in the specification or purchase description.

(2) Bid samples will be used only to determine the responsiveness of the bid and will not be used to determine a bidder’s ability to produce the required items.



(1) Each responsible bidder in the sealed bid acquisition has been given notice that negotiations will be conducted and has been given an opportunity to participate in negotiations; and

(2) The award is made to the responsible bidder offering the lowest negotiated price.

#### **14.404-2 Rejection of individual bids.**

(a) Any bid that fails to conform to the essential requirements of the invitation for bids shall be rejected.

(b) Any bid that does not conform to the applicable specifications shall be rejected unless the invitation authorized the submission of alternate bids and the supplies offered as alternates meet the requirements specified in the invitation.

(c) Any bid that fails to conform to the delivery schedule or permissible alternates stated in the invitation shall be rejected.

(d) A bid shall be rejected when the bidder imposes conditions that would modify requirements of the invitation or limit the bidder's liability to the Government, since to allow the bidder to impose such conditions would be prejudicial to other bidders. For example, bids shall be rejected in which the bidder—

(1) Protects against future changes in conditions, such as increased costs, if total possible costs to the Government cannot be determined;

(2) Fails to state a price and indicates that price shall be “price in effect at time of delivery;”

(3) States a price but qualifies it as being subject to “price in effect at time of delivery;”

(4) When not authorized by the invitation, conditions or qualifies a bid by stipulating that it is to be considered only if, before date of award, the bidder receives (or does not receive) award under a separate solicitation;

(5) Requires that the Government is to determine that the bidder's product meets applicable Government specifications; or

(6) Limits rights of the Government under any contract clause.

(e) A low bidder may be requested to delete objectionable conditions from a bid provided the conditions do not go to the substance, as distinguished from the form, of the bid, or work an injustice on other bidders. A condition goes to the substance of a bid where it affects price, quantity, quality, or delivery of the items offered.

(f) Any bid may be rejected if the contracting officer determines in writing that it is unreasonable as to price. Unreasonableness of price includes not only the total price of the bid, but the prices for individual line items as well.

(g) Any bid may be rejected if the prices for any line items or subline items are materially unbalanced (see [15.404-1\(g\)](#)).

(h) Bids received from any person or concern that is suspended, debarred, proposed for debarment or declared ineli-

gible as of the bid opening date shall be rejected unless a compelling reason determination is made (see [Subpart 9.4](#)).

(i) Low bids received from concerns determined to be not responsible pursuant to subpart 9.1 shall be rejected (but if a bidder is a small business concern, see 19.6 with respect to certificates of competency).

(j) When a bid guarantee is required and a bidder fails to furnish the guarantee in accordance with the requirements of the invitation for bids, the bid shall be rejected, except as otherwise provided in [28.101-4](#).

(k) The originals of all rejected bids, and any written findings with respect to such rejections, shall be preserved with the papers relating to the acquisition.

(l) After submitting a bid, if all of a bidder's assets or that part related to the bid are transferred during the period between the bid opening and the award, the transferee may not be able to take over the bid. Accordingly, the contracting officer shall reject the bid unless the transfer is effected by merger, operation of law, or other means not barred by [41 U.S.C. 6305](#) or [31 U.S.C. 3727](#).

#### **14.404-3 Notice to bidders of rejection of all bids.**

When it is determined necessary to reject all bids, the contracting officer shall notify each bidder that all bids have been rejected and shall state the reason for such action.

#### **14.404-4 Restrictions on disclosure of descriptive literature.**

When a bid is accompanied by descriptive literature (as defined in [2.101](#)), and the bidder imposes a restriction that prevents the public disclosure of such literature, the restriction may render the bid nonresponsive. The restriction renders the bid nonresponsive if it prohibits the disclosure of sufficient information to permit competing bidders to know the essential nature and type of the products offered or those elements of the bid that relate to quantity, price, and delivery terms. The provisions of this paragraph do not apply to unsolicited descriptive literature submitted by a bidder if such literature does not qualify the bid (see [14.202-5\(e\)](#)).

#### **14.404-5 All or none qualifications.**

Unless the solicitation provides otherwise, a bid may be responsive notwithstanding that the bidder specifies that award will be accepted only on all, or a specified group, of the items. Bidders shall not be permitted to withdraw or modify “all or none” qualifications after bid opening since such qualifications are substantive and affect the rights of other bidders.

#### **14.405 Minor informalities or irregularities in bids.**

A minor informality or irregularity is one that is merely a matter of form and not of substance. It also pertains to some immaterial defect in a bid or variation of a bid from the exact requirements of the invitation that can be corrected or waived

without being prejudicial to other bidders. The defect or variation is immaterial when the effect on price, quantity, quality, or delivery is negligible when contrasted with the total cost or scope of the supplies or services being acquired. The contracting officer either shall give the bidder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive the deficiency, whichever is to the advantage of the Government. Examples of minor informalities or irregularities include failure of a bidder to—

(a) Return the number of copies of signed bids required by the invitation;

(b) Furnish required information concerning the number of its employees;

(c) Sign its bid, but only if—

(1) The unsigned bid is accompanied by other material indicating the bidder's intention to be bound by the unsigned bid (such as the submission of a bid guarantee or a letter signed by the bidder, with the bid, referring to and clearly identifying the bid itself); or

(2) The firm submitting a bid has formally adopted or authorized, before the date set for opening of bids, the execution of documents by typewritten, printed, or stamped signature and submits evidence of such authorization and the bid carries such a signature;

(d) Acknowledge receipt of an amendment to an invitation for bids, but only if—

(1) The bid received clearly indicates that the bidder received the amendment, such as where the amendment added another item to the invitation and the bidder submitted a bid on the item; or

(2) The amendment involves only a matter of form or has either no effect or merely a negligible effect on price, quantity, quality, or delivery of the item bid upon; and

(e) Execute the representations with respect to Equal Opportunity and Affirmative Action Programs, as set forth in the clauses at [52.222-22](#), Previous Contracts and Compliance Reports, and [52.222-25](#), Affirmative Action Compliance.

#### **14.406 Receipt of an unreadable electronic bid.**

If a bid received at the Government facility by electronic data interchange is unreadable to the degree that conformance to the essential requirements of the invitation for bids cannot be ascertained, the contracting officer immediately shall notify the bidder that the bid will be rejected unless the bidder provides clear and convincing evidence—

(a) Of the content of the bid as originally submitted; and

(b) That the unreadable condition of the bid was caused by Government software or hardware error, malfunction, or other Government mishandling.

#### **14.407 Mistakes in bids.**

##### **14.407-1 General.**

After the opening of bids, contracting officers shall examine all bids for mistakes. In cases of apparent mistakes and in cases where the contracting officer has reason to believe that a mistake may have been made, the contracting officer shall request from the bidder a verification of the bid, calling attention to the suspected mistake. If the bidder alleges a mistake, the matter shall be processed in accordance with this section [14.407](#). Such actions shall be taken before award.

##### **14.407-2 Apparent clerical mistakes.**

(a) Any clerical mistake, apparent on its face in the bid, may be corrected by the contracting officer before award. The contracting officer first shall obtain from the bidder a verification of the bid intended. Examples of apparent mistakes are—

(1) Obvious misplacement of a decimal point;

(2) Obviously incorrect discounts (for example, 1 percent 10 days, 2 percent 20 days, 5 percent 30 days);

(3) Obvious reversal of the price f.o.b. destination and price f.o.b. origin; and

(4) Obvious mistake in designation of unit.

(b) Correction of the bid shall be effected by attaching the verification to the original bid and a copy of the verification to the duplicate bid. Correction shall not be made on the face of the bid; however, it shall be reflected in the award document.

(c) Correction of bids submitted by electronic data interchange shall be effected by including in the electronic solicitation file the original bid, the verification request, and the bid verification.

##### **14.407-3 Other mistakes disclosed before award.**

In order to minimize delays in contract awards, administrative determinations may be made as described in this [14.407-3](#) in connection with mistakes in bids alleged after opening of bids and before award. The authority to permit correction of bids is limited to bids that, as submitted, are responsive to the invitation and may not be used to permit correction of bids to make them responsive. This authority is in addition to that in [14.407-2](#) or that may be otherwise available.

(a) If a bidder requests permission to correct a mistake and clear and convincing evidence establishes both the existence of the mistake and the bid actually intended, the agency head may make a determination permitting the bidder to correct the mistake; provided, that if this correction would result in displacing one or more lower bids, such a determination shall not be made unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself.

(b) If—

**PART 15—CONTRACTING BY NEGOTIATION**

*Sec.*

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- 15.001 Definitions.
- 15.002 Types of negotiated acquisition.
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- 15.403-4 Requiring certified cost or pricing data ([10 U.S.C. 2306a](#) and [41 U.S.C. chapter 35](#)).
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- 15.404 Proposal analysis.
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**15.204-1 Uniform contract format.**

(a) Contracting officers shall prepare solicitations and resulting contracts using the uniform contract format outlined in [Table 15-1](#) of this subsection.

(b) Solicitations using the uniform contract format shall include Parts I, II, III, and IV (see [15.204-2](#) through [15.204-5](#)). Upon award, contracting officers shall not physically include Part IV in the resulting contract, but shall retain it in the contract file. (See [4.1201\(c\)](#).) Section K shall be incorporated by reference in the contract.

**TABLE 15-1—UNIFORM CONTRACT FORMAT**

SECTION	TITLE
<u>Part I—The Schedule</u>	
A	Solicitation/contract form
B	Supplies or services and prices/costs
C	Description/specifications/statement of work
D	Packaging and marking
E	Inspection and acceptance
F	Deliveries or performance
G	Contract administration data
H	Special contract requirements
<u>Part II—Contract Clauses</u>	
I	Contract clauses
<u>Part III—List of Documents, Exhibits, and Other Attachments</u>	
J	List of attachments
<u>Part IV—Representations and Instructions</u>	
K	Representations, certifications, and other statements of offerors or respondents
L	Instructions, conditions, and notices to offerors or respondents
M	Evaluation factors for award

**15.204-2 Part I—The Schedule.**

The contracting officer shall prepare the contract Schedule as follows:

(a) *Section A, Solicitation/contract form.* (1) [Optional Form \(OF\) 308](#), Solicitation and Offer—Negotiated Acquisition, or [Standard Form \(SF\) 33](#), Solicitation, Offer and Award, may be used to prepare RFPs.

(2) When other than [OF 308](#) or [SF 33](#) is used, include the following information on the first page of the solicitation:

(i) Name, address, and location of issuing activity, including room and building where proposals or information must be submitted.

(ii) Solicitation number.

(iii) Date of issuance.

(iv) Closing date and time.

(v) Number of pages.

(vi) Requisition or other purchase authority.

(vii) Brief description of item or service.

(viii) Requirement for the offeror to provide its name and complete address, including street, city, county, state, and ZIP code, and electronic address (including facsimile address), if appropriate.

(ix) Offer expiration date.

(b) *Section B, Supplies or services and prices/costs.* Include a brief description of the supplies or services; e.g., item number, national stock number/part number if applicable, nouns, nomenclature, and quantities. (This includes incidental deliverables such as manuals and reports.)

(c) *Section C, Description/specifications/statement of work.* Include any description or specifications needed in addition to Section B (see [Part 11](#), Describing Agency Needs).

(d) *Section D, Packaging and marking.* Provide packaging, packing, preservation, and marking requirements, if any.

(e) *Section E, Inspection and acceptance.* Include inspection, acceptance, quality assurance, and reliability requirements (see [Part 46](#), Quality Assurance).

(f) *Section F, Deliveries or performance.* Specify the requirements for time, place, and method of delivery or performance (see [Subpart 11.4](#), Delivery or Performance Schedules, and [47.301-1](#)).

(g) *Section G, Contract administration data.* Include any required accounting and appropriation data and any required contract administration information or instructions other than those on the solicitation form. Include a statement that the offeror should include the payment address in the proposal, if it is different from that shown for the offeror.

(h) *Section H, Special contract requirements.* Include a clear statement of any special contract requirements that are not included in Section I, Contract clauses, or in other sections of the uniform contract format.

**15.204-3 Part II—Contract Clauses.**

*Section I, Contract clauses.* The contracting officer shall include in this section the clauses required by law or by this regulation and any additional clauses expected to be included in any resulting contract, if these clauses are not required in any other section of the uniform contract format. An index may be inserted if this section's format is particularly complex.

**15.204-4 Part III—List of Documents, Exhibits, and Other Attachments.**

*Section J, List of attachments.* The contracting officer shall list the title, date, and number of pages for each attached document, exhibit, and other attachment. Cross-references to material in other sections may be inserted, as appropriate.

**15.204-5 Part IV—Representations and Instructions.**

The contracting officer shall prepare the representations and instructions as follows:

(a) *Section K, Representations, certifications, and other statements of offerors.* Include in this section those solicitation provisions that require representations, certifications, or the submission of other information by offerors.

(b) *Section L, Instructions, conditions, and notices to offerors or respondents.* Insert in this section solicitation provisions and other information and instructions not required elsewhere to guide offerors or respondents in preparing proposals or responses to requests for information. Prospective offerors or respondents may be instructed to submit proposals or information in a specific format or severable parts to facilitate evaluation. The instructions may specify further organization of proposal or response parts, such as—

- (1) Administrative;
- (2) Management;
- (3) Technical;
- (4) Past performance; and
- (5) Certified cost or pricing data (see [Table 15-2 of 15.408](#)) or data other than certified cost or pricing data.

(c) *Section M, Evaluation factors for award.* Identify all significant factors and any significant subfactors that will be considered in awarding the contract and their relative importance (see [15.304\(d\)](#)). The contracting officer shall insert one of the phrases in [15.304\(e\)](#).

#### 15.205 Issuing solicitations.

(a) The contracting officer shall issue solicitations to potential sources in accordance with the policies and procedures in [5.102](#), [19.202-4](#), and [Part 6](#).

(b) A master solicitation, as described in [14.203-3](#), may also be used for negotiated acquisitions.

#### 15.206 Amending the solicitation.

(a) When, either before or after receipt of proposals, the Government changes its requirements or terms and conditions, the contracting officer shall amend the solicitation.

(b) Amendments issued before the established time and date for receipt of proposals shall be issued to all parties receiving the solicitation.

(c) Amendments issued after the established time and date for receipt of proposals shall be issued to all offerors that have not been eliminated from the competition.

(d) If a proposal of interest to the Government involves a departure from the stated requirements, the contracting officer shall amend the solicitation, provided this can be done without revealing to the other offerors the alternate solution proposed or any other information that is entitled to protection (see [15.207\(b\)](#) and [15.306\(e\)](#)).

(e) If, in the judgment of the contracting officer, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective offerors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known

to them, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

(f) Oral notices may be used when time is of the essence. The contracting officer shall document the contract file and formalize the notice with an amendment (see [Subpart 4.5, Electronic Commerce in Contracting](#)).

(g) At a minimum, the following information should be included in each amendment:

- (1) Name and address of issuing activity.
- (2) Solicitation number and date.
- (3) Amendment number and date.
- (4) Number of pages.
- (5) Description of the change being made.
- (6) Government point of contact and phone number (and electronic or facsimile address, if appropriate).
- (7) Revision to solicitation closing date, if applicable.

#### 15.207 Handling proposals and information.

(a) Upon receipt at the location specified in the solicitation, proposals and information received in response to a request for information (RFI) shall be marked with the date and time of receipt and shall be transmitted to the designated officials.

(b) Proposals shall be safeguarded from unauthorized disclosure throughout the source selection process. (See [3.104](#) regarding the disclosure of source selection information ([41 U.S.C. chapter 21, Restrictions on Obtaining and Disclosing Certain Information](#)). Information received in response to an RFI shall be safeguarded adequately from unauthorized disclosure.

(c) If any portion of a proposal received by the contracting officer electronically or by facsimile is unreadable, the contracting officer immediately shall notify the offeror and permit the offeror to resubmit the unreadable portion of the proposal. The method and time for resubmission shall be prescribed by the contracting officer after consultation with the offeror, and documented in the file. The resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness under [15.208\(a\)](#), provided the offeror complies with the time and format requirements for resubmission prescribed by the contracting officer.

#### 15.208 Submission, modification, revision, and withdrawal of proposals.

(a) Offerors are responsible for submitting proposals, and any revisions, and modifications, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. Offerors may use any transmission method authorized by the solicitation (*i.e.*, regular mail, electronic commerce, or facsimile). If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that proposals are due.

(b)(1) Any proposal, modification, or revision, that is received at the designated Government office after the exact time specified for receipt of proposals is “late” and will not be considered unless it is received before award is made, the contracting officer determines that accepting the late proposal would not unduly delay the acquisition; and—

(i) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(ii) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of proposals and was under the Government’s control prior to the time set for receipt of proposals; or

(iii) It was the only proposal received.

(2) However, a late modification of an otherwise successful proposal, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(c) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the proposal wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(d) If an emergency or unanticipated event interrupts normal Government processes so that proposals cannot be received at the Government office designated for receipt of proposals by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation closing date, the time specified for receipt of proposals will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(e) Proposals may be withdrawn by written notice at any time before award. Oral proposals in response to oral solicitations may be withdrawn orally. The contracting officer must document the contract file when oral withdrawals are made. One copy of withdrawn proposals should be retained in the contract file (see [4.803\(a\)\(10\)](#)). Extra copies of the withdrawn proposals may be destroyed or returned to the offeror at the offeror’s request. Where practicable, electronically transmitted proposals that are withdrawn must be purged from primary and backup data storage systems after a copy is made for the file. Extremely bulky proposals must only be returned at the offeror’s request and expense.

(f) The contracting officer must promptly notify any offeror if its proposal, modification, or revision was received late, and must inform the offeror whether its proposal will be considered, unless contract award is imminent and the notice prescribed in [15.503\(b\)](#) would suffice.

(g) Late proposals and modifications that are not considered must be held unopened, unless opened for identification,

until after award and then retained with other unsuccessful proposals.

(h) If available, the following must be included in the contracting office files for each late proposal, modification, revision, or withdrawal:

(1) The date and hour of receipt.

(2) A statement regarding whether the proposal was considered for award, with supporting rationale.

(3) The envelope, wrapper, or other evidence of date of receipt.

### 15.209 Solicitation provisions and contract clauses.

When contracting by negotiation—

(a) The contracting officer shall insert the provision at [52.215-1](#), Instructions to Offerors—Competitive Acquisition, in all competitive solicitations where the Government intends to award a contract without discussions.

(1) If the Government intends to make award after discussions with offerors within the competitive range, the contracting officer shall use the basic provision with its Alternate I.

(2) If the Government would be willing to accept alternate proposals, the contracting officer shall alter the basic clause to add a new paragraph (c)(9) substantially the same as Alternate II.

(b)(1) Except as provided in paragraph (b)(2) of this section, the contracting officer shall insert the clause at [52.215-2](#), Audit and Records—Negotiation ([10 U.S.C. 2313](#), [41 U.S.C. 4706](#), and OMB Circular No. A-133), in solicitations and contracts except those for—

(i) Acquisitions not exceeding the simplified acquisition threshold;

(ii) The acquisition of utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge; or

(iii) The acquisition of commercial items exempted under [15.403-1](#).

(2)(i) When using funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5)—

(A) The exceptions in paragraphs (b)(1)(i) through (b)(1)(iii) are not applicable; and

(B) Use the clause with its Alternate I.

(ii)(A) In the case of a bilateral contract modification that will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify applicability of Alternate I to that modification.

(B) In the case of a task- or delivery-order contract in which not all orders will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify the task or delivery orders to which Alternate I applies.

(3) For cost-reimbursement contracts with State and local Governments, educational institutions, and other non-profit organizations, the contracting officer shall use the clause with its Alternate II.

(4) When the head of the agency has waived the examination of records by the Comptroller General in accordance with [25.1001](#), use the clause with its Alternate III.

(c) When issuing a solicitation for information or planning purposes, the contracting officer shall insert the provision at [52.215-3](#), Request for Information or Solicitation for Planning Purposes, and clearly mark on the face of the solicitation that it is for information or planning purposes.

(d) [Reserved]

(e) The contracting officer shall insert the provision at [52.215-5](#), Facsimile Proposals, in solicitations if facsimile proposals are authorized (see [15.203](#)(d)).

(f) The contracting officer shall insert the provision at [52.215-6](#), Place of Performance, in solicitations unless the place of performance is specified by the Government.

(g) [Reserved]

(h) The contracting officer shall insert the clause at [52.215-8](#), Order of Precedence—Uniform Contract Format, in solicitations and contracts using the format at [15.204](#).

#### 15.210 Forms.

Prescribed forms are not required to prepare solicitations described in this part. The following forms may be used at the discretion of the contracting officer:

(a) [Standard Form 33](#), Solicitation, Offer and Award, and [Optional Form 308](#), Solicitation and Offer—Negotiated Acquisition, may be used to issue RFPs and RFIs.

(b) [Standard Form 30](#), Amendment of Solicitation/ Modification of Contract, and [Optional Form 309](#), Amendment of Solicitation, may be used to amend solicitations of negotiated contracts.

(c) [Optional Form 17](#), Offer Label, may be furnished with each request for proposal.



## Subpart 15.3—Source Selection

### 15.300 Scope of subpart.

This subpart prescribes policies and procedures for selection of a source or sources in competitive negotiated acquisitions.

### 15.301 [Reserved]

### 15.302 Source selection objective.

The objective of source selection is to select the proposal that represents the best value.

### 15.303 Responsibilities.

(a) Agency heads are responsible for source selection. The contracting officer is designated as the source selection authority, unless the agency head appoints another individual for a particular acquisition or group of acquisitions.

(b) The source selection authority shall—

(1) Establish an evaluation team, tailored for the particular acquisition, that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a comprehensive evaluation of offers;

(2) Approve the source selection strategy or acquisition plan, if applicable, before solicitation release;

(3) Ensure consistency among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements;

(4) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation ([10 U.S.C. 2305\(b\)\(4\)\(C\)](#) and [41 U.S.C. 3703\(c\)](#));

(5) Consider the recommendations of advisory boards or panels (if any); and

(6) Select the source or sources whose proposal is the best value to the Government ([10 U.S.C. 2305\(b\)\(4\)\(C\)](#) and [41 U.S.C. 3703\(c\)](#)).

(c) The contracting officer shall—

(1) After release of a solicitation, serve as the focal point for inquiries from actual or prospective offerors;

(2) After receipt of proposals, control exchanges with offerors in accordance with [15.306](#); and

(3) Award the contract(s).

### 15.304 Evaluation factors and significant subfactors.

(a) The award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition.

(b) Evaluation factors and significant subfactors must—

(1) Represent the key areas of importance and emphasis to be considered in the source selection decision; and

(2) Support meaningful comparison and discrimination between and among competing proposals.

(c) The evaluation factors and significant subfactors that apply to an acquisition and their relative importance, are within the broad discretion of agency acquisition officials, subject to the following requirements:

(1) Price or cost to the Government shall be evaluated in every source selection ([10 U.S.C. 2305\(a\)\(3\)\(A\)\(ii\)](#) and [41 U.S.C. 3306\(c\)\(1\)\(B\)](#)) (also see [Part 36](#) for architect-engineer contracts);

(2) The quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience ([10 U.S.C. 2305\(a\)\(3\)\(A\)\(i\)](#) and [41 U.S.C. 3306\(c\)\(1\)\(A\)](#)); and

(3)(i) Except as set forth in paragraph (c)(3)(iii) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold.

(ii) For solicitations involving bundling that offer a significant opportunity for subcontracting, the contracting officer must include a factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans ([15 U.S.C. 637\(d\)\(4\)\(G\)\(ii\)](#)).

(iii) Past performance need not be evaluated if the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition.

(4) The extent of participation of small disadvantaged business concerns in performance of the contract shall be evaluated in unrestricted acquisitions expected to exceed \$650,000 (\$1.5 million for construction) subject to certain limitations (see [19.201](#) and [19.1202](#)).

(5) For solicitations involving bundling that offer a significant opportunity for subcontracting, the contracting officer must include proposed small business subcontracting participation in the subcontracting plan as an evaluation factor ([15 U.S.C. 637\(d\)\(4\)\(G\)\(i\)](#)).

(6) If telecommuting is not prohibited, agencies shall not unfavorably evaluate an offer that includes telecommuting unless the contracting officer executes a written determination in accordance with FAR [7.108\(b\)](#).

(d) All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation ([10 U.S.C. 2305\(a\)\(2\)\(A\)\(i\)](#) and [41 U.S.C. 3306\(b\)\(1\)\(A\)](#)) (see [15.204-5\(c\)](#)). The rating method need not be disclosed in the solicitation. The general approach for evaluating past performance information shall be described.

(e) The solicitation shall also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—

(1) Significantly more important than cost or price;

(2) Approximately equal to cost or price; or

(3) Significantly less important than cost or price ([10 U.S.C. 2305\(a\)\(3\)\(A\)\(iii\)](#) and [41 U.S.C. 3306\(c\)\(1\)\(C\)](#)).

### 15.305 Proposal evaluation.

(a) Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. An agency shall evaluate competitive proposals and then assess their relative qualities solely on the factors and subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file.

(1) *Cost or price evaluation.* Normally, competition establishes price reasonableness. Therefore, when contracting on a firm-fixed-price or fixed-price with economic price adjustment basis, comparison of the proposed prices will usually satisfy the requirement to perform a price analysis, and a cost analysis need not be performed. In limited situations, a cost analysis (see [15.403-1\(c\)\(1\)\(i\)\(B\)](#)) may be appropriate to establish reasonableness of the otherwise successful offeror's price. When contracting on a cost-reimbursement basis, evaluations shall include a cost realism analysis to determine what the Government should realistically expect to pay for the proposed effort, the offeror's understanding of the work, and the offeror's ability to perform the contract. (See [37.115](#) for uncompensated overtime evaluation.) The contracting officer shall document the cost or price evaluation.

(2) *Past performance evaluation.* (i) Past performance information is one indicator of an offeror's ability to perform the contract successfully. The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance shall be considered. This comparative assessment of past performance information is separate from the responsibility determination required under [Subpart 9.1](#).

(ii) The solicitation shall describe the approach for evaluating past performance, including evaluating offerors with no relevant performance history, and shall provide offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the Government requirement. The solicitation shall also authorize offerors to provide information on problems encountered on the identified contracts and the offeror's corrective actions. The Government shall consider this information, as well as information obtained from any other sources, when evaluating the offeror's past performance. The source selection authority shall determine the relevance of similar past performance information.

(iii) The evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.

(iv) In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance.

(v) The evaluation should include the past performance of offerors in complying with subcontracting plan goals for small disadvantaged business (SDB) concerns (see [Subpart 19.7](#)), monetary targets for SDB participation (see [19.1202](#)), and notifications submitted under [19.1202-4\(b\)](#).

(3) *Technical evaluation.* When tradeoffs are performed (see [15.101-1](#)), the source selection records shall include—

(i) An assessment of each offeror's ability to accomplish the technical requirements; and

(ii) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

(4) *Cost information.* Cost information may be provided to members of the technical evaluation team in accordance with agency procedures.

(5) *Small business subcontracting evaluation.* Solicitations must be structured to give offers from small business concerns the highest rating for the evaluation factors in [15.304\(c\)\(3\)\(ii\)](#) and (c)(5).

(b) The source selection authority may reject all proposals received in response to a solicitation, if doing so is in the best interest of the Government.

(c) For restrictions on the use of support contractor personnel in proposal evaluation, see [37.203\(d\)](#).

### 15.306 Exchanges with offerors after receipt of proposals.

(a) *Clarifications and award without discussions.*

(1) Clarifications are limited exchanges, between the Government and offerors, that may occur when award without discussions is contemplated.

(2) If award will be made without conducting discussions, offerors may be given the opportunity to clarify certain aspects of proposals (e.g., the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors.

(3) Award may be made without discussions if the solicitation states that the Government intends to evaluate propos-

als and make award without discussions. If the solicitation contains such a notice and the Government determines it is necessary to conduct discussions, the rationale for doing so shall be documented in the contract file (see the provision at [52.215-1](#)) ([10 U.S.C. 2305\(b\)\(4\)\(A\)\(ii\)](#) and [41 U.S.C. 3703\(a\)\(2\)](#)).

(b) *Communications with offerors before establishment of the competitive range.* Communications are exchanges, between the Government and offerors, after receipt of proposals, leading to establishment of the competitive range. If a competitive range is to be established, these communications—

(1) Shall be limited to the offerors described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section and—

(i) Shall be held with offerors whose past performance information is the determining factor preventing them from being placed within the competitive range. Such communications shall address adverse past performance information to which an offeror has not had a prior opportunity to respond; and

(ii) May only be held with those offerors (other than offerors under paragraph (b)(1)(i) of this section) whose exclusion from, or inclusion in, the competitive range is uncertain;

(2) May be conducted to enhance Government understanding of proposals; allow reasonable interpretation of the proposal; or facilitate the Government's evaluation process. Such communications shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. Such communications may be considered in rating proposals for the purpose of establishing the competitive range;

(3) Are for the purpose of addressing issues that must be explored to determine whether a proposal should be placed in the competitive range. Such communications shall not provide an opportunity for the offeror to revise its proposal, but may address—

(i) Ambiguities in the proposal or other concerns (*e.g.*, perceived deficiencies, weaknesses, errors, omissions, or mistakes (see [14.407](#))); and

(ii) Information relating to relevant past performance; and

(4) Shall address adverse past performance information to which the offeror has not previously had an opportunity to comment.

(c) *Competitive range.* (1) Agencies shall evaluate all proposals in accordance with [15.305\(a\)](#), and, if discussions are to be conducted, establish the competitive range. Based on the ratings of each proposal against all evaluation criteria, the contracting officer shall establish a competitive range comprised of all of the most highly rated proposals, unless the

range is further reduced for purposes of efficiency pursuant to paragraph (c)(2) of this section.

(2) After evaluating all proposals in accordance with [15.305\(a\)](#) and paragraph (c)(1) of this section, the contracting officer may determine that the number of most highly rated proposals that might otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted. Provided the solicitation notifies offerors that the competitive range can be limited for purposes of efficiency (see [52.215-1\(f\)\(4\)](#)), the contracting officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals ([10 U.S.C. 2305\(b\)\(4\)](#) and [41 U.S.C. 3703](#)).

(3) If the contracting officer, after complying with paragraph (d)(3) of this section, decides that an offeror's proposal should no longer be included in the competitive range, the proposal shall be eliminated from consideration for award. Written notice of this decision shall be provided to unsuccessful offerors in accordance with [15.503](#).

(4) Offerors excluded or otherwise eliminated from the competitive range may request a debriefing (see [15.505](#) and [15.506](#)).

(d) *Exchanges with offerors after establishment of the competitive range.* Negotiations are exchanges, in either a competitive or sole source environment, between the Government and offerors, that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions.

(1) Discussions are tailored to each offeror's proposal, and must be conducted by the contracting officer with each offeror within the competitive range.

(2) The primary objective of discussions is to maximize the Government's ability to obtain best value, based on the requirement and the evaluation factors set forth in the solicitation.

(3) At a minimum, the contracting officer must, subject to paragraphs (d)(5) and (e) of this section and [15.307\(a\)](#), indicate to, or discuss with, each offeror still being considered for award, deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond. The contracting officer also is encouraged to discuss other aspects of the offeror's proposal that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award. However, the contracting officer is not required to discuss every area where the proposal could be improved. The

scope and extent of discussions are a matter of contracting officer judgment.

(4) In discussing other aspects of the proposal, the Government may, in situations where the solicitation stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, negotiate with offerors for increased performance beyond any mandatory minimums, and the Government may suggest to offerors that have exceeded any mandatory minimums (in ways that are not integral to the design), that their proposals would be more competitive if the excesses were removed and the offered price decreased.

(5) If, after discussions have begun, an offeror originally in the competitive range is no longer considered to be among the most highly rated offerors being considered for award, that offeror may be eliminated from the competitive range whether or not all material aspects of the proposal have been discussed, or whether or not the offeror has been afforded an opportunity to submit a proposal revision (see [15.307\(a\)](#) and [15.503\(a\)\(1\)](#)).

(e) *Limits on exchanges.* Government personnel involved in the acquisition shall not engage in conduct that—

(1) Favors one offeror over another;

(2) Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;

(3) Reveals an offeror's price without that offeror's permission. However, the contracting officer may inform an offeror that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible, at the Government's discretion, to indicate to all offerors the cost or price that the Government's price analysis, market research,

and other reviews have identified as reasonable ([41 U.S.C. 2102](#) and 2107);

(4) Reveals the names of individuals providing reference information about an offeror's past performance; or

(5) Knowingly furnishes source selection information in violation of [3.104](#) and [41 U.S.C. 2102](#) and 2107).

#### **15.307 Proposal revisions.**

(a) If an offeror's proposal is eliminated or otherwise removed from the competitive range, no further revisions to that offeror's proposal shall be accepted or considered.

(b) The contracting officer may request or allow proposal revisions to clarify and document understandings reached during negotiations. At the conclusion of discussions, each offeror still in the competitive range shall be given an opportunity to submit a final proposal revision. The contracting officer is required to establish a common cut-off date only for receipt of final proposal revisions. Requests for final proposal revisions shall advise offerors that the final proposal revisions shall be in writing and that the Government intends to make award without obtaining further revisions.

#### **15.308 Source selection decision.**

The source selection authority's (SSA) decision shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation. While the SSA may use reports and analyses prepared by others, the source selection decision shall represent the SSA's independent judgment. The source selection decision shall be documented, and the documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.

## Subpart 15.4—Contract Pricing

### 15.400 Scope of subpart.

This subpart prescribes the cost and price negotiation policies and procedures for pricing negotiated prime contracts (including subcontracts) and contract modifications, including modifications to contracts awarded by sealed bidding.

### 15.401 Definitions.

As used in this subpart—

“Price” means cost plus any fee or profit applicable to the contract type.

“Subcontract” (except as used in [15.407-2](#)) also includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or a subcontractor ([10 U.S.C. 2306a\(h\)\(2\)](#) and [41 U.S.C. 3501\(a\)\(3\)](#)).

### 15.402 Pricing policy.

Contracting officers shall—

(a) Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer—

(1) Shall obtain certified cost or pricing data when required by [15.403-4](#), along with data other than certified cost or pricing data as necessary to establish a fair and reasonable price; or

(2) When certified cost or pricing data are not required by [15.403-4](#), shall obtain data other than certified cost or pricing data as necessary to establish a fair and reasonable price, generally using the following order of preference in determining the type of data required:

(i) No additional data from the offeror, if the price is based on adequate price competition, except as provided by [15.403-3\(b\)](#).

(ii) Data other than certified cost or pricing data such as—

(A) Data related to prices (*e.g.*, established catalog or market prices, sales to non-governmental and governmental entities), relying first on data available within the Government; second, on data obtained from sources other than the offeror; and, if necessary, on data obtained from the offeror. When obtaining data from the offeror is necessary, unless an exception under [15.403-1\(b\)\(1\)](#) or (2) applies, such data submitted by the offeror shall include, at a minimum, appropriate data on the prices at which the same or similar items have been sold previously, adequate for evaluating the reasonableness of the price.

(B) Cost data to the extent necessary for the contracting officer to determine a fair and reasonable price.

(3) Obtain the type and quantity of data necessary to establish a fair and reasonable price, but not more data than is necessary. Requesting unnecessary data can lead to increased

proposal preparation costs, generally extend acquisition lead time, and consume additional contractor and Government resources. Use techniques such as, but not limited to, price analysis, cost analysis, and/or cost realism analysis to establish a fair and reasonable price. If a fair and reasonable price cannot be established by the contracting officer from the analyses of the data obtained or submitted to date, the contracting officer shall require the submission of additional data sufficient for the contracting officer to support the determination of the fair and reasonable price.

(b) Price each contract separately and independently and not—

(1) Use proposed price reductions under other contracts as an evaluation factor; or

(2) Consider losses or profits realized or anticipated under other contracts.

(c) Not include in a contract price any amount for a specified contingency to the extent that the contract provides for a price adjustment based upon the occurrence of that contingency.

### 15.403 Obtaining certified cost or pricing data.

#### 15.403-1 Prohibition on obtaining certified cost or pricing data ([10 U.S.C. 2306a](#) and [41 U.S.C. chapter 35](#)).

(a) Certified cost or pricing data shall not be obtained for acquisitions at or below the simplified acquisition threshold.

(b) *Exceptions to certified cost or pricing data requirements.* The contracting officer shall not require certified cost or pricing data to support any action (contracts, subcontracts, or modifications) (but may require data other than certified cost or pricing data as defined in FAR [2.101](#) to support a determination of a fair and reasonable price or cost realism)—

(1) When the contracting officer determines that prices agreed upon are based on adequate price competition (see standards in paragraph (c)(1) of this subsection);

(2) When the contracting officer determines that prices agreed upon are based on prices set by law or regulation (see standards in paragraph (c)(2) of this subsection);

(3) When a commercial item is being acquired (see standards in paragraph (c)(3) of this subsection);

(4) When a waiver has been granted (see standards in paragraph (c)(4) of this subsection); or

(5) When modifying a contract or subcontract for commercial items (see standards in paragraph (c)(3) of this subsection).

(c) *Standards for exceptions from certified cost or pricing data requirements—* (1) *Adequate price competition.* A price is based on adequate price competition if— (i) Two or more responsible offerors, competing independently, submit priced offers that satisfy the Government’s expressed requirement and if—

(A) Award will be made to the offeror whose proposal represents the best value (see [2.101](#)) where price is a substantial factor in source selection; and

(B) There is no finding that the price of the otherwise successful offeror is unreasonable. Any finding that the price is unreasonable must be supported by a statement of the facts and approved at a level above the contracting officer;

(ii) There was a reasonable expectation, based on market research or other assessment, that two or more responsible offerors, competing independently, would submit priced offers in response to the solicitation's expressed requirement, even though only one offer is received from a responsible offeror and if—

(A) Based on the offer received, the contracting officer can reasonably conclude that the offer was submitted with the expectation of competition, *e.g.*, circumstances indicate that—

(1) The offeror believed that at least one other offeror was capable of submitting a meaningful offer; and

(2) The offeror had no reason to believe that other potential offerors did not intend to submit an offer; and

(B) The determination that the proposed price is based on adequate price competition and is reasonable has been approved at a level above the contracting officer; or

(iii) Price analysis clearly demonstrates that the proposed price is reasonable in comparison with current or recent prices for the same or similar items, adjusted to reflect changes in market conditions, economic conditions, quantities, or terms and conditions under contracts that resulted from adequate price competition.

(2) *Prices set by law or regulation.* Pronouncements in the form of periodic rulings, reviews, or similar actions of a governmental body, or embodied in the laws, are sufficient to set a price.

(3) *Commercial items.* (i) Any acquisition of an item that the contracting officer determines meets the commercial item definition in [2.101](#), or any modification, as defined in paragraph (3)(i) of that definition, that does not change the item from a commercial item to a noncommercial item, is exempt from the requirement for certified cost or pricing data. If the contracting officer determines that an item claimed to be commercial is, in fact, not commercial and that no other exception or waiver applies, (*e.g.* the acquisition is not based on adequate price competition; the acquisition is not based on prices set by law or regulation; and the acquisition exceeds the threshold for the submission of certified cost or pricing data at [15.403-4\(a\)\(1\)](#)) the contracting officer shall require submission of certified cost or pricing data.

(ii) In accordance with [41 U.S.C. 3501](#):

(A) When purchasing services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial

marketplace, they may be considered commercial items (thus meeting the purpose of [41 U.S.C. chapter 35](#) and [10 U.S.C. 2306a](#) for truth in negotiations) only if the contracting officer determines in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price of such services.

(B) In order to make this determination, the contracting officer may request the offeror to submit prices paid for the same or similar commercial items under comparable terms and conditions by both Government and commercial customers; and

(C) If the contracting officer determines that the information described in paragraph (c)(3)(ii)(B) of this section is not sufficient to determine the reasonableness of price, other relevant information regarding the basis for price or cost, including information on labor costs, material costs and overhead rates may be requested.

(iii) The following requirements apply to minor modifications defined in paragraph (3)(ii) of the definition of a commercial item at [2.101](#) that do not change the item from a commercial item to a noncommercial item:

(A) For acquisitions funded by any agency other than DoD, NASA, or Coast Guard, such modifications of a commercial item are exempt from the requirement for submission of certified cost or pricing data.

(B) For acquisitions funded by DoD, NASA, or Coast Guard, such modifications of a commercial item are exempt from the requirement for submission of certified cost or pricing data provided the total price of all such modifications under a particular contract action does not exceed the greater of the threshold for obtaining certified cost or pricing data in [15.403-4](#) or 5 percent of the total price of the contract at the time of contract award.

(C) For acquisitions funded by DoD, NASA, or Coast Guard such modifications of a commercial item are not exempt from the requirement for submission of certified cost or pricing data on the basis of the exemption provided for at [15.403-1\(c\)\(3\)](#) if the total price of all such modifications under a particular contract action exceeds the greater of the threshold for obtaining certified cost or pricing data in [15.403-4](#) or 5 percent of the total price of the contract at the time of contract award.

(iv) Any acquisition for noncommercial supplies or services treated as commercial items at [12.102\(f\)\(1\)](#), except sole source contracts greater than \$17.5 million, is exempt from the requirements for certified cost or pricing data ([41 U.S.C. 1903](#)).

(4) *Waivers.* The head of the contracting activity (HCA) may, without power of delegation, waive the requirement for submission of certified cost or pricing data in exceptional cases. The authorization for the waiver and the supporting rationale shall be in writing. The HCA may consider waiving the requirement if the price can be determined to be fair and reasonable without submission of certified cost or pricing data. For example, if certified cost or pricing data were fur-

nished on previous production buys and the contracting officer determines such data are sufficient, when combined with updated data, a waiver may be granted. If the HCA has waived the requirement for submission of certified cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to provide certified cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed the certified cost or pricing data threshold requires the submission of certified cost or pricing data unless—

- (i) An exception otherwise applies to the subcontract; or
- (ii) The waiver specifically includes the subcontract and the rationale supporting the waiver for that subcontract.

#### **15.403-2 Other circumstances where certified cost or pricing data are not required.**

(a) The exercise of an option at the price established at contract award or initial negotiation does not require submission of certified cost or pricing data.

(b) Certified cost or pricing data are not required for proposals used solely for overrun funding or interim billing price adjustments.

#### **15.403-3 Requiring data other than certified cost or pricing data.**

(a) (1) In those acquisitions that do not require certified cost or pricing data, the contracting officer shall—

(i) Obtain whatever data are available from Government or other secondary sources and use that data in determining a fair and reasonable price;

(ii) Require submission of data other than certified cost or pricing data, as defined in [2.101](#), from the offeror to the extent necessary to determine a fair and reasonable price ([10 U.S.C. 2306a\(d\)\(1\)](#) and [41 U.S.C. 3505\(a\)](#)) if the contracting officer determines that adequate data from sources other than the offeror are not available. This includes requiring data from an offeror to support a cost realism analysis;

(iii) Consider whether cost data are necessary to determine a fair and reasonable price when there is not adequate price competition;

(iv) Require that the data submitted by the offeror include, at a minimum, appropriate data on the prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price unless an exception under [15.403-1\(b\)\(1\)](#) or (2) applies; and

(v) Consider the guidance in section 3.3, chapter 3, volume I, of the Contract Pricing Reference Guide cited at [15.404-1\(a\)\(7\)](#) to determine the data an offeror shall be required to submit.

(2) The contractor's format for submitting the data should be used (see [15.403-5\(b\)\(2\)](#)).

(3) The contracting officer shall ensure that data used to support price negotiations are sufficiently current to permit

negotiation of a fair and reasonable price. Requests for updated offeror data should be limited to data that affect the adequacy of the proposal for negotiations, such as changes in price lists.

(4) As specified in section 808 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261), an offeror who does not comply with a requirement to submit data for a contract or subcontract in accordance with paragraph (a)(1) of this subsection is ineligible for award unless the HCA determines that it is in the best interest of the Government to make the award to that offeror, based on consideration of the following:

(i) The effort made to obtain the data.

(ii) The need for the item or service.

(iii) Increased cost or significant harm to the Government if award is not made.

(b) Adequate price competition. When adequate price competition exists (see [15.403-1\(c\)\(1\)](#)), generally no additional data are necessary to determine the reasonableness of price. However, if there are unusual circumstances where it is concluded that additional data are necessary to determine the reasonableness of price, the contracting officer shall, to the maximum extent practicable, obtain the additional data from sources other than the offeror. In addition, the contracting officer should request data to determine the cost realism of competing offers or to evaluate competing approaches.

(c) *Commercial items.* (1) At a minimum, the contracting officer must use price analysis to determine whether the price is fair and reasonable whenever the contracting officer acquires a commercial item (see [15.404-1\(b\)](#)). The fact that a price is included in a catalog does not, in and of itself, make it fair and reasonable. If the contracting officer cannot determine whether an offered price is fair and reasonable, even after obtaining additional data from sources other than the offeror, then the contracting officer shall require the offeror to submit data other than certified cost or pricing data to support further analysis (see [15.404-1](#)). This data may include history of sales to non-governmental and governmental entities, cost data, or any other information the contracting officer requires to determine the price is fair and reasonable. Unless an exception under [15.403-1\(b\)\(1\)](#) or (2) applies, the contracting officer shall require that the data submitted by the offeror include, at a minimum, appropriate data on the prices at which the same item or similar items have previously been sold, adequate for determining the reasonableness of the price.

(2) *Limitations relating to commercial items* ([10 U.S.C. 2306a\(d\)\(2\)](#) and [41 U.S.C. 3505\(b\)](#)). (i) The contracting officer shall limit requests for sales data relating to commercial items to data for the same or similar items during a relevant time period.

(ii) The contracting officer shall, to the maximum extent practicable, limit the scope of the request for data relating to commercial items to include only data that are in the

form regularly maintained by the offeror as part of its commercial operations.

(iii) The Government shall not disclose outside the Government data obtained relating to commercial items that is exempt from disclosure under [24.202\(a\)](#) or the Freedom of Information Act ([5 U.S.C. 552\(b\)](#)).

(3) For services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace, see [15.403-1\(c\)\(3\)\(ii\)](#).

#### **15.403-4 Requiring certified cost or pricing data**

**(10 U.S.C. 2306a and 41 U.S.C. chapter 35).**

(a)(1) The contracting officer shall obtain certified cost or pricing data only if the contracting officer concludes that none of the exceptions in [15.403-1\(b\)](#) applies. However, if the contracting officer has reason to believe exceptional circumstances exist and has sufficient data available to determine a fair and reasonable price, then the contracting officer should consider requesting a waiver under the exception at [15.403-1\(b\)\(4\)](#). The threshold for obtaining certified cost or pricing data is \$700,000. Unless an exception applies, certified cost or pricing data are required before accomplishing any of the following actions expected to exceed the current threshold or, in the case of existing contracts, the threshold specified in the contract:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor were required to furnish certified cost or pricing data (but see waivers at [15.403-1\(c\)\(4\)](#)).

(iii) The modification of any sealed bid or negotiated contract (whether or not certified cost or pricing data were initially required) or any subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts must consider both increases and decreases (*e.g.*, a \$200,000 modification resulting from a reduction of \$500,000 and an increase of \$300,000 is a pricing adjustment exceeding \$700,000). This requirement does not apply when unrelated and separately priced changes for which certified cost or pricing data would not otherwise be required are included for administrative convenience in the same modification. Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring certified cost or pricing data if—

(A) The total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection; or

(B) The partial termination settlement plus the estimate to complete the continued portion of the contract

exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection (see [49.105\(c\)\(15\)](#)).

(2) Unless prohibited because an exception at [15.403-1\(b\)](#) applies, the head of the contracting activity, without power of delegation, may authorize the contracting officer to obtain certified cost or pricing data for pricing actions below the pertinent threshold in paragraph (a)(1) of this subsection, provided the action exceeds the simplified acquisition threshold. The head of the contracting activity shall justify the requirement for certified cost or pricing data. The documentation shall include a written finding that certified cost or pricing data are necessary to determine whether the price is fair and reasonable and the facts supporting that finding.

(b) When certified cost or pricing data are required, the contracting officer shall require the contractor or prospective contractor to submit to the contracting officer (and to have any subcontractor or prospective subcontractor submit to the prime contractor or appropriate subcontractor tier) the following in support of any proposal:

(1) The certified cost or pricing data and data other than certified cost or pricing data required by the contracting officer to determine that the price is fair and reasonable.

(2) A Certificate of Current Cost or Pricing Data, in the format specified in [15.406-2](#), certifying that to the best of its knowledge and belief, the cost or pricing data were accurate, complete, and current as of the date of agreement on price or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

(c) If certified cost or pricing data are requested and submitted by an offeror, but an exception is later found to apply, the data must not be considered certified cost or pricing data as defined in [2.101](#) and must not be certified in accordance with [15.406-2](#)

(d) The requirements of this subsection also apply to contracts entered into by an agency on behalf of a foreign government.

#### **15.403-5 Instructions for submission of certified cost or pricing data and data other than certified cost or pricing data.**

(a) Taking into consideration the policy at [15.402](#), the contracting officer shall specify in the solicitation (see [15.408 \(l\)](#) and (m))—

(1) Whether certified cost or pricing data are required;

(2) That, in lieu of submitting certified cost or pricing data, the offeror may submit a request for exception from the requirement to submit certified cost or pricing data;

(3) Any requirement for data other than certified cost or pricing data; and

(4) The requirement for necessary preaward or postaward access to offeror's records.

(b)(1) *Format for submission of certified cost or pricing data.* When certification is required, the contracting officer



may require submission of certified cost or pricing data in the format indicated in [Table 15-2](#) of [15.408](#), specify an alternative format, or permit submission in the contractor's format (See [15.408\(1\)\(1\)](#)), unless the data are required to be submitted on one of the termination forms specified in [Subpart 49.6](#).

(2) *Format for submission of data other than certified cost or pricing data.* When required by the contracting officer, data other than certified cost or pricing data may be submitted in the offeror's own format unless the contracting officer decides that use of a specific format is essential for evaluating and determining that the price is fair and reasonable and the format has been described in the solicitation.

(3) *Format for submission of data supporting forward pricing rate agreements.* Data supporting forward pricing rate agreements or final indirect cost proposals shall be submitted in a form acceptable to the contracting officer.

### 15.404 Proposal analysis.

#### 15.404-1 Proposal analysis techniques.

(a) *General.* The objective of proposal analysis is to ensure that the final agreed-to price is fair and reasonable.

(1) The contracting officer is responsible for evaluating the reasonableness of the offered prices. The analytical techniques and procedures described in this subsection may be used, singly or in combination with others, to ensure that the final price is fair and reasonable. The complexity and circumstances of each acquisition should determine the level of detail of the analysis required.

(2) Price analysis shall be used when certified cost or pricing data are not required (see paragraph (b) of this subsection and [15.404-3](#)).

(3) Cost analysis shall be used to evaluate the reasonableness of individual cost elements when certified cost or pricing data are required. Price analysis should be used to verify that the overall price offered is fair and reasonable.

(4) Cost analysis may also be used to evaluate data other than certified cost or pricing data to determine cost reasonableness or cost realism when a fair and reasonable price cannot be determined through price analysis alone for commercial or non-commercial items.

(5) The contracting officer may request the advice and assistance of other experts to ensure that an appropriate analysis is performed.

(6) Recommendations or conclusions regarding the Government's review or analysis of an offeror's or contractor's proposal shall not be disclosed to the offeror or contractor without the concurrence of the contracting officer. Any discrepancy or mistake of fact (such as duplications, omissions, and errors in computation) contained in the certified cost or pricing data or data other than certified cost or pricing data submitted in support of a proposal shall be brought to the contracting officer's attention for appropriate action.

(7) The Air Force Institute of Technology (AFIT) and the Federal Acquisition Institute (FAI) jointly prepared a five-volume set of Contract Pricing Reference Guides to guide pricing and negotiation personnel. The five guides are: I Price Analysis, II Quantitative Techniques for Contract Pricing, III Cost Analysis, IV Advanced Issues in Contract Pricing, and V Federal Contract Negotiation Techniques. These references provide detailed discussion and examples applying pricing policies to pricing problems. They are to be used for instruction and professional guidance. However, they are not directive and should be considered informational only. They are available via the internet at [http://www.acq.osd.mil/dpap/epic/cp/contract\\_pricing\\_reference\\_guides.html](http://www.acq.osd.mil/dpap/epic/cp/contract_pricing_reference_guides.html).

(b) *Price analysis for commercial and non-commercial items.* (1) Price analysis is the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit. Unless an exception from the requirement to obtain certified cost or pricing data applies under [15.403-1\(b\)\(1\)](#) or (b)(2), at a minimum, the contracting officer shall obtain appropriate data, without certification, on the prices at which the same or similar items have previously been sold and determine if the data is adequate for evaluating the reasonableness of the price. Price analysis may include evaluating data other than certified cost or pricing data obtained from the offeror or contractor when there is no other means for determining a fair and reasonable price. Contracting officers shall obtain data other than certified cost or pricing data from the offeror or contractor for all acquisitions (including commercial item acquisitions), if that is the contracting officer's only means to determine the price to be fair and reasonable.

(2) The Government may use various price analysis techniques and procedures to ensure a fair and reasonable price. Examples of such techniques include, but are not limited to, the following:

(i) Comparison of proposed prices received in response to the solicitation. Normally, adequate price competition establishes a fair and reasonable price (see [15.403-1\(c\)\(1\)\(i\)](#)).

(ii) Comparison of the proposed prices to historical prices paid, whether by the Government or other than the Government, for the same or similar items. This method may be used for commercial items including those "of a type" or requiring minor modifications.

(A) The prior price must be a valid basis for comparison. If there has been a significant time lapse between the last acquisition and the present one, if the terms and conditions of the acquisition are significantly different, or if the reasonableness of the prior price is uncertain, then the prior price may not be a valid basis for comparison.

(B) The prior price must be adjusted to account for materially differing terms and conditions, quantities and market and economic factors. For similar items, the contract-

ing officer must also adjust the prior price to account for material differences between the similar item and the item being procured.

(C) Expert technical advice should be obtained when analyzing similar items, or commercial items that are “of a type” or requiring minor modifications, to ascertain the magnitude of changes required and to assist in pricing the required changes

(iii) Use of parametric estimating methods/application of rough yardsticks (such as dollars per pound or per horsepower, or other units) to highlight significant inconsistencies that warrant additional pricing inquiry.

(iv) Comparison with competitive published price lists, published market prices of commodities, similar indexes, and discount or rebate arrangements.

(v) Comparison of proposed prices with independent Government cost estimates.

(vi) Comparison of proposed prices with prices obtained through market research for the same or similar items.

(vii) Analysis of data other than certified cost or pricing data (as defined at [2.101](#)) provided by the offeror.

(3) The first two techniques at [15.404-1\(b\)\(2\)](#) are the preferred techniques. However, if the contracting officer determines that information on competitive proposed prices or previous contract prices is not available or is insufficient to determine that the price is fair and reasonable, the contracting officer may use any of the remaining techniques as appropriate to the circumstances applicable to the acquisition.

(4) Value analysis can give insight into the relative worth of a product and the Government may use it in conjunction with the price analysis techniques listed in paragraph (b)(2) of this section.

(c) *Cost analysis.* (1) Cost analysis is the review and evaluation of any separate cost elements and profit or fee in an offeror’s or contractor’s proposal, as needed to determine a fair and reasonable price or to determine cost realism, and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency.

(2) The Government may use various cost analysis techniques and procedures to ensure a fair and reasonable price, given the circumstances of the acquisition. Such techniques and procedures include the following:

(i) Verification of cost data or pricing data and evaluation of cost elements, including—

(A) The necessity for, and reasonableness of, proposed costs, including allowances for contingencies;

(B) Projection of the offeror’s cost trends, on the basis of current and historical cost or pricing data;

(C) Reasonableness of estimates generated by appropriately calibrated and validated parametric models or cost-estimating relationships; and

(D) The application of audited or negotiated indirect cost rates, labor rates, and cost of money or other factors.

(ii) Evaluating the effect of the offeror’s current practices on future costs. In conducting this evaluation, the contracting officer shall ensure that the effects of inefficient or uneconomical past practices are not projected into the future. In pricing production of recently developed complex equipment, the contracting officer should perform a trend analysis of basic labor and materials, even in periods of relative price stability.

(iii) Comparison of costs proposed by the offeror for individual cost elements with—

(A) Actual costs previously incurred by the same offeror;

(B) Previous cost estimates from the offeror or from other offerors for the same or similar items;

(C) Other cost estimates received in response to the Government’s request;

(D) Independent Government cost estimates by technical personnel; and

(E) Forecasts of planned expenditures.

(iv) Verification that the offeror’s cost submissions are in accordance with the contract cost principles and procedures in [Part 31](#) and, when applicable, the requirements and procedures in 48 CFR Chapter 99 ([Appendix](#) to the FAR looseleaf edition), Cost Accounting Standards.

(v) Review to determine whether any cost data or pricing data, necessary to make the offeror’s proposal suitable for negotiation, have not been either submitted or identified in writing by the offeror. If there are such data, the contracting officer shall attempt to obtain and use them in the negotiations or make satisfactory allowance for the incomplete data.

(vi) Analysis of the results of any make-or-buy program reviews, in evaluating subcontract costs (see [15.407-2](#)).

(d) *Cost realism analysis.* (1) Cost realism analysis is the process of independently reviewing and evaluating specific elements of each offeror’s proposed cost estimate to determine whether the estimated proposed cost elements are realistic for the work to be performed; reflect a clear understanding of the requirements; and are consistent with the unique methods of performance and materials described in the offeror’s technical proposal.

(2) Cost realism analyses shall be performed on cost-reimbursement contracts to determine the probable cost of performance for each offeror.

(i) The probable cost may differ from the proposed cost and should reflect the Government’s best estimate of the cost of any contract that is most likely to result from the offeror’s proposal. The probable cost shall be used for purposes of evaluation to determine the best value.

(ii) The probable cost is determined by adjusting each offeror’s proposed cost, and fee when appropriate, to

reflect any additions or reductions in cost elements to realistic levels based on the results of the cost realism analysis.

(3) Cost realism analyses may also be used on competitive fixed-price incentive contracts or, in exceptional cases, on other competitive fixed-price-type contracts when new requirements may not be fully understood by competing offerors, there are quality concerns, or past experience indicates that contractors' proposed costs have resulted in quality or service shortfalls. Results of the analysis may be used in performance risk assessments and responsibility determinations. However, proposals shall be evaluated using the criteria in the solicitation, and the offered prices shall not be adjusted as a result of the analysis.

(e) *Technical analysis.* (1) The contracting officer should request that personnel having specialized knowledge, skills, experience, or capability in engineering, science, or management perform a technical analysis of the proposed types and quantities of materials, labor, processes, special tooling, equipment or real property, the reasonableness of scrap and spoilage, and other associated factors set forth in the proposal(s) in order to determine the need for and reasonableness of the proposed resources, assuming reasonable economy and efficiency.

(2) At a minimum, the technical analysis should examine the types and quantities of material proposed and the need for the types and quantities of labor hours and the labor mix. Any other data that may be pertinent to an assessment of the offeror's ability to accomplish the technical requirements or to the cost or price analysis of the service or product being proposed should also be included in the analysis.

(3) The contracting officer should request technical assistance in evaluating pricing related to items that are "similar to" items being purchased, or commercial items that are "of a type" or requiring minor modifications, to ascertain the magnitude of changes required and to assist in pricing the required changes.

(f) *Unit prices.* (1) Except when pricing an item on the basis of adequate price competition or catalog or market price, unit prices shall reflect the intrinsic value of an item or service and shall be in proportion to an item's base cost (e.g., manufacturing or acquisition costs). Any method of distributing costs to line items that distorts the unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost.

(2) Except for the acquisition of commercial items, contracting officers shall require that offerors identify in their proposals those items of supply that they will not manufacture or to which they will not contribute significant value, unless adequate price competition is expected ([10 U.S.C. 2306a\(b\)\(1\)\(A\)\(i\)](#) and [41 U.S.C. 3503\(a\)\(1\)\(A\)](#)). Such information shall be used to determine whether the intrinsic value of an item has been distorted through applica-

tion of overhead and whether such items should be considered for breakout. The contracting officer should require such information in all other negotiated contracts when appropriate.

(g) *Unbalanced pricing.* (1) Unbalanced pricing may increase performance risk and could result in payment of unreasonably high prices. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly over or understated as indicated by the application of cost or price analysis techniques. The greatest risks associated with unbalanced pricing occur when—

(i) Startup work, mobilization, first articles, or first article testing are separate line items;

(ii) Base quantities and option quantities are separate line items; or

(iii) The evaluated price is the aggregate of estimated quantities to be ordered under separate line items of an indefinite-delivery contract.

(2) All offers with separately priced line items or subline items shall be analyzed to determine if the prices are unbalanced. If cost or price analysis techniques indicate that an offer is unbalanced, the contracting officer shall—

(i) Consider the risks to the Government associated with the unbalanced pricing in determining the competitive range and in making the source selection decision; and

(ii) Consider whether award of the contract will result in paying unreasonably high prices for contract performance.

(3) An offer may be rejected if the contracting officer determines that the lack of balance poses an unacceptable risk to the Government.

#### **15.404-2 Data to support proposal analysis.**

(a) *Field pricing assistance.* (1) The contracting officer should request field pricing assistance when the information available at the buying activity is inadequate to determine a fair and reasonable price. The contracting officer shall tailor requests to reflect the minimum essential supplementary information needed to conduct a technical or cost or pricing analysis.

(2) The contracting officer shall tailor the type of information and level of detail requested in accordance with the specialized resources available at the buying activity and the magnitude and complexity of the required analysis. Field pricing assistance is generally available to provide—

(i) Technical, audit, and special reports associated with the cost elements of a proposal, including subcontracts;

(ii) Information on related pricing practices and history;

(iii) Information to help contracting officers determine commerciality and a fair and reasonable price, including—

- (A) Verifying sales history to source documents;
- (B) Identifying special terms and conditions;
- (C) Identifying customarily granted or offered discounts for the item;
- (D) Verifying the item to an existing catalog or price list;
- (E) Verifying historical data for an item previously not determined commercial that the offeror is now trying to qualify as a commercial item; and
- (F) Identifying general market conditions affecting determinations of commerciality and a fair and reasonable price.

(iv) Information relative to the business, technical, production, or other capabilities and practices of an offeror.

(3) When field pricing assistance is requested, contracting officers are encouraged to team with appropriate field experts throughout the acquisition process, including negotiations. Early communication with these experts will assist in determining the extent of assistance required, the specific areas for which assistance is needed, a realistic review schedule, and the information necessary to perform the review.

(4) When requesting field pricing assistance on a contractor's request for equitable adjustment, the contracting officer shall provide the information listed in [43.204\(b\)\(5\)](#).

(5) Field pricing information and other reports may include proprietary or source selection information (see [2.101](#)). This information must be appropriately identified and protected accordingly.

(b) *Reporting field pricing information.* (1) Depending upon the extent and complexity of the field pricing review, results, including supporting rationale, may be reported directly to the contracting officer orally, in writing, or by any other method acceptable to the contracting officer.

(i) Whenever circumstances permit, the contracting officer and field pricing experts are encouraged to use telephonic and/or electronic means to request and transmit pricing information.

(ii) When it is necessary to have written technical and audit reports, the contracting officer shall request that the audit agency concurrently forward the audit report to the requesting contracting officer and the administrative contracting officer (ACO). The completed field pricing assistance results may reference audit information, but need not reconcile the audit recommendations and technical recommendations. A copy of the information submitted to the contracting officer by field pricing personnel shall be provided to the audit agency.

(2) Audit and field pricing information, whether written or reported telephonically or electronically, shall be made a part of the official contract file (see [4.807\(f\)](#)).

(c) *Audit assistance for prime contracts or subcontracts.* (1) The contracting officer should contact the cognizant audit office directly, particularly when an audit is the only field

pricing support required. The audit office shall send the audit report, or otherwise transmit the audit recommendations, directly to the contracting officer.

(i) The auditor shall not reveal the audit conclusions or recommendations to the offeror/contractor without obtaining the concurrence of the contracting officer. However, the auditor may discuss statements of facts with the contractor.

(ii) The contracting officer should be notified immediately of any information disclosed to the auditor after submission of a report that may significantly affect the audit findings and, if necessary, a supplemental audit report shall be issued.

(2) The contracting officer shall not request a separate preaward audit of indirect costs unless the information already available from an existing audit, completed within the preceding 12 months, is considered inadequate for determining the reasonableness of the proposed indirect costs ([41 U.S.C. 4706](#) and [10 U.S.C. 2313](#)).

(3) The auditor is responsible for the scope and depth of the audit. Copies of updated information that will significantly affect the audit should be provided to the auditor by the contracting officer.

(4) General access to the offeror's books and financial records is limited to the auditor. This limitation does not preclude the contracting officer or the ACO, or their representatives, from requesting that the offeror provide or make available any data or records necessary to analyze the offeror's proposal.

(d) *Deficient proposals.* The ACO or the auditor, as appropriate, shall notify the contracting officer immediately if the data provided for review is so deficient as to preclude review or audit, or if the contractor or offeror has denied access to any records considered essential to conduct a satisfactory review or audit. Oral notifications shall be confirmed promptly in writing, including a description of deficient or denied data or records. The contracting officer immediately shall take appropriate action to obtain the required data. Should the offeror/contractor again refuse to provide adequate data, or provide access to necessary data, the contracting officer shall withhold the award or price adjustment and refer the contract action to a higher authority, providing details of the attempts made to resolve the matter and a statement of the practicability of obtaining the supplies or services from another source.

#### **15.404-3 Subcontract pricing considerations.**

(a) The contracting officer is responsible for the determination of a fair and reasonable price for the prime contract, including subcontracting costs. The contracting officer should consider whether a contractor or subcontractor has an approved purchasing system, has performed cost or price analysis of proposed subcontractor prices, or has negotiated the subcontract prices before negotiation of the prime contract, in determining the reasonableness of the prime contract

price. This does not relieve the contracting officer from the responsibility to analyze the contractor's submission, including subcontractor's certified cost or pricing data.

(b) The prime contractor or subcontractor shall—

(1) Conduct appropriate cost or price analyses to establish the reasonableness of proposed subcontract prices;

(2) Include the results of these analyses in the price proposal; and

(3) When required by paragraph (c) of this subsection, submit subcontractor certified cost or pricing data to the Government as part of its own certified cost or pricing data.

(c) Any contractor or subcontractor that is required to submit certified cost or pricing data also shall obtain and analyze certified cost or pricing data before awarding any subcontract, purchase order, or modification expected to exceed the certified cost or pricing data threshold, unless an exception in [15.403-1\(b\)](#) applies to that action.

(1) The contractor shall submit, or cause to be submitted by the subcontractor(s), certified cost or pricing data to the Government for subcontracts that are the lower of either—

(i) \$12.5 million or more; or

(ii) Both more than the pertinent certified cost or pricing data threshold and more than 10 percent of the prime contractor's proposed price, unless the contracting officer believes such submission is unnecessary.

(2) The contracting officer should require the contractor or subcontractor to submit to the Government (or cause submission of) subcontractor certified cost or pricing data below the thresholds in paragraph (c)(1) of this subsection and data other than certified cost or pricing data that the contracting officer considers necessary for adequately pricing the prime contract.

(3) Subcontractor certified cost or pricing data shall be submitted in the format provided in [Table 15-2](#) of [15.408](#) or the alternate format specified in the solicitation.

(4) Subcontractor certified cost or pricing data shall be current, accurate, and complete as of the date of price agreement, or, if applicable, an earlier date agreed upon by the parties and specified on the contractor's Certificate of Current Cost or Pricing Data. The contractor shall update subcontractor's data, as appropriate, during source selection and negotiations.

(5) If there is more than one prospective subcontractor for any given work, the contractor need only submit to the Government certified cost or pricing data for the prospective subcontractor most likely to receive the award.

#### 15.404-4 Profit.

(a) *General.* This subsection prescribes policies for establishing the profit or fee portion of the Government prenegotiation objective in price negotiations based on cost analysis.

(1) Profit or fee prenegotiation objectives do not necessarily represent net income to contractors. Rather, they repre-

sent that element of the potential total remuneration that contractors may receive for contract performance over and above allowable costs. This potential remuneration element and the Government's estimate of allowable costs to be incurred in contract performance together equal the Government's total prenegotiation objective. Just as actual costs may vary from estimated costs, the contractor's actual realized profit or fee may vary from negotiated profit or fee, because of such factors as efficiency of performance, incurrence of costs the Government does not recognize as allowable, and the contract type.

(2) It is in the Government's interest to offer contractors opportunities for financial rewards sufficient to stimulate efficient contract performance, attract the best capabilities of qualified large and small business concerns to Government contracts, and maintain a viable industrial base.

(3) Both the Government and contractors should be concerned with profit as a motivator of efficient and effective contract performance. Negotiations aimed merely at reducing prices by reducing profit, without proper recognition of the function of profit, are not in the Government's interest. Negotiation of extremely low profits, use of historical averages, or automatic application of predetermined percentages to total estimated costs do not provide proper motivation for optimum contract performance.

(b) *Policy.* (1) Structured approaches (see paragraph (d) of this subsection) for determining profit or fee prenegotiation objectives provide a discipline for ensuring that all relevant factors are considered. Subject to the authorities in [1.301\(c\)](#), agencies making noncompetitive contract awards over \$100,000 totaling \$50 million or more a year—

(i) Shall use a structured approach for determining the profit or fee objective in those acquisitions that require cost analysis; and

(ii) May prescribe specific exemptions for situations in which mandatory use of a structured approach would be clearly inappropriate.

(2) Agencies may use another agency's structured approach.

(c) *Contracting officer responsibilities.* (1) When the price negotiation is not based on cost analysis, contracting officers are not required to analyze profit.

(2) When the price negotiation is based on cost analysis, contracting officers in agencies that have a structured approach shall use it to analyze profit. When not using a structured approach, contracting officers shall comply with paragraph (d)(1) of this subsection in developing profit or fee prenegotiation objectives.

(3) Contracting officers shall use the Government prenegotiation cost objective amounts as the basis for calculating the profit or fee prenegotiation objective. Before applying profit or fee factors, the contracting officer shall exclude from the pre-negotiation cost objective amounts the purchase cost of contractor-acquired property that is categorized as equipment, as defined in FAR [45.101](#), and where such equipment

is to be charged directly to the contract. Before applying profit or fee factors, the contracting officer shall exclude any facilities capital cost of money included in the cost objective amounts. If the prospective contractor fails to identify or propose facilities capital cost of money in a proposal for a contract that will be subject to the cost principles for contracts with commercial organizations (see [Subpart 31.2](#)), facilities capital cost of money will not be an allowable cost in any resulting contract (see [15.408\(i\)](#)).

(4)(i) The contracting officer shall not negotiate a price or fee that exceeds the following statutory limitations, imposed by [10 U.S.C. 2306\(d\)](#) and [41 U.S.C. 3905](#):

(A) For experimental, developmental, or research work performed under a cost-plus-fixed-fee contract, the fee shall not exceed 15 percent of the contract's estimated cost, excluding fee.

(B) For architect-engineer services for public works or utilities, the contract price or the estimated cost and fee for production and delivery of designs, plans, drawings, and specifications shall not exceed 6 percent of the estimated cost of construction of the public work or utility, excluding fees.

(C) For other cost-plus-fixed-fee contracts, the fee shall not exceed 10 percent of the contract's estimated cost, excluding fee.

(ii) The contracting officer's signature on the price negotiation memorandum or other documentation supporting determination of fair and reasonable price documents the contracting officer's determination that the statutory price or fee limitations have not been exceeded.

(5) The contracting officer shall not require any prospective contractor to submit breakouts or supporting rationale for its profit or fee objective but may consider it, if it is submitted voluntarily.

(6) If a change or modification calls for essentially the same type and mix of work as the basic contract and is of relatively small dollar value compared to the total contract value, the contracting officer may use the basic contract's profit or fee rate as the prenegotiation objective for that change or modification.

(d) *Profit-analysis factors*— (1) *Common factors*. Unless it is clearly inappropriate or not applicable, each factor outlined in paragraphs (d)(1)(i) through (vi) of this subsection shall be considered by agencies in developing their structured approaches and by contracting officers in analyzing profit, whether or not using a structured approach.

(i) *Contractor effort*. This factor measures the complexity of the work and the resources required of the prospective contractor for contract performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance. The subfactors in paragraphs (d)(1)(i)(A) through (D) of this subsection shall be considered in determining contractor effort, but they may be modified in specific sit-

uations to accommodate differences in the categories used by prospective contractors for listing costs—

(A) *Material acquisition*. This subfactor measures the managerial and technical effort needed to obtain the required purchased parts and material, subcontracted items, and special tooling. Considerations include the complexity of the items required, the number of purchase orders and subcontracts to be awarded and administered, whether established sources are available or new or second sources must be developed, and whether material will be obtained through routine purchase orders or through complex subcontracts requiring detailed specifications. Profit consideration should correspond to the managerial and technical effort involved.

(B) *Conversion direct labor*. This subfactor measures the contribution of direct engineering, manufacturing, and other labor to converting the raw materials, data, and subcontracted items into the contract items. Considerations include the diversity of engineering, scientific, and manufacturing labor skills required and the amount and quality of supervision and coordination needed to perform the contract task.

(C) *Conversion-related indirect costs*. This subfactor measures how much the indirect costs contribute to contract performance. The labor elements in the allocable indirect costs should be given the profit consideration they would receive if treated as direct labor. The other elements of indirect costs should be evaluated to determine whether they merit only limited profit consideration because of their routine nature, or are elements that contribute significantly to the proposed contract.

(D) *General management*. This subfactor measures the prospective contractor's other indirect costs and general and administrative (G&A) expense, their composition, and how much they contribute to contract performance. Considerations include how labor in the overhead pools would be treated if it were direct labor, whether elements within the pools are routine expenses or instead are elements that contribute significantly to the proposed contract, and whether the elements require routine as opposed to unusual managerial effort and attention.

(ii) *Contract cost risk*. (A) This factor measures the degree of cost responsibility and associated risk that the prospective contractor will assume as a result of the contract type contemplated and considering the reliability of the cost estimate in relation to the complexity and duration of the contract task. Determination of contract type should be closely related to the risks involved in timely, cost-effective, and efficient performance. This factor should compensate contractors proportionately for assuming greater cost risks.

(B) The contractor assumes the greatest cost risk in a closely priced firm-fixed-price contract under which it agrees to perform a complex undertaking on time and at a predetermined price. Some firm-fixed-price contracts may entail substantially less cost risk than others because, for example,

the contract task is less complex or many of the contractor's costs are known at the time of price agreement, in which case the risk factor should be reduced accordingly. The contractor assumes the least cost risk in a cost-plus-fixed-fee level-of-effort contract, under which it is reimbursed those costs determined to be allocable and allowable, plus the fixed fee.

(C) In evaluating assumption of cost risk, contracting officers shall, except in unusual circumstances, treat time-and-materials, labor-hour, and firm-fixed-price, level-of-effort term contracts as cost-plus-fixed-fee contracts.

(iii) *Federal socioeconomic programs.* This factor measures the degree of support given by the prospective contractor to Federal socioeconomic programs, such as those involving small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, women-owned small business concerns, veteran-owned, HUBZone, service-disabled veteran-owned small business concerns, sheltered workshops for workers with disabilities, and energy conservation. Greater profit opportunity should be provided contractors that have displayed unusual initiative in these programs.

(iv) *Capital investments.* This factor takes into account the contribution of contractor investments to efficient and economical contract performance.

(v) *Cost-control and other past accomplishments.* This factor allows additional profit opportunities to a prospective contractor that has previously demonstrated its ability to perform similar tasks effectively and economically. In addition, consideration should be given to measures taken by the prospective contractor that result in productivity improvements, and other cost-reduction accomplishments that will benefit the Government in follow-on contracts.

(vi) *Independent development.* Under this factor, the contractor may be provided additional profit opportunities in recognition of independent development efforts relevant to the contract end item without Government assistance. The contracting officer should consider whether the development cost was recovered directly or indirectly from Government sources.

(2) *Additional factors.* In order to foster achievement of program objectives, each agency may include additional factors in its structured approach or take them into account in the profit analysis of individual contract actions.

#### 15.405 Price negotiation.

(a) The purpose of performing cost or price analysis is to develop a negotiation position that permits the contracting officer and the offeror an opportunity to reach agreement on a fair and reasonable price. A fair and reasonable price does not require that agreement be reached on every element of cost, nor is it mandatory that the agreed price be within the contracting officer's initial negotiation position. Taking into consideration the advisory recommendations, reports of contributing specialists, and the current status of the contractor's

purchasing system, the contracting officer is responsible for exercising the requisite judgment needed to reach a negotiated settlement with the offeror and is solely responsible for the final price agreement. However, when significant audit or other specialist recommendations are not adopted, the contracting officer should provide rationale that supports the negotiation result in the price negotiation documentation.

(b) The contracting officer's primary concern is the overall price the Government will actually pay. The contracting officer's objective is to negotiate a contract of a type and with a price providing the contractor the greatest incentive for efficient and economical performance. The negotiation of a contract type and a price are related and should be considered together with the issues of risk and uncertainty to the contractor and the Government. Therefore, the contracting officer should not become preoccupied with any single element and should balance the contract type, cost, and profit or fee negotiated to achieve a total result—a price that is fair and reasonable to both the Government and the contractor.

(c) The Government's cost objective and proposed pricing arrangement directly affect the profit or fee objective. Because profit or fee is only one of several interrelated variables, the contracting officer shall not agree on profit or fee without concurrent agreement on cost and type of contract.

(d) If, however, the contractor insists on a price or demands a profit or fee that the contracting officer considers unreasonable, and the contracting officer has taken all authorized actions (including determining the feasibility of developing an alternative source) without success, the contracting officer shall refer the contract action to a level above the contracting officer. Disposition of the action should be documented.

#### 15.406 Documentation.

##### 15.406-1 Prenegotiation objectives.

(a) The prenegotiation objectives establish the Government's initial negotiation position. They assist in the contracting officer's determination of fair and reasonable price. They should be based on the results of the contracting officer's analysis of the offeror's proposal, taking into consideration all pertinent information including field pricing assistance, audit reports and technical analysis, fact-finding results, independent Government cost estimates and price histories.

(b) The contracting officer shall establish prenegotiation objectives before the negotiation of any pricing action. The scope and depth of the analysis supporting the objectives should be directly related to the dollar value, importance, and complexity of the pricing action. When cost analysis is required, the contracting officer shall document the pertinent issues to be negotiated, the cost objectives, and a profit or fee objective.

**15.406-2 Certificate of Current Cost or Pricing Data.**

(a) When certified cost or pricing data are required, the contracting officer shall require the contractor to execute a Certificate of Current Cost or Pricing Data, using the format in this paragraph, and must include the executed certificate in the contract file.

**CERTIFICATE OF CURRENT COST OR PRICING DATA**

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section [2.101](#) of the Federal Acquisition Regulation (FAR) and required under FAR subsection [15.403-4](#)) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of \_\_\_\_\_\* are accurate, complete, and current as of \_\_\_\_\_\*\*. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

Firm \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date of execution\*\*\* \_\_\_\_\_

\* Identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

\*\* Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

\*\*\* Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.

(END OF CERTIFICATE)

(b) The certificate does not constitute a representation as to the accuracy of the contractor's judgment on the estimate of future costs or projections. It applies to the data upon which the judgment or estimate was based. This distinction between fact and judgment should be clearly understood. If the contractor had information reasonably available at the time of agreement showing that the negotiated price was not based on accurate, complete, and current data, the contractor's responsibility is not limited by any lack of personal knowledge of the information on the part of its negotiators.

(c) The contracting officer and contractor are encouraged to reach a prior agreement on criteria for establishing closing or cutoff dates when appropriate in order to minimize delays associated with proposal updates. Closing or cutoff dates

should be included as part of the data submitted with the proposal and, before agreement on price, data should be updated by the contractor to the latest closing or cutoff dates for which the data are available. Use of cutoff dates coinciding with reports is acceptable, as certain data may not be reasonably available before normal periodic closing dates (e.g., actual indirect costs). Data within the contractor's or a subcontractor's organization on matters significant to contractor management and to the Government will be treated as reasonably available. What is significant depends upon the circumstances of each acquisition.

(d) Possession of a Certificate of Current Cost or Pricing Data is not a substitute for examining and analyzing the contractor's proposal.

(e) If certified cost or pricing data are requested by the Government and submitted by an offeror, but an exception is later found to apply, the data shall not be considered certified cost or pricing data and shall not be certified in accordance with this subsection.

**15.406-3 Documenting the negotiation.**

(a) The contracting officer shall document in the contract file the principal elements of the negotiated agreement. The documentation (e.g., price negotiation memorandum (PNM)) shall include the following:

- (1) The purpose of the negotiation.
- (2) A description of the acquisition, including appropriate identifying numbers (e.g., RFP No.).
- (3) The name, position, and organization of each person representing the contractor and the Government in the negotiation.
- (4) The current status of any contractor systems (e.g., purchasing, estimating, accounting, and compensation) to the extent they affected and were considered in the negotiation.
- (5) If certified cost or pricing data were not required in the case of any price negotiation exceeding the certified cost or pricing data threshold, the exception used and the basis for it.
- (6) If certified cost or pricing data were required, the extent to which the contracting officer—
  - (i) Relied on the certified cost or pricing data submitted and used them in negotiating the price;
  - (ii) Recognized as inaccurate, incomplete, or non-current any certified cost or pricing data submitted; the action taken by the contracting officer and the contractor as a result; and the effect of the defective data on the price negotiated; or
  - (iii) Determined that an exception applied after the data were submitted and, therefore, considered not to be certified cost or pricing data.
- (7) A summary of the contractor's proposal, any field pricing assistance recommendations, including the reasons for any pertinent variances from them, the Government's



negotiation objective, and the negotiated position. Where the determination of a fair and reasonable price is based on cost analysis, the summary shall address each major cost element. When determination of a fair and reasonable price is based on price analysis, the summary shall include the source and type of data used to support the determination.

(8) The most significant facts or considerations controlling the establishment of the prenegotiation objectives and the negotiated agreement including an explanation of any significant differences between the two positions.

(9) To the extent such direction has a significant effect on the action, a discussion and quantification of the impact of direction given by Congress, other agencies, and higher-level officials (*i.e.*, officials who would not normally exercise authority during the award and review process for the instant contract action).

(10) The basis for the profit or fee prenegotiation objective and the profit or fee negotiated.

(11) Documentation of fair and reasonable pricing.

(b) Whenever field pricing assistance has been obtained, the contracting officer shall forward a copy of the negotiation documentation to the office(s) providing assistance. When appropriate, information on how advisory field support can be made more effective should be provided separately.

#### 15.407 Special cost or pricing areas.

##### 15.407-1 Defective certified cost or pricing data.

(a) If, before agreement on price, the contracting officer learns that any certified cost or pricing data submitted are inaccurate, incomplete, or noncurrent, the contracting officer shall immediately bring the matter to the attention of the prospective contractor, whether the defective data increase or decrease the contract price. The contracting officer shall consider any new data submitted to correct the deficiency, or consider the inaccuracy, incompleteness, or noncurrency of the data when negotiating the contract price. The price negotiation memorandum shall reflect the adjustments made to the data or the corrected data used to negotiate the contract price.

(b)(1) If, after award, certified cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of final agreement on price or an earlier date agreed upon by the parties given on the contractor's or subcontractor's Certificate of Current Cost or Pricing Data, the Government is entitled to a price adjustment, including profit or fee, of any significant amount by which the price was increased because of the defective data. This entitlement is ensured by including in the contract one of the clauses prescribed in [15.408\(b\)](#) and (c) and is set forth in the clauses at [52.215-10](#), Price Reduction for Defective Certified Cost or Pricing Data, and [52.215-11](#), Price Reduction for Defective Certified Cost or Pricing Data-Modifications. The clauses give the Government the right to a price adjustment for defects in certified cost or pricing data submitted by the contractor, a prospective subcontractor, or an actual subcontractor.

(2) In arriving at a price adjustment, the contracting officer shall consider the time by which the certified cost or pricing data became reasonably available to the contractor, and the extent to which the Government relied upon the defective data.

(3) The clauses referred to in paragraph (b)(1) of this subsection recognize that the Government's right to a price adjustment is not affected by any of the following circumstances:

(i) The contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position;

(ii) The contracting officer should have known that the certified cost or pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the contracting officer;

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under such contract; or

(iv) Certified cost or pricing data were required; however, the contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data relating to the contract.

(4) Subject to paragraphs (b)(5) and (6) of this subsection, the contracting officer shall allow an offset for any understated certified cost or pricing data submitted in support of price negotiations, up to the amount of the Government's claim for overstated pricing data arising out of the same pricing action (*e.g.*, the initial pricing of the same contract or the pricing of the same change order).

(5) An offset shall be allowed only in an amount supported by the facts and if the contractor—

(i) Certifies to the contracting officer that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset in the amount requested; and

(ii) Proves that the certified cost or pricing data were available before the "as of" date specified on the Certificate of Current Cost or Pricing Data but were not submitted. Such offsets need not be in the same cost groupings (*e.g.*, material, direct labor, or indirect costs).

(6) An offset shall not be allowed if—

(i) The understated data were known by the contractor to be understated before the "as of" date specified on the Certificate of Current Cost or Pricing Data; or

(ii) The Government proves that the facts demonstrate that the price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on the Certificate of Current Cost or Pricing Data.

(7)(i) In addition to the price adjustment, the Government is entitled to recovery of any overpayment plus interest on the overpayments. The Government is also entitled to penalty amounts on certain of these overpayments. Overpayment occurs only when payment is made for supplies or services accepted by the Government. Overpayments do not result from amounts paid for contract financing, as defined in [32.001](#).

(ii) In calculating the interest amount due, the contracting officer shall—

(A) Determine the defective pricing amounts that have been overpaid to the contractor;

(B) Consider the date of each overpayment (the date of overpayment for this interest calculation shall be the date payment was made for the related completed and accepted contract items; or for subcontract defective pricing, the date payment was made to the prime contractor, based on prime contract progress billings or deliveries, which included payments for a completed and accepted subcontract item); and

(C) Apply the underpayment interest rate(s) in effect for each quarter from the time of overpayment to the time of repayment, utilizing rate(s) prescribed by the Secretary of the Treasury under [26 U.S.C. 6621\(a\)\(2\)](#).

(iii) In arriving at the amount due for penalties on contracts where the submission of defective certified cost or pricing data was a knowing submission, the contracting officer shall obtain an amount equal to the amount of overpayment made. Before taking any contractual actions concerning penalties, the contracting officer shall obtain the advice of counsel.

(iv) In the demand letter, the contracting officer shall separately include—

(A) The repayment amount;

(B) The penalty amount (if any);

(C) The interest amount through a specified date;

and

(D) A statement that interest will continue to accrue until repayment is made.

(c) If, after award, the contracting officer learns or suspects that the data furnished were not accurate, complete, and current, or were not adequately verified by the contractor as of the time of negotiation, the contracting officer shall request an audit to evaluate the accuracy, completeness, and currency of the data. The Government may evaluate the profit-cost relationships only if the audit reveals that the data certified by the contractor were defective. The contracting officer shall not reprice the contract solely because the profit was greater than forecast or because a contingency specified in the submission failed to materialize.

(d) For each advisory audit received based on a postaward review that indicates defective pricing, the contracting officer shall make a determination as to whether or not the data submitted were defective and relied upon. Before making such a determination, the contracting officer should give the contractor an opportunity to support the accuracy, completeness, and currency of the data in question. The contracting officer shall prepare a memorandum documenting both the determination and any corrective action taken as a result. The contracting officer shall send one copy of this memorandum to the auditor and, if the contract has been assigned for administration, one copy to the administrative contracting officer (ACO). A copy

of the memorandum or other notice of the contracting officer's determination shall be provided to the contractor. When the contracting officer determines that the contractor submitted defective cost or pricing data, the contracting officer, in accordance with agency procedures, shall ensure that information relating to the contracting officer's final determination is reported in accordance with [42.1503\(h\)](#). Agencies shall ensure updated information that changes a contracting officer's prior final determination is reported into the FAPIIS module of PPIRS in the event of a—

(1) Contracting officer's decision in accordance with the Contract Disputes statute;

(2) Board of Contract Appeals decision; or

(3) Court decision.

(e) If both the contractor and subcontractor submitted, and the contractor certified, or should have certified, cost or pricing data, the Government has the right, under the clauses at [52.215-10](#), Price Reduction for Defective Certified Cost or Pricing Data, and [52.215-11](#), Price Reduction for Defective Certified Cost or Pricing Data—Modifications, to reduce the prime contract price if it was significantly increased because a subcontractor submitted defective data. This right applies whether these data supported subcontract cost estimates or supported firm agreements between subcontractor and contractor.

(f) If Government audit discloses defective subcontractor certified cost or pricing data, the information necessary to support a reduction in prime contract and subcontract prices may be available only from the Government. To the extent necessary to secure a prime contract price reduction, the contracting officer should make this information available to the prime contractor or appropriate subcontractors, upon request. If release of the information would compromise Government security or disclose trade secrets or confidential business information, the contracting officer shall release it only under conditions that will protect it from improper disclosure. Information made available under this paragraph shall be limited to that used as the basis for the prime contract price reduction. In order to afford an opportunity for corrective action, the contracting officer should give the prime contractor reasonable advance notice before determining to reduce the prime contract price.

(1) When a prime contractor includes defective subcontract data in arriving at the price but later awards the subcontract to a lower priced subcontractor (or does not subcontract for the work), any adjustment in the prime contract price due to defective subcontract data is limited to the difference (plus applicable indirect cost and profit markups) between the subcontract price used for pricing the prime contract, and either the actual subcontract price or the actual cost to the contractor, if not subcontracted, provided the data on which the actual subcontract price is based are not themselves defective.

### Subpart 15.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

#### 15.501 Definition.

“Day,” as used in this subpart, has the meaning set forth at [33.101](#).

#### 15.502 Applicability.

This subpart applies to competitive proposals, as described in [6.102\(b\)](#), and a combination of competitive procedures, as described in [6.102\(c\)](#). The procedures in [15.504](#), [15.506](#), [15.507](#), [15.508](#), and [15.509](#), with reasonable modification, should be followed for sole source acquisitions and acquisitions described in [6.102\(d\)\(1\)](#) and (2).

#### 15.503 Notifications to unsuccessful offerors.

(a) *Preaward notices*— (1) *Preaward notices of exclusion from competitive range*. The contracting officer shall notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice shall state the basis for the determination and that a proposal revision will not be considered.

(2) *Preaward notices for small business programs*.

(i) In addition to the notice in paragraph (a)(1) of this section, the contracting officer shall notify each offeror in writing prior to award, upon completion of negotiations, determinations of responsibility, and, if necessary, the process in [19.304\(d\)](#)—

(A) When using a small business set-aside (see [Subpart 19.5](#));

(B) When a small disadvantaged business concern receives a benefit based on its disadvantaged status (see [Subpart 19.11](#) and [19.1202](#)) and is the apparently successful offeror;

(C) When using the HUBZone procedures in [19.1305](#) or [19.1307](#);

(D) When using the service-disabled veteran-owned small business procedures in [19.1405](#); or

(E) When using the Woman-Owned Small Business Program procedures in [19.1505](#).

(ii) The notice shall state—

(A) The name and address of the apparently successful offeror;

(B) That the Government will not consider subsequent revisions of the offeror’s proposal; and

(C) That no response is required unless a basis exists to challenge the size status or small business status of the apparently successful offeror (*e.g.*, small business concern, small disadvantaged business concern, HUBZone small business concern, service-disabled veteran-owned small business concern, economically disadvantaged women-owned

small business concern, or women-owned small business concern eligible under the Women-Owned Small Business Program).

(iii) The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay or when the contract is entered into under the 8(a) program (see [19.805-2](#)).

(b) *Postaward notices*. (1) Within 3 days after the date of contract award, the contracting officer shall provide written notification to each offeror whose proposal was in the competitive range but was not selected for award ([10 U.S.C. 2305\(b\)\(5\)](#) and [41 U.S.C. 3704](#)) or had not been previously notified under paragraph (a) of this section. The notice shall include—

(i) The number of offerors solicited;

(ii) The number of proposals received;

(iii) The name and address of each offeror receiving an award;

(iv) The items, quantities, and any stated unit prices of each award. If the number of items or other factors makes listing any stated unit prices impracticable at that time, only the total contract price need be furnished in the notice. However, the items, quantities, and any stated unit prices of each award shall be made publicly available, upon request; and

(v) In general terms, the reason(s) the offeror’s proposal was not accepted, unless the price information in paragraph (b)(1)(iv) of this section readily reveals the reason. In no event shall an offeror’s cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(2) Upon request, the contracting officer shall furnish the information described in paragraph (b)(1) of this section to unsuccessful offerors in solicitations using simplified acquisition procedures in [Part 13](#).

(3) Upon request, the contracting officer shall provide the information in paragraph (b)(1) of this section to unsuccessful offerors that received a preaward notice of exclusion from the competitive range.

#### 15.504 Award to successful offeror.

The contracting officer shall award a contract to the successful offeror by furnishing the executed contract or other notice of the award to that offeror.

(a) If the award document includes information that is different than the latest signed proposal, as amended by the offeror’s written correspondence, both the offeror and the contracting officer shall sign the contract award.

(b) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the proposal acceptance period.

(c) If the [Optional Form \(OF\) 307](#), Contract Award, [Standard Form \(SF\) 26](#), Award/Contract, or [SF 33](#), Solicitation, Offer and Award, is not used to award the contract, the first page of the award document shall contain the Government's acceptance statement from Block 15 of that form, exclusive of the Item 3 reference language, and shall contain the contracting officer's name, signature, and date. In addition, if the award document includes information that is different than the signed proposal, as amended by the offeror's written correspondence, the first page shall include the contractor's agreement statement from Block 14 of the [OF 307](#) and the signature of the contractor's authorized representative.

#### 15.505 Preaward debriefing of offerors.

Offerors excluded from the competitive range or otherwise excluded from the competition before award may request a debriefing before award ([10 U.S.C. 2305\(b\)\(6\)\(A\)](#) and [41 U.S.C. 3705](#)).

(a)(1) The offeror may request a preaward debriefing by submitting a written request for debriefing to the contracting officer within 3 days after receipt of the notice of exclusion from the competition.

(2) At the offeror's request, this debriefing may be delayed until after award. If the debriefing is delayed until after award, it shall include all information normally provided in a postaward debriefing (see [15.506\(d\)](#)). Debriefings delayed pursuant to this paragraph could affect the timeliness of any protest filed subsequent to the debriefing.

(3) If the offeror does not submit a timely request, the offeror need not be given either a preaward or a postaward debriefing. Offerors are entitled to no more than one debriefing for each proposal.

(b) The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable, but may refuse the request for a debriefing if, for compelling reasons, it is not in the best interests of the Government to conduct a debriefing at that time. The rationale for delaying the debriefing shall be documented in the contract file. If the contracting officer delays the debriefing, it shall be provided no later than the time postaward debriefings are provided under [15.506](#). In that event, the contracting officer shall include the information at [15.506\(d\)](#) in the debriefing.

(c) Debriefings may be done orally, in writing, or by any other method acceptable to the contracting officer.

(d) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(e) At a minimum, preaward debriefings shall include—

(1) The agency's evaluation of significant elements in the offeror's proposal;

(2) A summary of the rationale for eliminating the offeror from the competition; and

(3) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed in the process of eliminating the offeror from the competition.

(f) Preaward debriefings shall not disclose—

(1) The number of offerors;

(2) The identity of other offerors;

(3) The content of other offerors' proposals;

(4) The ranking of other offerors;

(5) The evaluation of other offerors; or

(6) Any of the information prohibited in [15.506\(e\)](#).

(g) An official summary of the debriefing shall be included in the contract file.

#### 15.506 Postaward debriefing of offerors.

(a)(1) An offeror, upon its written request received by the agency within 3 days after the date on which that offeror has received notification of contract award in accordance with [15.503\(b\)](#), shall be debriefed and furnished the basis for the selection decision and contract award.

(2) To the maximum extent practicable, the debriefing should occur within 5 days after receipt of the written request. Offerors that requested a postaward debriefing in lieu of a preaward debriefing, or whose debriefing was delayed for compelling reasons beyond contract award, also should be debriefed within this time period.

(3) An offeror that was notified of exclusion from the competition (see [15.505\(a\)](#)), but failed to submit a timely request, is not entitled to a debriefing.

(4)(i) Untimely debriefing requests may be accommodated.

(ii) Government accommodation of a request for delayed debriefing pursuant to [15.505\(a\)\(2\)](#), or any untimely debriefing request, does not automatically extend the deadlines for filing protests. Debriefings delayed pursuant to [15.505\(a\)\(2\)](#) could affect the timeliness of any protest filed subsequent to the debriefing.

(b) Debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the contracting officer.

(c) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(d) At a minimum, the debriefing information shall include—

(1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;

(2) The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;

**16.000 Scope of part.**

This part describes types of contracts that may be used in acquisitions. It prescribes policies and procedures and provides guidance for selecting a contract type appropriate to the circumstances of the acquisition.

**16.001 Definitions.**

As used in this part—

*Award-Fee Board* means the team of individuals identified in the award-fee plan who have been designated to assist the Fee-Determining Official in making award-fee determinations.

*Fee-Determining Official (FDO)* means the designated Agency official(s) who reviews the recommendations of the Award-Fee Board in determining the amount of award fee to be earned by the contractor for each evaluation period.

*Rollover of unearned award fee* means the process of transferring unearned award fee, which the contractor had an opportunity to earn, from one evaluation period to a subsequent evaluation period, thus allowing the contractor an additional opportunity to earn that previously unearned award fee.

**Subpart 16.1—Selecting Contract Types****16.101 General.**

(a) A wide selection of contract types is available to the Government and contractors in order to provide needed flexibility in acquiring the large variety and volume of supplies and services required by agencies. Contract types vary according to—

- (1) The degree and timing of the responsibility assumed by the contractor for the costs of performance; and
- (2) The amount and nature of the profit incentive offered to the contractor for achieving or exceeding specified standards or goals.

(b) The contract types are grouped into two broad categories: fixed-price contracts (see [Subpart 16.2](#)) and cost-reimbursement contracts (see [Subpart 16.3](#)). The specific contract types range from firm-fixed-price, in which the contractor has full responsibility for the performance costs and resulting profit (or loss), to cost-plus-fixed-fee, in which the contractor has minimal responsibility for the performance costs and the negotiated fee (profit) is fixed. In between are the various incentive contracts (see [Subpart 16.4](#)), in which the contractor's responsibility for the performance costs and the profit or fee incentives offered are tailored to the uncertainties involved in contract performance.

**16.102 Policies.**

(a) Contracts resulting from sealed bidding shall be firm-fixed-price contracts or fixed-price contracts with economic price adjustment.

(b) Contracts negotiated under [Part 15](#) may be of any type or combination of types that will promote the Government's interest, except as restricted in this part (see [10 U.S.C. 2306\(a\)](#) and [41 U.S.C. 3901](#)). Contract types not described in this regulation shall not be used, except as a deviation under [Subpart 1.4](#).

(c) The cost-plus-a-percentage-of-cost system of contracting shall not be used (see [10 U.S.C. 2306\(a\)](#) and [41 U.S.C. 3905\(a\)](#)). Prime contracts (including letter contracts) other than firm-fixed-price contracts shall, by an appropriate clause, prohibit cost-plus-a-percentage-of-cost subcontracts (see clauses prescribed in [Subpart 44.2](#) for cost-reimbursement contracts and [Subparts 16.2](#) and [16.4](#) for fixed-price contracts).

(d) No contract may be awarded before the execution of any determination and findings (D&F's) required by this part. Minimum requirements for the content of D&F's required by this part are specified in [1.704](#).

**16.103 Negotiating contract type.**

(a) Selecting the contract type is generally a matter for negotiation and requires the exercise of sound judgment. Negotiating the contract type and negotiating prices are closely related and should be considered together. The objective is to negotiate a contract type and price (or estimated cost and fee) that will result in reasonable contractor risk and provide the contractor with the greatest incentive for efficient and economical performance.

(b) A firm-fixed-price contract, which best utilizes the basic profit motive of business enterprise, shall be used when the risk involved is minimal or can be predicted with an acceptable degree of certainty. However, when a reasonable basis for firm pricing does not exist, other contract types should be considered, and negotiations should be directed toward selecting a contract type (or combination of types) that will appropriately tie profit to contractor performance.

(c) In the course of an acquisition program, a series of contracts, or a single long-term contract, changing circumstances may make a different contract type appropriate in later periods than that used at the outset. In particular, contracting officers should avoid protracted use of a cost-reimbursement or time-and-materials contract after experience provides a basis for firmer pricing.

(d)(1) Each contract file shall include documentation to show why the particular contract type was selected. This shall be documented in the acquisition plan, or in the contract file if a written acquisition plan is not required by agency procedures.

(i) Explain why the contract type selected must be used to meet the agency need.

(ii) Discuss the Government's additional risks and the burden to manage the contract type selected (e.g., when a cost-reimbursement contract is selected, the Government incurs additional cost risks, and the Government has the addi-

tional burden of managing the contractor's costs). For such instances, acquisition personnel shall discuss—

(A) How the Government identified the additional risks (*e.g.*, pre-award survey, or past performance information);

(B) The nature of the additional risks (*e.g.*, inadequate contractor's accounting system, weaknesses in contractor's internal control, non-compliance with Cost Accounting Standards, or lack of or inadequate earned value management system); and

(C) How the Government will manage and mitigate the risks.

(iii) Discuss the Government resources necessary to properly plan for, award, and administer the contract type selected (*e.g.*, resources needed and the additional risks to the Government if adequate resources are not provided).

(iv) For other than a firm-fixed price contract, at a minimum the documentation should include—

(A) An analysis of why the use of other than a firm-fixed-price contract (*e.g.*, cost reimbursement, time and materials, labor hour) is appropriate;

(B) Rationale that detail the particular facts and circumstances (*e.g.*, complexity of the requirements, uncertain duration of the work, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection;

(C) An assessment regarding the adequacy of Government resources that are necessary to properly plan for, award, and administer other than firm-fixed-price contracts; and

(D) A discussion of the actions planned to minimize the use of other than firm-fixed-price contracts on future acquisitions for the same requirement and to transition to firm-fixed-price contracts to the maximum extent practicable.

(v) A discussion of why a level-of-effort, price redetermination, or fee provision was included.

(2) Exceptions to the requirements at (d)(1) of this section are—

(i) Fixed-price acquisitions made under simplified acquisition procedures;

(ii) Contracts on a firm-fixed-price basis other than those for major systems or research and development; and

(iii) Awards on the set-aside portion of sealed bid partial set-asides for small business.

#### 16.104 Factors in selecting contract types.

There are many factors that the contracting officer should consider in selecting and negotiating the contract type. They include the following:

(a) *Price competition.* Normally, effective price competition results in realistic pricing, and a fixed-price contract is ordinarily in the Government's interest.

(b) *Price analysis.* Price analysis, with or without competition, may provide a basis for selecting the contract type. The degree to which price analysis can provide a realistic pricing standard should be carefully considered. (See [15.404-1\(b\)](#).)

(c) *Cost analysis.* In the absence of effective price competition and if price analysis is not sufficient, the cost estimates of the offeror and the Government provide the bases for nego-

tiating contract pricing arrangements. It is essential that the uncertainties involved in performance and their possible impact upon costs be identified and evaluated, so that a contract type that places a reasonable degree of cost responsibility upon the contractor can be negotiated.

(d) *Type and complexity of the requirement.* Complex requirements, particularly those unique to the Government, usually result in greater risk assumption by the Government. This is especially true for complex research and development contracts, when performance uncertainties or the likelihood of changes makes it difficult to estimate performance costs in advance. As a requirement recurs or as quantity production begins, the cost risk should shift to the contractor, and a fixed-price contract should be considered.

(e) *Combining contract types.* If the entire contract cannot be firm-fixed-price, the contracting officer shall consider whether or not a portion of the contract can be established on a firm-fixed-price basis.

(f) *Urgency of the requirement.* If urgency is a primary factor, the Government may choose to assume a greater proportion of risk or it may offer incentives tailored to performance outcomes to ensure timely contract performance.

(g) *Period of performance or length of production run.* In times of economic uncertainty, contracts extending over a relatively long period may require economic price adjustment or price redetermination clauses.

(h) *Contractor's technical capability and financial responsibility.*

(i) *Adequacy of the contractor's accounting system.* Before agreeing on a contract type other than firm-fixed-price, the contracting officer shall ensure that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type. This factor may be critical—

(1) When the contract type requires price revision while performance is in progress; or

(2) When a cost-reimbursement contract is being considered and all current or past experience with the contractor has been on a fixed-price basis. See [42.302\(a\)\(12\)](#).

(j) *Concurrent contracts.* If performance under the proposed contract involves concurrent operations under other contracts, the impact of those contracts, including their pricing arrangements, should be considered.

(k) *Extent and nature of proposed subcontracting.* If the contractor proposes extensive subcontracting, a contract type reflecting the actual risks to the prime contractor should be selected.

(l) *Acquisition history.* Contractor risk usually decreases as the requirement is repetitively acquired. Also, product descriptions or descriptions of services to be performed can be defined more clearly.

#### 16.105 Solicitation provision.

The contracting officer shall complete and insert the provision at [52.216-1](#), Type of Contract, in a solicitation unless it is for—

(a) A fixed-price acquisition made under simplified acquisition procedures; or

(b) Information or planning purposes.

## Subpart 16.5—Indefinite-Delivery Contracts

### 16.500 Scope of subpart.

(a) This subpart prescribes policies and procedures for making awards of indefinite-delivery contracts and establishes a preference for making multiple awards of indefinite-quantity contracts.

(b) This subpart does not limit the use of other than competitive procedures authorized by [Part 6](#).

(c) Nothing in this subpart restricts the authority of the General Services Administration (GSA) to enter into schedule, multiple award, or task or delivery order contracts under any other provision of law. Therefore, GSA regulations and the coverage for the Federal Supply Schedule program in [Subpart 8.4](#) and [Part 38](#) take precedence over this subpart.

(d) The statutory multiple award preference implemented by this subpart does not apply to architect-engineer contracts subject to the procedures in [Subpart 36.6](#). However, agencies are not precluded from making multiple awards for architect-engineer services using the procedures in this subpart, provided the selection of contractors and placement of orders are consistent with [Subpart 36.6](#).

### 16.501-1 Definitions.

As used in this subpart—

“Delivery-order contract” means a contract for supplies that does not procure or specify a firm quantity of supplies (other than a minimum or maximum quantity) and that provides for the issuance of orders for the delivery of supplies during the period of the contract.

“Task-order contract” means a contract for services that does not procure or specify a firm quantity of services (other than a minimum or maximum quantity) and that provides for the issuance of orders for the performance of tasks during the period of the contract.

### 16.501-2 General.

(a) There are three types of indefinite-delivery contracts: definite-quantity contracts, requirements contracts, and indefinite-quantity contracts. The appropriate type of indefinite-delivery contract may be used to acquire supplies and/or services when the exact times and/or exact quantities of future deliveries are not known at the time of contract award. Pursuant to [10 U.S.C. 2304d](#) and [41 U.S.C. 4101](#), requirements contracts and indefinite-quantity contracts are also known as delivery-order contracts or task-order contracts.

(b) The various types of indefinite-delivery contracts offer the following advantages:

(1) All three types permit—

(i) Government stocks to be maintained at minimum levels; and

(ii) Direct shipment to users.

(2) Indefinite-quantity contracts and requirements contracts also permit—

(i) Flexibility in both quantities and delivery scheduling; and

(ii) Ordering of supplies or services after requirements materialize.

(3) Indefinite-quantity contracts limit the Government’s obligation to the minimum quantity specified in the contract.

(4) Requirements contracts may permit faster deliveries when production lead time is involved, because contractors are usually willing to maintain limited stocks when the Government will obtain all of its actual purchase requirements from the contractor.

(c) Indefinite-delivery contracts may provide for any appropriate cost or pricing arrangement under [Part 16](#). Cost or pricing arrangements that provide for an estimated quantity of supplies or services (*e.g.*, estimated number of labor hours) must comply with the appropriate procedures of this subpart.

### 16.502 Definite-quantity contracts.

(a) *Description.* A definite-quantity contract provides for delivery of a definite quantity of specific supplies or services for a fixed period, with deliveries or performance to be scheduled at designated locations upon order.

(b) *Application.* A definite-quantity contract may be used when it can be determined in advance that—

(1) A definite quantity of supplies or services will be required during the contract period; and

(2) The supplies or services are regularly available or will be available after a short lead time.

### 16.503 Requirements contracts.

(a) *Description.* A requirements contract provides for filling all actual purchase requirements of designated Government activities for supplies or services during a specified contract period (from one contractor), with deliveries or performance to be scheduled by placing orders with the contractor.

(1) For the information of offerors and contractors, the contracting officer shall state a realistic estimated total quantity in the solicitation and resulting contract. This estimate is not a representation to an offeror or contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal. The contracting officer may obtain the estimate from records of previous requirements and consumption, or by other means, and should base the estimate on the most current information available.

(2) The contract shall state, if feasible, the maximum limit of the contractor’s obligation to deliver and the Government’s obligation to order. The contract may also specify maximum or minimum quantities that the Government may order under each individual order and the maximum that it may order during a specified period of time.

(b) *Application.* (1) A requirements contract may be appropriate for acquiring any supplies or services when the Government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated Government activities will need during a definite period.

(2) No requirements contract in an amount estimated to exceed \$103 million (including all options) may be awarded to a single source unless a determination is executed in accordance with [16.504\(c\)\(1\)\(ii\)\(D\)](#).

(c) *Government property furnished for repair.* When a requirements contract is used to acquire work (e.g., repair, modification, or overhaul) on existing items of Government property, the contracting officer shall specify in the Schedule that failure of the Government to furnish such items in the amounts or quantities described in the Schedule as “estimated” or “maximum” will not entitle the contractor to any equitable adjustment in price under the Government Property clause of the contract.

(d) *Limitations on use of requirements contracts for advisory and assistance services.* (1) Except as provided in paragraph (d)(2) of this section, no solicitation for a requirements contract for advisory and assistance services in excess of three years and \$12.5 million (including all options) may be issued unless the contracting officer or other official designated by the head of the agency determines in writing that the services required are so unique or highly specialized that it is not practicable to make multiple awards using the procedures in [16.504](#).

(2) The limitation in paragraph (d)(1) of this section is not applicable to an acquisition of supplies or services that includes the acquisition of advisory and assistance services, if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are necessarily incident to, and not a significant component of, the contract.

#### 16.504 Indefinite-quantity contracts.

(a) *Description.* An indefinite-quantity contract provides for an indefinite quantity, within stated limits, of supplies or services during a fixed period. The Government places orders for individual requirements. Quantity limits may be stated as number of units or as dollar values.

(1) The contract must require the Government to order and the contractor to furnish at least a stated minimum quantity of supplies or services. In addition, if ordered, the contractor must furnish any additional quantities, not to exceed the stated maximum. The contracting officer should establish a reasonable maximum quantity based on market research, trends on recent contracts for similar supplies or services, survey of potential users, or any other rational basis.

(2) To ensure that the contract is binding, the minimum quantity must be more than a nominal quantity, but it should

not exceed the amount that the Government is fairly certain to order.

(3) The contract may also specify maximum or minimum quantities that the Government may order under each task or delivery order and the maximum that it may order during a specific period of time.

(4) A solicitation and contract for an indefinite quantity must—

(i) Specify the period of the contract, including the number of options and the period for which the Government may extend the contract under each option;

(ii) Specify the total minimum and maximum quantity of supplies or services the Government will acquire under the contract;

(iii) Include a statement of work, specifications, or other description, that reasonably describes the general scope, nature, complexity, and purpose of the supplies or services the Government will acquire under the contract in a manner that will enable a prospective offeror to decide whether to submit an offer;

(iv) State the procedures that the Government will use in issuing orders, including the ordering media, and, if multiple awards may be made, state the procedures and selection criteria that the Government will use to provide awardees a fair opportunity to be considered for each order (see [16.505\(b\)\(1\)](#));

(v) Include the name, address, telephone number, facsimile number, and e-mail address of the agency task and delivery order ombudsman (see [16.505\(b\)\(8\)](#)) if multiple awards may be made;

(vi) Include a description of the activities authorized to issue orders; and

(vii) Include authorization for placing oral orders, if appropriate, provided that the Government has established procedures for obligating funds and that oral orders are confirmed in writing.

(b) *Application.* Contracting officers may use an indefinite-quantity contract when the Government cannot predetermine, above a specified minimum, the precise quantities of supplies or services that the Government will require during the contract period, and it is inadvisable for the Government to commit itself for more than a minimum quantity. The contracting officer should use an indefinite-quantity contract only when a recurring need is anticipated.

(c) *Multiple award preference—(1) Planning the acquisition.*

(i) Except for indefinite-quantity contracts for advisory and assistance services as provided in paragraph (c)(2) of this section, the contracting officer must, to the maximum extent practicable, give preference to making multiple awards of indefinite-quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources.

(ii)(A) The contracting officer must determine whether multiple awards are appropriate as part of acquisition planning. The contracting officer must avoid situations in which awardees specialize exclusively in one or a few areas within the statement of work, thus creating the likelihood that



orders in those areas will be awarded on a sole-source basis; however, each awardee need not be capable of performing every requirement as well as any other awardee under the contracts. The contracting officer should consider the following when determining the number of contracts to be awarded:

(1) The scope and complexity of the contract requirement.

(2) The expected duration and frequency of task or delivery orders.

(3) The mix of resources a contractor must have to perform expected task or delivery order requirements.

(4) The ability to maintain competition among the awardees throughout the contracts' period of performance.

(B) The contracting officer must not use the multiple award approach if—

(1) Only one contractor is capable of providing performance at the level of quality required because the supplies or services are unique or highly specialized;

(2) Based on the contracting officer's knowledge of the market, more favorable terms and conditions, including pricing, will be provided if a single award is made;

(3) The expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards;

(4) The projected task orders are so integrally related that only a single contractor can reasonably perform the work;

(5) The total estimated value of the contract is less than the simplified acquisition threshold; or

(6) Multiple awards would not be in the best interests of the Government.

(C) The contracting officer must document the decision whether or not to use multiple awards in the acquisition plan or contract file. The contracting officer may determine that a class of acquisitions is not appropriate for multiple awards (see [Subpart 1.7](#)).

(D) (1) No task or delivery order contract in an amount estimated to exceed \$103 million (including all options) may be awarded to a single source unless the head of the agency determines in writing that—

(i) The task or delivery orders expected under the contract are so integrally related that only a single source can reasonably perform the work;

(ii) The contract provides only for firm-fixed price (see [16.202](#)) task or delivery orders for—

(A) Products for which unit prices are established in the contract; or

(B) Services for which prices are established in the contract for the specific tasks to be performed;

(iii) Only one source is qualified and capable of performing the work at a reasonable price to the Government; or

(iv) It is necessary in the public interest to award the contract to a single source due to exceptional circumstances.

(2) The head of the agency must notify Congress within 30 days after any determination under paragraph (c)(1)(ii)(D)(1)(iv) of this section.

(3) The requirement for a determination for a single-award contract greater than \$103 million:

(i) Is in addition to any applicable requirements of [Subpart 6.3](#).

(ii) Is not applicable for architect-engineer services awarded pursuant to [Subpart 36.6](#).

(2) *Contracts for advisory and assistance services.*

(i) Except as provided in paragraph (c)(2)(ii) of this section, if an indefinite-quantity contract for advisory and assistance services exceeds 3 years and \$12.5 million, including all options, the contracting officer must make multiple awards unless—

(A) The contracting officer or other official designated by the head of the agency determines in writing, as part of acquisition planning, that multiple awards are not practicable. The contracting officer or other official must determine that only one contractor can reasonably perform the work because either the scope of work is unique or highly specialized or the tasks so integrally related;

(B) The contracting officer or other official designated by the head of the agency determines in writing, after the evaluation of offers, that only one offeror is capable of providing the services required at the level of quality required; or

(C) Only one offer is received.

(ii) The requirements of paragraph (c)(2)(i) of this section do not apply if the contracting officer or other official designated by the head of the agency determines that the advisory and assistance services are incidental and not a significant component of the contract.

### **16.505 Ordering.**

(a) *General.* (1) In general, the contracting officer does not synopsise orders under indefinite-delivery contracts; except see [16.505\(a\)\(4\)](#) and (11), and [16.505\(b\)\(2\)\(ii\)\(D\)](#).

(2) Individual orders shall clearly describe all services to be performed or supplies to be delivered so the full cost or price for the performance of the work can be established when the order is placed. Orders shall be within the scope, issued within the period of performance, and be within the maximum value of the contract.

(3) Performance-based acquisition methods must be used to the maximum extent practicable, if the contract or order is for services (see [37.102\(a\)](#) and [Subpart 37.6](#)).

(4) The following requirements apply when procuring items peculiar to one manufacturer:

(i) The contracting officer must justify restricting consideration to an item peculiar to one manufacturer (*e.g.*, a

particular brand-name, product, or a feature of a product that is peculiar to one manufacturer). A brand-name item, even if available on more than one contract, is an item peculiar to one manufacturer. Brand-name specifications shall not be used unless the particular brand-name, product, or feature is essential to the Government's requirements and market research indicates other companies' similar products, or products lacking the particular feature, do not meet, or cannot be modified to meet, the agency's needs.

(ii) Requirements for use of items peculiar to one manufacturer shall be justified and approved using the format(s) and requirements from paragraphs (b)(2)(ii)(A), (B), and (C) of this section, modified to show the brand-name justification. A justification is required unless a justification covering the requirements in the order was previously approved for the contract in accordance with [6.302-1\(c\)](#) or unless the base contract is a single-award contract awarded under full and open competition. Justifications for the use of brand-name specifications must be completed and approved at the time the requirement for a brand-name is determined.

(iii)(A) For an order in excess of \$25,000, the contracting officer shall—

(1) Post the justification and supporting documentation on the agency website used (if any) to solicit offers for orders under the contract; or

(2) Provide the justification and supporting documentation along with the solicitation to all contract awardees.

(B) The justifications for brand-name acquisitions may apply to the portion of the acquisition requiring the brand-name item. If the justification is to cover only the portion of the acquisition which is brand-name, then it should so state; the approval level requirements will then only apply to that portion.

(C) The requirements in paragraph (a)(4)(iii)(A) of this section do not apply when disclosure would compromise the national security (e.g., would result in disclosure of classified information) or create other security risks.

(D) The justification is subject to the screening requirement in paragraph (b)(2)(ii)(D)(4) of this section.

(5) When acquiring information technology and related services, consider the use of modular contracting to reduce program risk (see [39.103\(a\)](#)).

(6) Orders may be placed by using any medium specified in the contract.

(7) Orders placed under indefinite-delivery contracts must contain the following information:

(i) Date of order.

(ii) Contract number and order number.

(iii) For supplies and services, contract item number and description, quantity, and unit price or estimated cost or fee.

(iv) Delivery or performance schedule.

(v) Place of delivery or performance (including consignee).

(vi) Any packaging, packing, and shipping instructions.

(vii) Accounting and appropriation data.

(viii) Method of payment and payment office, if not specified in the contract (see [32.1110\(e\)](#)).

(8) Orders placed under a task-order contract or delivery-order contract awarded by another agency (i.e., a Governmentwide acquisition contract, or multi-agency contract)—

(i) Are not exempt from the development of acquisition plans (see [Subpart 7.1](#)), and an information technology acquisition strategy (see [Part 39](#));

(ii) May not be used to circumvent conditions and limitations imposed on the use of funds (e.g., [31 U.S.C. 1501\(a\)\(1\)](#)); and

(iii) Must comply with all FAR requirements for a bundled contract when the order meets the definition of "bundled contract" (see [2.101\(b\)](#)).

(9) In accordance with section 1427(b) of Public Law 108-136 ([40 U.S.C. 1103](#) note), orders placed under multi-agency contracts for services that substantially or to a dominant extent specify performance of architect-engineer services, as defined in [2.101](#), shall—

(i) Be awarded using the procedures at [Subpart 36.6](#); and

(ii) Require the direct supervision of a professional architect or engineer licensed, registered or certified in the State, Federal District, or outlying area, in which the services are to be performed.

(10) (i) No protest under [Subpart 33.1](#) is authorized in connection with the issuance or proposed issuance of an order under a task-order contract or delivery-order contract, except for—

(A) A protest on the grounds that the order increases the scope, period, or maximum value of the contract; or

(B) A protest of an order valued in excess of \$10 million. Protests of orders in excess of \$10 million may only be filed with the Government Accountability Office, in accordance with the procedures at [33.104](#).

(ii) The authority to protest the placement of an order under (a)(10)(i)(B) of this section expires on September 30, 2016, for agencies other than DoD, NASA, and the Coast Guard ([41 U.S.C. 4103\(d\)](#) and [41 U.S.C. 4106\(f\)](#)). The authority to protest the placement of an order under (a)(10)(i)(B) of this section does not expire for DoD, NASA, and the Coast Guard.

(11) Publicize orders funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) as follows:

(i) Notices of proposed orders shall follow the procedures in [5.704](#) for posting orders.

(ii) Award notices for orders shall follow the procedures in [5.705](#).

(12) When using the Governmentwide commercial purchase card as a method of payment, orders at or below the micro-purchase threshold are exempt from verification in the System for Award Management database as to whether the contractor has a delinquent debt subject to collection under the Treasury Offset Program (TOP).

(b) *Orders under multiple-award contracts*—(1) *Fair opportunity.*(i) The contracting officer must provide each awardee a fair opportunity to be considered for each order exceeding \$3,000 issued under multiple delivery-order contracts or multiple task-order contracts, except as provided for in paragraph (b)(2) of this section.

(ii) The contracting officer may exercise broad discretion in developing appropriate order placement procedures. The contracting officer should keep submission requirements to a minimum. Contracting officers may use streamlined procedures, including oral presentations. If the order does not exceed the simplified acquisition threshold, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order. The competition requirements in [Part 6](#) and the policies in [Subpart 15.3](#) do not apply to the ordering process. However, the contracting officer must—

(A) Develop placement procedures that will provide each awardee a fair opportunity to be considered for each order and that reflect the requirement and other aspects of the contracting environment;

(B) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;

(C) Tailor the procedures to each acquisition;

(D) Include the procedures in the solicitation and the contract; and

(E) Consider price or cost under each order as one of the factors in the selection decision.

(iii) *Orders exceeding the simplified acquisition threshold.* (A) Each order exceeding the simplified acquisition threshold shall be placed on a competitive basis in accordance with paragraph (b)(1)(iii)(B) of this section, unless supported by a written determination that one of the circumstances described at [16.505\(b\)\(2\)\(i\)](#) applies to the order and the requirement is waived on the basis of a justification that is prepared in accordance with [16.505\(b\)\(2\)\(ii\)\(B\)](#);

(B) The contracting officer shall—

(1) Provide a fair notice of the intent to make a purchase, including a clear description of the supplies to be delivered or the services to be performed and the basis upon which the selection will be made to all contractors offering the

required supplies or services under the multiple-award contract; and

(2) Afford all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

(iv) *Orders exceeding \$5 million.* For task or delivery orders in excess of \$5 million, the requirement to provide all awardees a fair opportunity to be considered for each order shall include, at a minimum—

(A) A notice of the task or delivery order that includes a clear statement of the agency's requirements;

(B) A reasonable response period;

(C) Disclosure of the significant factors and sub-factors, including cost or price, that the agency expects to consider in evaluating proposals, and their relative importance;

(D) Where award is made on a best value basis, a written statement documenting the basis for award and the relative importance of quality and price or cost factors; and

(E) An opportunity for a postaward debriefing in accordance with paragraph (b)(6) of this section.

(v) The contracting officer should consider the following when developing the procedures:

(A) (1) Past performance on earlier orders under the contract, including quality, timeliness and cost control.

(2) Potential impact on other orders placed with the contractor.

(3) Minimum order requirements.

(4) The amount of time contractors need to make informed business decisions on whether to respond to potential orders.

(5) Whether contractors could be encouraged to respond to potential orders by outreach efforts to promote exchanges of information, such as—

(i) Seeking comments from two or more contractors on draft statements of work;

(ii) Using a multiphased approach when effort required to respond to a potential order may be resource intensive (*e.g.*, requirements are complex or need continued development), where all contractors are initially considered on price considerations (*e.g.*, rough estimates), and other considerations as appropriate (*e.g.*, proposed conceptual approach, past performance). The contractors most likely to submit the highest value solutions are then selected for one-on-one sessions with the Government to increase their understanding of the requirements, provide suggestions for refining requirements, and discuss risk reduction measures.

(B) Formal evaluation plans or scoring of quotes or offers are not required.

(2) *Exceptions to the fair opportunity process.*(i) The contracting officer shall give every awardee a fair opportunity to be considered for a delivery-order or task-order exceeding \$3,000 unless one of the following statutory exceptions applies:

(A) The agency need for the supplies or services is so urgent that providing a fair opportunity would result in unacceptable delays.

(B) Only one awardee is capable of providing the supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized.

(C) The order must be issued on a sole-source basis in the interest of economy and efficiency because it is a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order.

(D) It is necessary to place an order to satisfy a minimum guarantee.

(E) For orders exceeding the simplified acquisition threshold, a statute expressly authorizes or requires that the purchase be made from a specified source.

(F) In accordance with section 1331 of Public Law 111-240 ([15 U.S.C. 644\(r\)](#)), contracting officers may, at their discretion, set aside orders for any of the small business concerns identified in [19.000\(a\)\(3\)](#). When setting aside orders for small business concerns, the specific small business program eligibility requirements identified in part [19](#) apply.

(ii) The justification for an exception to fair opportunity shall be in writing as specified in paragraphs (b)(2)(ii)(A) or (B) of this section. No justification is needed for the exception described in paragraph (b)(2)(i)(F) of this section.

(A) *Orders exceeding \$3,000, but not exceeding the simplified acquisition threshold.* The contracting officer shall document the basis for using an exception to the fair opportunity process. If the contracting officer uses the logical follow-on exception, the rationale shall describe why the relationship between the initial order and the follow-on is logical (*e.g.*, in terms of scope, period of performance, or value).

(B) Orders exceeding the simplified acquisition threshold. As a minimum, each justification shall include the following information and be approved in accordance with paragraph (b)(2)(ii)(C) of this section:

(1) Identification of the agency and the contracting activity, and specific identification of the document as a "Justification for an Exception to Fair Opportunity."

(2) Nature and/or description of the action being approved.

(3) A description of the supplies or services required to meet the agency's needs (including the estimated value).

(4) Identification of the exception to fair opportunity (see [16.505\(b\)\(2\)](#)) and the supporting rationale, including a demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the exception cited. If the contracting officer uses the logical follow-on exception, the rationale shall describe why

the relationship between the initial order and the follow-on is logical (*e.g.*, in terms of scope, period of performance, or value).

(5) A determination by the contracting officer that the anticipated cost to the Government will be fair and reasonable.

(6) Any other facts supporting the justification.

(7) A statement of the actions, if any, the agency may take to remove or overcome any barriers that led to the exception to fair opportunity before any subsequent acquisition for the supplies or services is made.

(8) The contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief.

(9) Evidence that any supporting data that is the responsibility of technical or requirements personnel (*e.g.*, verifying the Government's minimum needs or requirements or other rationale for an exception to fair opportunity) and which form a basis for the justification have been certified as complete and accurate by the technical or requirements personnel.

(10) A written determination by the approving official that one of the circumstances in (b)(2)(i)(A) through (E) of this section applies to the order.

(C) *Approval.*(1) For proposed orders exceeding the simplified acquisition threshold, but not exceeding \$650,000, the ordering activity contracting officer's certification that the justification is accurate and complete to the best of the ordering activity contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(2) For a proposed order exceeding \$650,000, but not exceeding \$12.5 million, the justification must be approved by the advocate for competition of the activity placing the order, or by an official named in paragraph (b)(2)(ii)(C)(3) or (4) of this section. This authority is not delegable.

(3) For a proposed order exceeding \$12.5 million, but not exceeding \$62.5 million (or, for DoD, NASA, and the Coast Guard, not exceeding \$85.5 million), the justification must be approved by—

(i) The head of the procuring activity placing the order;

(ii) A designee who—

(A) If a member of the armed forces, is a general or flag officer;

(B) If a civilian, is serving in a position in a grade above GS-15 under the General Schedule (or in a comparable or higher position under another schedule); or

(iii) An official named in paragraph (b)(2)(ii)(C)(4) of this section.

(4) For a proposed order exceeding \$62.5 million (or, for DoD, NASA, and the Coast Guard, over \$85.5

million), the justification must be approved by the senior procurement executive of the agency placing the order. This authority is not delegable, except in the case of the Under Secretary of Defense for Acquisition, Technology, and Logistics, acting as the senior procurement executive for the Department of Defense.

(D) *Posting.* (1) Except as provided in paragraph (b)(2)(ii)(D)(5) of this section, within 14 days after placing an order exceeding the simplified acquisition threshold that does not provide for fair opportunity in accordance with [16.505\(b\)](#), the contract officer shall—

(i) Publish a notice in accordance with [5.301](#); and

(ii) Make publicly available the justification required at (b)(2)(ii)(B) of this section.

(2) The justification shall be made publicly available—

(i) At the GPE [www.fedbizopps.gov](http://www.fedbizopps.gov);

(ii) On the Web site of the agency, which may provide access to the justifications by linking to the GPE; and

(iii) Must remain posted for a minimum of 30 days.

(3) In the case of an order permitted under paragraph (b)(2)(i)(A) of this subsection, the justification shall be posted within 30 days after award of the order.

(4) Contracting officers shall carefully screen all justifications for contractor proprietary data and remove all such data, and such references and citations as are necessary to protect the proprietary data, before making the justifications available for public inspection. Contracting officers shall also be guided by the exemptions to disclosure of information contained in the Freedom of Information Act ([5 U.S.C. 552](#)) and the prohibitions against disclosure in [24.202](#) in determining whether other data should be removed. Although the submitter notice process set out in Executive Order 12600 “Predisclosure Notification Procedures for Confidential Commercial Information” does not apply, if the justification appears to contain proprietary data, the contracting officer should provide the contractor that submitted the information an opportunity to review the justification for proprietary data before making the justification available for public inspection, redacted as necessary. This process must not prevent or delay the posting of the justification in accordance with the timeframes required in paragraphs (1) and (3).

(5) The posting requirement of this section does not apply—

(i) When disclosure would compromise the national security (e.g., would result in disclosure of classified information) or create other security risks; or

(ii) To a small business set-aside under paragraph (b)(2)(i)(F).

(3) *Pricing orders.* If the contract did not establish the price for the supply or service, the contracting officer must establish prices for each order using the policies and methods in Subpart 15.4.

(4) For additional requirements for cost reimbursement orders see [16.301-3](#).

(5) For additional requirements for time-and-materials or labor-hour orders, see [16.601\(e\)](#).

(6) *Postaward Notices and Debriefing of Awardees for Orders Exceeding \$5 million.* The contracting officer shall notify unsuccessful awardees when the total price of a task or delivery order exceeds \$5 million.

(i) The procedures at [15.503\(b\)\(1\)](#) shall be followed when providing postaward notification to unsuccessful awardees.

(ii) The procedures at [15.506](#) shall be followed when providing postaward debriefing to unsuccessful awardees.

(iii) A summary of the debriefing shall be included in the task or delivery order file.

(7) *Decision documentation for orders.* (i) The contracting officer shall document in the contract file the rationale for placement and price of each order, including the basis for award and the rationale for any tradeoffs among cost or price and non-cost considerations in making the award decision. This documentation need not quantify the tradeoffs that led to the decision.

(ii) The contract file shall also identify the basis for using an exception to the fair opportunity process (see paragraph (b)(2))

(8) *Task-order and delivery-order ombudsman.* The head of the agency shall designate a task-order and delivery-order ombudsman. The ombudsman must review complaints from contractors and ensure they are afforded a fair opportunity to be considered, consistent with the procedures in the contract. The ombudsman must be a senior agency official who is independent of the contracting officer and may be the agency’s advocate for competition.

(c) *Limitation on ordering period for task-order contracts for advisory and assistance services.* (1) Except as provided for in paragraphs (c)(2) and (c)(3), the ordering period of a task-order contract for advisory and assistance services, including all options or modifications, normally may not exceed 5 years.

(2) The 5-year limitation does not apply when—

(i) A longer ordering period is specifically authorized by a statute; or

(ii) The contract is for an acquisition of supplies or services that includes the acquisition of advisory and assistance services and the contracting officer, or other official designated by the head of the agency, determines that the advisory and assistance services are incidental and not a significant component of the contract.

(3) The contracting officer may extend the contract on a sole-source basis only once for a period not to exceed 6 months if the contracting officer, or other official designated by the head of the agency, determines that—

(i) The award of a follow-on contract is delayed by circumstances that were not reasonably foreseeable at the time the initial contract was entered into; and

(ii) The extension is necessary to ensure continuity of services, pending the award of the follow-on contract.

#### **16.506 Solicitation provisions and contract clauses.**

(a) Insert the clause at [52.216-18](#), Ordering, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(b) Insert a clause substantially the same as the clause at [52.216-19](#), Order Limitations, in solicitations and contracts when a definite-quantity contract, a requirements contract, or an indefinite-quantity contract is contemplated.

(c) Insert the clause at [52.216-20](#), Definite Quantity, in solicitations and contracts when a definite-quantity contract is contemplated.

(d)(1) Insert the clause at [52.216-21](#), Requirements, in solicitations and contracts when a requirements contract is contemplated.

(2) If the contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform, use the clause with its Alternate I.

(3) If the contract includes subsistence for both Government use and resale in the same Schedule, and similar prod-

ucts may be acquired on a brand-name basis, use the clause with its Alternate II (but see paragraph (d)(5) of this section).

(4) If the contract involves a partial small business set-aside, use the clause with its Alternate III (but see paragraph (d)(5) of this section).

(5) If the contract—

(i) Includes subsistence for Government use and resale in the same schedule and similar products may be acquired on a brand-name basis; and

(ii) Involves a partial small business set-aside, use the clause with its Alternate IV.

(e) Insert the clause at [52.216-22](#), Indefinite Quantity, in solicitations and contracts when an indefinite-quantity contract is contemplated.

(f) Insert the provision at [52.216-27](#), Single or Multiple Awards, in solicitations for indefinite-quantity contracts that may result in multiple contract awards. Modify the provision to specify the estimated number of awards. Do not use this provision for advisory and assistance services contracts that exceed 3 years and \$12.5 million (including all options).

(g) Insert the provision at [52.216-28](#), Multiple Awards for Advisory and Assistance Services, in solicitations for task-order contracts for advisory and assistance services that exceed 3 years and \$12.5 million (including all options), unless a determination has been made under [16.504\(c\)\(2\)\(i\)\(A\)](#). Modify the provision to specify the estimated number of awards.

(h) See [10.001\(d\)](#) for insertion of the clause at [52.210-1](#), Market Research, when the contract is over \$5 million for the procurement of items other than commercial items.

**17.000 Scope of part.**

This part prescribes policies and procedures for the acquisition of supplies and services through special contracting methods, including—

- (a) Multi-year contracting;
- (b) Options; and
- (c) Leader company contracting.

**Subpart 17.1—Multi-year Contracting****17.101 Authority.**

This subpart implements [41 U.S.C. 3903](#) and [10 U.S.C. 2306b](#) and provides policy and procedures for the use of multi-year contracting.

**17.102 Applicability.**

For DoD, NASA, and the Coast Guard, the authorities cited in [17.101](#) do not apply to contracts for the purchase of supplies to which [40 U.S.C. 759](#) applies (information resource management supply contracts).

**17.103 Definitions.**

As used in this subpart—

“Cancellation” means the cancellation (within a contractually specified time) of the total requirements of all remaining program years. Cancellation results when the contracting officer—

- (1) Notifies the contractor of nonavailability of funds for contract performance for any subsequent program year; or
- (2) Fails to notify the contractor that funds are available for performance of the succeeding program year requirement.

“Cancellation ceiling” means the maximum cancellation charge that the contractor can receive in the event of cancellation.

“Cancellation charge” means the amount of unrecovered costs which would have been recouped through amortization over the full term of the contract, including the term canceled.

“Multi-year contract” means a contract for the purchase of supplies or services for more than 1, but not more than 5, program years. A multi-year contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds, and (if it does so provide) may provide for a cancellation payment to be made to the contractor if appropriations are not made. The key distinguishing difference between multi-year contracts and multiple year contracts is that multi-year contracts, defined in the statutes cited at [17.101](#), buy more than 1 year’s requirement (of a product or service) without establishing and having to exercise an option for each program year after the first.

“Nonrecurring costs” means those costs which are generally incurred on a one-time basis and include such costs as plant or equipment relocation, plant rearrangement, special

tooling and special test equipment, preproduction engineering, initial spoilage and rework, and specialized work force training.

“Recurring costs” means costs that vary with the quantity being produced, such as labor and materials.

**17.104 General.**

(a) Multi-year contracting is a special contracting method to acquire known requirements in quantities and total cost not over planned requirements for up to 5 years unless otherwise authorized by statute, even though the total funds ultimately to be obligated may not be available at the time of contract award. This method may be used in sealed bidding or contracting by negotiation.

(b) Multi-year contracting is a flexible contracting method applicable to a wide range of acquisitions. The extent to which cancellation terms are used in multi-year contracts will depend on the unique circumstances of each contract. Accordingly, for multi-year contracts, the agency head may authorize modification of the requirements of this subpart and the clause at [52.217-2](#), Cancellation Under Multi-year Contracts.

(c) Agency funding of multi-year contracts shall conform to the policies in OMB Circulars A-11 (Preparation and Submission of Budget Estimates) and A-34 (Instructions on Budget Execution) and other applicable guidance regarding the funding of multi-year contracts. As provided by that guidance, the funds obligated for multi-year contracts must be sufficient to cover any potential cancellation and/or termination costs; and multi-year contracts for the acquisition of fixed assets should be fully funded or funded in stages that are economically or programmatically viable.

(d) The termination for convenience procedure may apply to any Government contract, including multiyear contracts. As contrasted with cancellation, termination can be effected at any time during the life of the contract (cancellation is effected between fiscal years) and can be for the total quantity or partial quantity (where as cancellation must be for all subsequent fiscal years’ quantities).

**17.105 Policy.****17.105-1 Uses.**

(a) Except for DoD, NASA, and the Coast Guard, the contracting officer may enter into a multi-year contract if the head of the contracting activity determines that—

- (1) The need for the supplies or services is reasonably firm and continuing over the period of the contract; and
- (2) A multi-year contract will serve the best interests of the United States by encouraging full and open competition or promoting economy in administration, performance, and operation of the agency’s programs.

(b) For DoD, NASA, and the Coast Guard, the head of the agency may enter into a multi-year contract for supplies if—

(1) The use of such a contract will result in substantial savings of the total estimated costs of carrying out the program through annual contracts;

(2) The minimum need to be purchased is expected to remain substantially unchanged during the contemplated contract period in terms of production rate, procurement rate, and total quantities;

(3) There is a stable design for the supplies to be acquired, and the technical risks associated with such supplies are not excessive;

(4) There is a reasonable expectation that, throughout the contemplated contract period, the head of the agency will request funding for the contract at a level to avoid contract cancellation; and

(5) The estimates of both the cost of the contract and the cost avoidance through the use of a multi-year contract are realistic.

(c) The multi-year contracting method may be used for the acquisition of supplies or services.

(d) If funds are not appropriated to support the succeeding years' requirements, the agency must cancel the contract.

#### 17.105-2 Objectives.

Use of multi-year contracting is encouraged to take advantage of one or more of the following:

(a) Lower costs.

(b) Enhancement of standardization.

(c) Reduction of administrative burden in the placement and administration of contracts.

(d) Substantial continuity of production or performance, thus avoiding annual startup costs, preproduction testing costs, make-ready expenses, and phaseout costs.

(e) Stabilization of contractor work forces.

(f) Avoidance of the need for establishing quality control techniques and procedures for a new contractor each year.

(g) Broadening the competitive base with opportunity for participation by firms not otherwise willing or able to compete for lesser quantities, particularly in cases involving high startup costs.

(h) Providing incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology.

#### 17.106 Procedures.

##### 17.106-1 General.

(a) *Method of contracting.* The nature of the requirement should govern the selection of the method of contracting, since the multi-year procedure is compatible with sealed bidding, including two-step sealed bidding, and negotiation.

(b) *Type of contract.* Given the longer performance period associated with multi-year acquisition, consideration in pricing fixed-priced contracts should be given to the use of eco-

nomic price adjustment terms and profit objectives commensurate with contractor risk and financing arrangements.

(c) *Cancellation procedures.* (1) All program years except the first are subject to cancellation. For each program year subject to cancellation, the contracting officer shall establish a cancellation ceiling. Ceilings must exclude amounts for requirements included in prior program years. The contracting officer shall reduce the cancellation ceiling for each program year in direct proportion to the remaining requirements subject to cancellation. For example, consider that the total nonrecurring costs (see [15.408, Table 15-2](#), Formats for Submission of Line Items Summaries C(8)) are estimated at 10 percent of the total multi-year price, and the percentages for each of the program year requirements for 5 years are (i) 30 in the first year, (ii) 30 in the second, (iii) 20 in the third, (iv) 10 in the fourth, and (v) 10 in the fifth. The cancellation percentages, after deducting 3 percent for the first program year, would be 7, 4, 2, and 1 percent of the total price applicable to the second, third, fourth, and fifth program years, respectively.

(2) In determining cancellation ceilings, the contracting officer must estimate reasonable preproduction or startup, labor learning, and other nonrecurring costs to be incurred by an "average" prime contractor or subcontractor, which would be applicable to, and which normally would be amortized over, the items or services to be furnished under the multi-year requirements. Nonrecurring costs include such costs, where applicable, as plant or equipment relocation or rearrangement, special tooling and special test equipment, preproduction engineering, initial rework, initial spoilage, pilot runs, allocable portions of the costs of facilities to be acquired or established for the conduct of the work, costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force, and unrealized labor learning. They shall not include any costs of labor or materials, or other expenses (except as indicated above), which might be incurred for performance of subsequent program year requirements. The total estimate of the above costs must then be compared with the best estimate of the contract cost to arrive at a reasonable percentage or dollar figure. To perform this calculation, the contracting officer should obtain in-house engineering cost estimates identifying the detailed recurring and nonrecurring costs, and the effect of labor learning.

(3) The contracting officer shall establish cancellation dates for each program year's requirements regarding production lead time and the date by which funding for these requirements can reasonably be established. The contracting officer shall include these dates in the schedule, as appropriate.

(d) *Cancellation ceilings.* Cancellation ceilings and dates may be revised after issuing the solicitation if necessary. In sealed bidding, the contracting officer shall change the ceiling by amending the solicitation before bid opening. In two-step



sealed bidding, discussions conducted during the first step may indicate the need for revised ceilings and dates which may be incorporated in step two. In a negotiated acquisition, negotiations with offerors may provide information requiring a change in cancellation ceilings and dates before final negotiation and contract award.

(e) *Payment of cancellation charges.* If cancellation occurs, the Government's liability will be determined by the terms of the applicable contract.

(f) *Presolicitation or pre-bid conferences.* To ensure that all interested sources of supply are thoroughly aware of how multi-year contracting is accomplished, use of presolicitation or pre-bid conferences may be advisable.

(g) *Payment limit.* The contracting officer shall limit the Government's payment obligation to an amount available for contract performance. The contracting officer shall insert the amount for the first program year in the contract upon award and modify it for successive program years upon availability of funds.

(h) *Termination payment.* If the contract is terminated for the convenience of the Government in whole, including requirements subject to cancellation, the Government's obligation shall not exceed the amount specified in the Schedule as available for contract performance, plus the cancellation ceiling.

#### 17.106-2 Solicitations.

Solicitations for multi-year contracts shall reflect all the factors to be considered for evaluation, specifically including the following:

(a) The requirements, by item of supply or service, for the—

(1) First program year; and

(2) Multi-year contract including the requirements for each program year.

(b) Criteria for comparing the lowest evaluated submission on the first program year requirements to the lowest evaluated submission on the multi-year requirements.

(c) A provision that, if the Government determines before award that only the first program year requirements are needed, the Government's evaluation of the price or estimated cost and fee shall consider only the first year.

(d) A provision specifying a separate cancellation ceiling (on a percentage or dollar basis) and dates applicable to each program year subject to a cancellation (see [17.106-1\(c\)](#) and (d)).

(e) A statement that award will not be made on less than the first program year requirements.

(f) The Government's administrative costs of annual contracting may be used as a factor in the evaluation only if they can be reasonably established and are stated in the solicitation.

(g) The cancellation ceiling shall not be an evaluation factor.

#### 17.106-3 Special procedures applicable to DoD, NASA, and the Coast Guard.

(a) *Participation by subcontractors, suppliers, and vendors.* In order to broaden the defense industrial base, to the maximum extent practicable—

(1) Multi-year contracting shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, suppliers, and vendors; and

(2) Upon accrual of any payment or other benefit under such a multi-year contract to any subcontractor, supplier, or vendor company participating in such contract, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.

(b) *Protection of existing authority.* To the extent practicable, multi-year contracting shall not be carried out in a manner to preclude or curtail the existing ability of the Department or agency to provide for termination of a prime contract, the performance of which is deficient with respect to cost, quality, or schedule.

(c) *Cancellation or termination for insufficient funding.* In the event funds are not made available for the continuation of a multi-year contract awarded using the procedures in this section, the contract shall be canceled or terminated.

(d) Contracts awarded under the multi-year procedure shall be firm-fixed-price, fixed-price with economic price adjustment, or fixed-price incentive.

(e) *Recurring costs in cancellation ceiling.* The inclusion of recurring costs in cancellation ceilings is an exception to normal contract financing arrangements and requires approval by the agency head.

(f) *Annual and multi-year proposals.* Obtaining both annual and multi-year offers provides reduced lead time for making an annual award in the event that the multi-year award is not in the Government's interest. Obtaining both also provides a basis for the computation of savings and other benefits. However, the preparation and evaluation of dual offers may increase administrative costs and workload for both offerors and the Government, especially for large or complex acquisitions. The head of a contracting activity may authorize the use of a solicitation requesting only multi-year prices, provided it is found that such a solicitation is in the Government's interest, and that dual proposals are not necessary to meet the objectives in [17.105-2](#).

(g) *Level unit prices.* Multi-year contract procedures provide for the amortization of certain costs over the entire contract quantity resulting in identical (level) unit prices (except when the economic price adjustment terms apply) for all items or services under the multi-year contract. If level unit pricing is not in the Government's interest, the head of a contracting activity may approve the use of variable unit prices, provided that for competitive proposals there is a valid method of evaluation.

**17.107 Options.**

Benefits may accrue by including options in a multi-year contract. In that event, contracting officers must follow the requirements of [Subpart 17.2](#). Options should not include charges for plant and equipment already amortized, or other nonrecurring charges which were included in the basic contract.

**17.108 Congressional notification.**

(a) Except for DoD, NASA, and the Coast Guard, a multi-year contract which includes a cancellation ceiling in excess of \$12.5 million may not be awarded until the head of the agency gives written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the committees on appropriations of the House of Representatives and Senate and the appropriate oversight committees of the House and Senate for the agency in question. Information on such committees may not be readily available to contracting officers. Accordingly, agencies should provide such information through its internal regulations. The contract may not be awarded until the thirty-first day after the date of notification.

(b) For DoD, NASA, and the Coast Guard, a multi-year contract which includes a cancellation ceiling in excess of \$125 million may not be awarded until the head of the agency gives written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the committees on armed services and appropriations of the House of

Representatives and Senate. The contract may not be awarded until the thirty-first day after the date of notification.

**17.109 Contract clauses.**

(a) The contracting officer shall insert the clause at [52.217-2](#), Cancellation Under Multi-year Contracts, in solicitations and contracts when a multi-year contract is contemplated.

(b) *Economic price adjustment clauses.* Economic price adjustment clauses are adaptable to multi-year contracting needs. When the period of production is likely to warrant a labor and material costs contingency in the contract price, the contracting officer should normally use an economic price adjustment clause (see [16.203](#)). When contracting for services, the contracting officer—

(1) Shall add the clause at [52.222-43](#), Fair Labor Standards Act and Service Contract Labor Standards- Price Adjustment (Multiple Year and Option Contracts), when the contract includes the clause at [52.222-41](#), Service Contract Labor Standards;

(2) May modify the clause at [52.222-43](#) in overseas contracts when laws, regulations, or international agreements require contractors to pay higher wage rates; or

(3) May use an economic price adjustment clause authorized by [16.203](#), when potential fluctuations require coverage and are not included in cost contingencies provided for by the clause at [52.222-43](#).

## 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 Labor Standards statute (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](#);
- (5) The contractor is not listed in the System for Award Management Exclusions (see FAR [9.405-1](#));
- (6) The contractor's past performance evaluations on other contract actions have been considered; and
- (7) The contractor's performance on this contract has been acceptable, *e.g.*, received satisfactory ratings.

(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 require-

## Subpart 17.5—Interagency Acquisitions

### 17.500 Scope of subpart.

(a) This subpart prescribes policies and procedures applicable to all interagency acquisitions under any authority, except as provided for in paragraph (c) of this section. In addition to complying with the interagency acquisition policy and procedures in this subpart, nondefense agencies acquiring supplies and services on behalf of the Department of Defense shall also comply with the policy and procedures at [subpart 17.7](#).

(b) This subpart applies to interagency acquisitions, see 2.101 for definition, when—

(1) An agency needing supplies or services obtains them using another agency's contract; or

(2) An agency uses another agency to provide acquisition assistance, such as awarding and administering a contract, a task order, or delivery order.

(c) This subpart does not apply to—

(1) Interagency reimbursable work performed by Federal employees (other than acquisition assistance), or interagency activities where contracting is incidental to the purpose of the transaction; or

(2) Orders of \$500,000 or less issued against Federal Supply Schedules.

### 17.501 General.

(a) Interagency acquisitions are commonly conducted through indefinite-delivery contracts, such as task- and delivery-order contracts. The indefinite-delivery contracts used most frequently to support interagency acquisitions are Federal Supply Schedules (FSS), Governmentwide acquisition contracts (GWACs), and multi-agency contracts (MACs).

(b) An agency shall not use an interagency acquisition to circumvent conditions and limitations imposed on the use of funds.

(c) An interagency acquisition is not exempt from the requirements of [subpart 7.3](#), Contractor Versus Government Performance.

(d) An agency shall not use an interagency acquisition to make acquisitions conflicting with any other agency's authority or responsibility (for example, that of the Administrator of General Services under [title 40, United States Code](#), "Public Buildings, Property and Works" and [41 U.S.C. division C of subtitle I](#), Procurement.)

### 17.502 Procedures.

#### 17.502-1 General.

(a) *Determination of best procurement approach.*

(1) *Assisted acquisitions.* Prior to requesting that another agency conduct an acquisition on its behalf, the requesting agency shall make a determination that the use of an interagency acquisition represents the best procurement approach. As part of the best procurement approach determination, the requesting agency shall obtain the concurrence of the requesting agency's responsible contracting office in accordance

with internal agency procedures. At a minimum, the determination shall include an analysis of procurement approaches, including an evaluation by the requesting agency that using the acquisition services of another agency—

(i) Satisfies the requesting agency's schedule, performance, and delivery requirements (taking into account factors such as the servicing agency's authority, experience, and expertise as well as customer satisfaction with the servicing agency's past performance);

(ii) Is cost effective (taking into account the reasonableness of the servicing agency's fees); and

(iii) Will result in the use of funds in accordance with appropriation limitations and compliance with the requesting agency's laws and policies.

(2) *Direct acquisitions.* Prior to placing an order against another agency's indefinite-delivery vehicle, the requesting agency shall make a determination that use of another agency's contract vehicle is the best procurement approach and shall obtain the concurrence of the requesting agency's responsible contracting office. At a minimum, the determination shall include an analysis, including factors such as:

(i) The suitability of the contract vehicle;

(ii) The value of using the contract vehicle, including—

(A) The administrative cost savings from using an existing contract;

(B) Lower prices, greater number of vendors, and reasonable vehicle access fees; and

(iii) The expertise of the requesting agency to place orders and administer them against the selected contract vehicle throughout the acquisition lifecycle.

(b) *Written agreement on responsibility for management and administration.* (1) *Assisted acquisitions.* (i) Prior to the issuance of a solicitation, the servicing agency and the requesting agency shall both sign a written interagency agreement that establishes the general terms and conditions governing the relationship between the parties, including roles and responsibilities for acquisition planning, contract execution, and administration and management of the contract(s) or order(s). The requesting agency shall provide to the servicing agency any unique terms, conditions, and applicable agency-specific statutes, regulations, directives, and other applicable requirements for incorporation into the order or contract. In the event there are no agency unique requirements beyond the FAR, the requesting agency shall so inform the servicing agency contracting officer in writing. For acquisitions on behalf of the Department of Defense, also see [subpart 17.7](#), for patent rights, see [27.304-2](#). In preparing interagency agreements to support assisted acquisitions, agencies should review the Office of Federal Procurement Policy guidance, Interagency Acquisitions, available at [http://www.whitehouse.gov/omb/assets/procurement/iac\\_revised.pdf](http://www.whitehouse.gov/omb/assets/procurement/iac_revised.pdf).

(ii) Each agency's file shall include the interagency agreement between the requesting and servicing agency, and shall include sufficient documentation to ensure an adequate audit consistent with [4.801\(b\)](#).

(2) *Direct acquisitions.* The requesting agency administers the order; therefore, no written agreement with the servicing agency is required.

(c) *Business-case analysis requirements for multi-agency contracts and governmentwide acquisition contracts.* In order to establish a multi-agency or governmentwide acquisition contract, a business-case analysis must be prepared by the servicing agency and approved in accordance with the Office of Federal Procurement Policy (OFPP) business case guidance, available at <http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/development-review-and-approval-of-business-cases-for-certain-interagency-and-agency-specific-acquisitions-memo.pdf>. The business-case analysis shall—

(1) Consider strategies for the effective participation of small businesses during acquisition planning (see 7.103(u));

(2) Detail the administration of such contract, including an analysis of all direct and indirect costs to the Government of awarding and administering such contract;

(3) Describe the impact such contract will have on the ability of the Government to leverage its purchasing power, *e.g.*, will it have a negative effect because it dilutes other existing contracts;

(4) Include an analysis concluding that there is a need for establishing the multi-agency contract; and

(5) Document roles and responsibilities in the administration of the contract.

#### 17.502-2 The Economy Act.

(a) The Economy Act ([31 U.S.C. 1535](#)) authorizes agencies to enter into agreements to obtain supplies or services from another agency. The FAR applies when one agency uses another agency's contract to obtain supplies or services. If the interagency business transaction does not result in a contract or an order, then the FAR does not apply. The Economy Act also provides authority for placement of orders between major organizational units within an agency; procedures for such intra-agency transactions are addressed in agency regulations.

(b) The Economy Act applies when more specific statutory authority does not exist. Examples of more specific authority are [40 U.S.C. 501](#) for the Federal Supply Schedules (subpart 8.4), and [40 U.S.C. 11302](#)(e) for Governmentwide acquisition contracts (GWACs).

(c) *Requirements for determinations and findings.*

(1) Each Economy Act order to obtain supplies or services by interagency acquisition shall be supported by a determination and findings (D&F). The D&F shall—

(i) State that use of an interagency acquisition is in the best interest of the Government;

(ii) State that the supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source; and

(iii) Include a statement that at least one of the following circumstances applies:

(A) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services.

(B) The servicing agency has the capability or expertise to enter into a contract for such supplies or services that is not available within the requesting agency.

(C) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

(2) The D&F shall be approved by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency head, except that, if the servicing agency is not covered by the FAR, approval of the D&F may not be delegated below the senior procurement executive of the requesting agency.

(3) The requesting agency shall furnish a copy of the D&F to the servicing agency with the request for order.

(d) *Payment.* (1) *The servicing agency may ask the requesting agency, in writing, for advance payment for all or part of the estimated cost of furnishing the supplies or services. Adjustment on the basis of actual costs shall be made as agreed to by the agencies.*

(2) If approved by the servicing agency, payment for actual costs may be made by the requesting agency after the supplies or services have been furnished.

(3) Bills rendered or requests for advance payment shall not be subject to audit or certification in advance of payment.

(4) In no event shall the servicing agency require, or the requesting agency pay, any fee or charge in excess of the actual cost (or estimated cost if the actual cost is not known) of entering into and administering the contract or other agreement under which the order is filled.

#### 17.503 Ordering procedures.

(a) Before placing an order for supplies or services with another Government agency, the requesting agency shall follow the procedures in [17.502-1](#) and, if under the Economy Act, also [17.502-2](#).

(b) The order may be placed on any form or document that is acceptable to both agencies. The order should include—

(1) A description of the supplies or services required;

(2) Delivery requirements;

(3) A funds citation;

(4) A payment provision (see [17.502-2](#)(d) for Economy Act orders); and

(5) Acquisition authority as may be appropriate (see [17.503](#)(d)).

## Subpart 17.6—Management and Operating Contracts

### 17.600 Scope of subpart.

This subpart prescribes policies and procedures for management and operating contracts for the Department of Energy and any other agency having requisite statutory authority.

### 17.601 Definition.

“Management and operating contract” means an agreement under which the Government contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or -controlled research, development, special production, or testing establishment wholly or principally devoted to one or more major programs of the contracting Federal agency.

### 17.602 Policy.

(a) Heads of agencies, with requisite statutory authority, may determine in writing to authorize contracting officers to enter into or renew any management and operating contract in accordance with the agency’s statutory authority, or [41 U.S.C. chapter 33](#), and the agency’s regulations governing such contracts. This authority shall not be delegated. Every contract so authorized shall show its authorization upon its face.

(b) Agencies may authorize management and operating contracts only in a manner consistent with the guidance of this subpart and only if they are consistent with the situations described in [17.604](#).

(c) Within 2 years of the effective date of this regulation, agencies shall review their current contractual arrangements in the light of the guidance of this subpart, in order to—

(1) Identify, modify as necessary, and authorize management and operating contracts; and

(2) Modify as necessary or terminate contracts not so identified and authorized, except that any contract with less than 4 years remaining as of the effective date of this regulation need not be terminated, nor need it be identified, modified, or authorized unless it is renewed or its terms are substantially renegotiated.

### 17.603 Limitations.

(a) Management and operating contracts shall not be authorized for—

(1) Functions involving the direction, supervision, or control of Government personnel, except for supervision incidental to training;

(2) Functions involving the exercise of police or regulatory powers in the name of the Government, other than guard or plant protection services;

(3) Functions of determining basic Government policies;

(4) Day-to-day staff or management functions of the agency or of any of its elements; or

(5) Functions that can more properly be accomplished in accordance with [Subpart 45.3](#), Authorizing the Use and Rental of Government Property.

(b) Since issuance of an authorization under [17.602\(a\)](#) is deemed sufficient proof of compliance with paragraph (a) immediately above, nothing in paragraph (a) immediately above shall affect the validity or legality of such an authorization.

(c) For use of project labor agreements, see subpart [22.5](#).

### 17.604 Identifying management and operating contracts.

A management and operating contract is characterized both by its purpose (see [17.601](#)) and by the special relationship it creates between Government and contractor. The following criteria can generally be applied in identifying management and operating contracts:

(a) Government-owned or -controlled facilities must be utilized; for instance—

(1) In the interest of national defense or mobilization readiness;

(2) To perform the agency’s mission adequately; or

(3) Because private enterprise is unable or unwilling to use its own facilities for the work.

(b) Because of the nature of the work, or because it is to be performed in Government facilities, the Government must maintain a special, close relationship with the contractor and the contractor’s personnel in various important areas (e.g., safety, security, cost control, site conditions).

(c) The conduct of the work is wholly or at least substantially separate from the contractor’s other business, if any.

(d) The work is closely related to the agency’s mission and is of a long-term or continuing nature, and there is a need—

(1) To ensure its continuity; and

(2) For special protection covering the orderly transition of personnel and work in the event of a change in contractors.

### 17.605 Award, renewal, and extension.

(a) Effective work performance under management and operating contracts usually involves high levels of expertise and continuity of operations and personnel. Because of program requirements and the unusual (sometimes unique) nature of the work performed under management and operating contracts, the Government is often limited in its ability to effect competition or to replace a contractor. Therefore contracting officers should take extraordinary steps before award to assure themselves that the prospective contractor’s technical and managerial capacity are sufficient, that organizational conflicts of interest are adequately covered, and that the contract will grant the Government broad and continuing rights to

involve itself, if necessary, in technical and managerial decisionmaking concerning performance.

(b) The contracting officer shall review each management and operating contract, following agency procedures, at appropriate intervals and at least once every 5 years. The review should determine whether meaningful improvement in performance or cost might reasonably be achieved. Any extension or renewal of an operating and management contract must be authorized at a level within the agency no lower than the level at which the original contract was authorized in accordance with [17.602\(a\)](#).

(c) Replacement of an incumbent contractor is usually based largely upon expectation of meaningful improvement in performance or cost. Therefore, when reviewing contractor performance, contracting officers should consider—

(1) The incumbent contractor’s overall performance, including, specifically, technical, administrative, and cost performance;

(2) The potential impact of a change in contractors on program needs, including safety, national defense, and mobilization considerations; and

(3) Whether it is likely that qualified offerors will compete for the contract.

\* \* \* \* \*



**19.000 Scope of part.**

(a) This part implements the acquisition-related sections of the Small Business Act ([15 U.S.C. 631](#), et seq.); applicable sections of [10 U.S.C. 2302](#), et seq.; [41 U.S.C. 3104](#); [10 U.S.C. 2323](#); and Executive Order 12138, May 18, 1979. It covers—

(1) The determination that a concern is eligible for participation in the programs identified in this part;

(2) The respective roles of executive agencies and the Small Business Administration (SBA) in implementing the programs;

(3) Setting acquisitions aside for exclusive competitive participation by small business, 8(a) business development participants, HUBZone small business concerns, service-disabled veteran-owned small business concerns, and economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-Owned Small Business Program;

(4) The certificate of competency program;

(5) The subcontracting assistance program;

(6) The “8(a)” business development program (hereafter referred to as 8(a) program), under which agencies contract with the SBA for goods or services to be furnished under a subcontract by a small disadvantaged business concern;

(7) The use of women-owned small business concerns;

(8) The use of a price evaluation adjustment for small disadvantaged business concerns, and the use of a price evaluation preference for HUBZone small business concerns;

(9) The Small Disadvantaged Business Participation Program;

(10) [Reserved];

(11) The use of veteran-owned small business concerns; and

(12) Sole source awards to HUBZone small business and service-disabled veteran-owned small business concerns.

(b) This part, except for [Subpart 19.6](#), applies only in the United States or its outlying areas. [Subpart 19.6](#) applies worldwide.

**19.001 Definitions.**

As used in this part—

“Concern” means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States or its outlying areas and that makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. “Concern” includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see [19.101](#)), include any business entity, whether organized for profit or not, and any foreign business entity, *i.e.*, any entity located outside the United States and its outlying areas.

“Fair market price” means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost (see [19.202-6](#)).

“Industry” means all concerns primarily engaged in similar lines of activity, as listed and described in the North American Industry Classification System (NAICS) manual.

“Nonmanufacturer rule” means that a contractor under a small business set-aside or 8(a) contract shall be a small business under the applicable size standard and shall provide either its own product or that of another domestic small business manufacturing or processing concern (see 13 CFR 121.406).

**Subpart 19.1—Size Standards****19.101 Explanation of terms.**

As used in this subpart—

“Affiliates.” Business concerns are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or another concern controls or has the power to control both. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships; provided, that restraints imposed by a franchise agreement are not considered in determining whether the franchisor controls or has the power to control the franchisee, if the franchisee has the right to profit from its effort, commensurate with ownership, and bears the risk of loss or failure. Any business entity may be found to be an affiliate, whether or not it is organized for profit or located in the United States or its outlying areas.

(1) *Nature of control.* Every business concern is considered as having one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

(2) *Meaning of “party or parties.”* The term “party” or “parties” includes, but is not limited to, two or more persons with an identity of interest such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

(3) *Control through stock ownership.* (i) A party is considered to control or have the power to control a concern, if the party controls or has the power to control 50 percent or more of the concern’s voting stock.

(ii) A party is considered to control or have the power to control a concern, even though the party owns, controls, or has the power to control less than 50 percent of the concern’s voting stock, if the block of stock the party owns, controls, or has the power to control is large, as compared with any other outstanding block of stock. If two or more parties each owns,

controls, or has the power to control, less than 50 percent of the voting stock of a concern, and such minority block is equal or substantially equal in size, and large as compared with any other block outstanding, there is a presumption that each such party controls or has the power to control such concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(iii) If a concern's voting stock is distributed other than as described above, its management (officers and directors) is deemed to be in control of such concern.

(4) *Stock options and convertible debentures.* Stock options and convertible debentures exercisable at the time or within a relatively short time after a size determination and agreements to merge in the future, are considered as having a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are treated as though the rights held thereunder had been exercised.

(5) *Voting trusts.* If the purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may qualify as a small business within the size regulations, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not valid within the appropriate jurisdiction. However, if a voting trust is entered into for a legitimate purpose other than that described above, and it is valid within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination, provided such consideration is determined to be in the best interest of the small business program.

(6) *Control through common management.* A concern may be found as controlling or having the power to control another concern when one or more of the following circumstances are found to exist, and it is reasonable to conclude that under the circumstances, such concern is directing or influencing, or has the power to direct or influence, the operation of such other concern.

(i) *Interlocking management.* Officers, directors, employees, or principal stockholders of one concern serve as a working majority of the board of directors or officers of another concern.

(ii) *Common facilities.* One concern shares common office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operation, or where such concerns were formerly affiliated.

(iii) *Newly organized concern.* Former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern in the same or a related industry or field operation, and serve as its officers, directors, principal stockholders, and/or key employees, and one concern is

furnishing or will furnish the other concern with subcontracts, financial or technical assistance, and/or facilities, whether for a fee or otherwise.

(7) *Control through contractual relationships—*  
(i) *Definition of a joint venture for size determination purposes.* A joint venture for size determination purposes is an association of persons or concerns with interests in any degree or proportion by way of contract, express or implied, consenting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.

(A) For bundled requirements, apply size standards for the requirement to individual persons or concerns, not to the combined assets, of the joint venture.

(B) For other than bundled requirements, apply size standards for the requirement to individual persons or concerns, not to the combined assets, of the joint venture, if—

(1) A revenue-based size standard applies to the requirement and the estimated contract value, including options, exceeds one-half the applicable size standard; or

(2) An employee-based size standard applies to the requirement and the estimated contract value, including options, exceeds \$10 million.

(ii) *HUBZone joint venture.* A HUBZone joint venture of two or more HUBZone small business concerns may submit an offer for a HUBZone contract as long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided one of the following conditions apply:

(A) The aggregate total of the joint venture is small under the size standard corresponding to the NAICS code assigned to the contract.

(B) The aggregate total of the joint venture is not small under the size standard corresponding to the NAICS code assigned to the contract and either—

(1) For a revenue-based size standard, the estimated contract value exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

(2) For an employee-based size standard, the estimated contract value exceeds \$10 million.

(iii) *Joint venture.* Concerns submitting offers on a particular acquisition as joint ventures are considered as affiliated and controlling or having the power to control each other with regard to performance of the contract. Moreover, an ostensible subcontractor which is to perform primary or vital requirements of a contract may have a controlling role such to be considered a joint venturer affiliated on the contract with the prime contractor. A joint venture affiliation finding is lim-

## Subpart 19.2—Policies

### 19.201 General policy.

(a) It is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. Such concerns must also have the maximum practicable opportunity to participate as subcontractors in the contracts awarded by any executive agency, consistent with efficient contract performance. The Small Business Administration (SBA) counsels and assists small business concerns and assists contracting personnel to ensure that a fair proportion of contracts for supplies and services is placed with small business.

(b) The Department of Commerce will determine on an annual basis, by North American Industry Classification System (NAICS) Industry Subsector, and region, if any, the authorized small disadvantaged business (SDB) procurement mechanisms and applicable factors (percentages). The Department of Commerce determination shall only affect solicitations that are issued on or after the effective date of the determination. The effective date of the Department of Commerce determination shall be no less than 60 days after its publication date. The Department of Commerce determination shall not affect ongoing acquisitions. The SDB procurement mechanisms are a price evaluation adjustment for SDB concerns (see [Subpart 19.11](#)), an evaluation factor or subfactor for participation of SDB concerns (see [19.1202](#)), and monetary subcontracting incentive clauses for SDB concerns (see [19.1203](#)). The Department of Commerce determination shall also include the applicable factors, by NAICS Industry Subsector, to be used in the price evaluation adjustment for SDB concerns (see [19.1104](#)). The General Services Administration shall post the Department of Commerce determination at <https://www.acquisition.gov/References/sdbadjustments.htm>. The authorized procurement mechanisms shall be applied consistently with the policies and procedures in this subpart. The agencies shall apply the procurement mechanisms determined by the Department of Commerce. The Department of Commerce, in making its determination, is not limited to the SDB procurement mechanisms identified in this section where the Department of Commerce has found substantial and persuasive evidence of—

(1) A persistent and significant underutilization of minority firms in a particular industry, attributable to past or present discrimination; and

(2) A demonstrated incapacity to alleviate the problem by using those mechanisms.

(c) Heads of contracting activities are responsible for effectively implementing the small business programs within their activities, including achieving program goals. They are to ensure that contracting and technical personnel maintain knowledge of small business program requirements and take

all reasonable action to increase participation in their activities' contracting processes by these businesses.

(d) The Small Business Act requires each agency with contracting authority to establish an Office of Small and Disadvantaged Business Utilization (see section (k) of the Small Business Act). For the Department of Defense, in accordance with section 904 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163) ([10 U.S.C. 144 note](#)), the Office of Small and Disadvantaged Business Utilization has been redesignated as the Office of Small Business Programs. Management of the office shall be the responsibility of an officer or employee of the agency who shall, in carrying out the purposes of the Act—

(1) Be known as the Director of Small and Disadvantaged Business Utilization, or for the Department of Defense, the Director of Small Business Programs;

(2) Be appointed by the agency head;

(3) Be responsible to and report directly to the agency head or the deputy to the agency head;

(4) Be responsible for the agency carrying out the functions and duties in sections 8, 15, and 31 of the Small Business Act.

(5) Work with the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) to—

(i) Identify proposed solicitations that involve bundling;

(ii) Facilitate small business participation as contractors including small business contract teams, where appropriate; and

(iii) Facilitate small business participation as subcontractors and suppliers where participation by small business concerns as contractors is unlikely;

(6) Assist small business concerns in obtaining payments under their contracts, late payment, interest penalties, or information on contractual payment provisions;

(7) Have supervisory authority over agency personnel to the extent that their functions and duties relate to sections 8, 15, and 31 of the Small Business Act.

(8) Assign a small business technical advisor to each contracting activity within the agency to which the SBA has assigned a representative (see [19.402](#))—

(i) Who shall be a full-time employee of the contracting activity, well qualified, technically trained, and familiar with the supplies or services contracted for by the activity; and

(ii) Whose principal duty is to assist the SBA's assigned representative in performing functions and duties relating to sections 8, 15, and 31 of the Small Business Act;

(9) Cooperate and consult on a regular basis with the SBA in carrying out the agency's functions and duties in sections 8, 15, and 31 of the Small Business Act;

(10) Make recommendations in accordance with agency procedures as to whether a particular acquisition should be awarded under subpart [19.5](#) as a small business set-aside, under subpart [19.8](#) as a Section 8(a) award, under subpart [19.13](#) as a HUBZone set-aside, under subpart [19.14](#) as a

service-disabled veteran-owned small business set-aside, or under subpart [19.15](#) as a set-aside for economically disadvantaged women-owned small business (EDWOSB) concerns or women-owned small business (WOSB) concerns eligible under the WOSB Program.

(11) Conduct annual reviews to assess the—

(i) Extent to which small businesses are receiving a fair share of Federal procurements, including contract opportunities under the programs administered under the Small Business Act;

(ii) Adequacy of contract bundling documentation and justifications; and

(iii) Actions taken to mitigate the effects of necessary and justified contract bundling on small businesses.

(12) Provide a copy of the assessment made under paragraph (d)(11) of this section to the Agency Head and SBA Administrator.

(e) Small Business Specialists must be appointed and act in accordance with agency regulations.

(f)(1) Each agency shall designate, at levels it determines appropriate, personnel responsible for determining whether, in order to achieve the contracting agency's goal for SDB concerns, the use of the SDB mechanism in [Subpart 19.11](#) has resulted in an undue burden on non-SDB firms in one of the Industry Subsectors and regions identified by Department of Commerce following paragraph (b) of this section, or is otherwise inappropriate. Determinations under this subpart are for the purpose of determining future acquisitions and shall not affect ongoing acquisitions. Requests for a determination, including supporting rationale, may be submitted to the agency designee. If the agency designee makes an affirmative determination that the SDB mechanism has an undue burden or is otherwise inappropriate, the determination shall be forwarded through agency channels to the OFPP, which shall review the determination in consultation with the Department of Commerce and the Small Business Administration. At a minimum, the following information should be included in any submittal:

(i) A determination of undue burden or other inappropriate effect, including proposed corrective action.

(ii) The Industry Subsector affected.

(iii) Supporting information to justify the determination, including, but not limited to, dollars and percentages of contracts awarded by the contracting activity under the affected Industry Subsector for the previous two fiscal years and current fiscal year to date for—

(A) Total awards;

(B) Total awards to SDB concerns;

(C) Awards to SDB concerns awarded contracts under the SDB price evaluation adjustment where the SDB concerns would not otherwise have been the successful offeror;

(D) Number of successful and unsuccessful SDB offerors; and

(E) Number of successful and unsuccessful non-SDB offerors.

(iv) A discussion of the pertinent findings, including any peculiarities related to the industry, regions or demographics.

(v) A discussion of other efforts the agency has undertaken to ensure equal opportunity for SDBs in contracting with the agency.

(2) After consultation with OFPP, or if the agency does not receive a response from OFPP within 90 days after notice is provided to OFPP, the contracting agency may limit the use of the SDB mechanism in [Subpart 19.11](#) until the Department of Commerce determines the updated price evaluation adjustment, as required by this section. This limitation shall not apply to solicitations that already have been synopsized.

### 19.202 Specific policies.

In order to further the policy in [19.201\(a\)](#), contracting officers shall comply with the specific policies listed in this section and shall consider recommendations of the agency Director of Small and Disadvantaged Business Utilization, or the Director's designee, as to whether a particular acquisition should be awarded under subpart [19.5](#), [19.8](#), [19.13](#), [19.14](#), or [19.15](#). Agencies shall establish procedures including dollar thresholds for review of acquisitions by the Director or the Director's designee for the purpose of making these recommendations. The contracting officer shall document the contract file whenever the Director's recommendations are not accepted.

#### 19.202-1 Encouraging small business participation in acquisitions.

Small business concerns shall be afforded an equitable opportunity to compete for all contracts that they can perform to the extent consistent with the Government's interest. When applicable, the contracting officer shall take the following actions:

(a) Divide proposed acquisitions of supplies and services (except construction) into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement.

(b) Plan acquisitions such that, if practicable, more than one small business concern may perform the work, if the work exceeds the amount for which a surety may be guaranteed by SBA against loss under [15 U.S.C. 694b](#).

(c) Ensure that delivery schedules are established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government.

(d) Encourage prime contractors to subcontract with small business concerns (see [Subpart 19.7](#)).

## Subpart 19.8—Contracting with the Small Business Administration (The 8(a) Program)

### 19.800 General.

(a) Section 8(a) of the Small Business Act ([15 U.S.C. 637\(a\)](#)) established a program that authorizes the Small Business Administration (SBA) to enter into all types of contracts with other agencies and award subcontracts for performing those contracts to firms eligible for program participation. The SBA's subcontractors are referred to as "8(a) contractors."

(b) Contracts may be awarded to the SBA for performance by eligible 8(a) firms on either a sole source or competitive basis.

(c) When, acting under the authority of the program, the SBA certifies to an agency that the SBA is competent and responsible to perform a specific contract, the contracting officer is authorized, in the contracting officer's discretion, to award the contract to the SBA based upon mutually agreeable terms and conditions.

(d) The SBA refers to this program as the 8(a) Business Development (BD) Program.

(e) The contracting officer shall comply with [19.203](#) before deciding to offer an acquisition to a small business concern under the 8(a) Program. For acquisitions above the simplified acquisition threshold, the contracting officer shall consider 8(a) set-asides or sole source awards before considering small business set-asides.

(f) When SBA has delegated its 8(a) Program contract execution authority to an agency, the contracting officer must refer to its agency supplement or other policy directives for appropriate guidance.

### 19.801 [Reserved]

### 19.802 Selecting concerns for the 8(a) Program.

Selecting concerns for the 8(a) Program is the responsibility of the SBA and is based on the criteria established in 13 CFR 124.101-112.

### 19.803 Selecting acquisitions for the 8(a) Program.

Through their cooperative efforts, the SBA and an agency match the agency's requirements with the capabilities of 8(a) concerns to establish a basis for the agency to contract with the SBA under the program. Selection is initiated in one of three ways—

(a) The SBA advises an agency contracting activity through a search letter of an 8(a) firm's capabilities and asks the agency to identify acquisitions to support the firm's business plans. In these instances, the SBA will provide at least the following information in order to enable the agency to match an acquisition to the firm's capabilities:

(1) Identification of the concern and its owners.

(2) Background information on the concern, including any and all information pertaining to the concern's technical ability and capacity to perform.

(3) The firm's present production capacity and related facilities.

(4) The extent to which contracting assistance is needed in the present and the future, described in terms that will enable the agency to relate the concern's plans to present and future agency requirements.

(5) If construction is involved, the request shall also include the following:

(i) The concern's capabilities in and qualifications for accomplishing various categories of maintenance, repair, alteration, and construction work in specific categories such as mechanical, electrical, heating and air conditioning, demolition, building, painting, paving, earth work, waterfront work, and general construction work.

(ii) The concern's capacity in each construction category in terms of estimated dollar value (*e.g.*, electrical, up to \$100,000).

(b) The SBA identifies a specific requirement for a particular 8(a) firm or firms and asks the agency contracting activity to offer the acquisition to the 8(a) Program for the firm(s). In these instances, in addition to the information in paragraph (a) of this section, the SBA will provide—

(1) A clear identification of the acquisition sought; *e.g.*, project name or number;

(2) A statement as to how any additional needed equipment and real property will be provided in order to ensure that the firm will be fully capable of satisfying the agency's requirements;

(3) If construction, information as to the bonding capability of the firm(s); and

(4) Either—

(i) If sole source request—

(A) The reasons why the firm is considered suitable for this particular acquisition; *e.g.*, previous contracts for the same or similar supply or service; and

(B) A statement that the firm is eligible in terms of NAICS code, business support levels, and business activity targets; or

(ii) If competitive, a statement that at least two 8(a) firms are considered capable of satisfying the agency's requirements and a statement that the firms are also eligible in terms of the NAICS code, business support levels, and business activity targets. If requested by the contracting activity, SBA will identify at least two such firms and provide information concerning the firms' capabilities.

(c) Agencies may also review other proposed acquisitions for the purpose of identifying requirements which may be offered to the SBA. Where agencies independently, or through the self marketing efforts of an 8(a) firm, identify a requirement for the 8(a) Program, they may offer on behalf of

a specific 8(a) firm, for the 8(a) Program in general, or for 8(a) competition.

### 19.804 Evaluation, offering, and acceptance.

#### 19.804-1 Agency evaluation.

In determining the extent to which a requirement should be offered in support of the 8(a) Program, the agency should evaluate—

(a) Its current and future plans to acquire the specific items or work that 8(a) contractors are seeking to provide, identified in terms of—

(1) Quantities required or the number of construction projects planned; and

(2) Performance or delivery requirements, including required monthly production rates, when applicable;

(b) Its current and future plans to acquire items or work similar in nature and complexity to that specified in the business plan;

(c) Problems encountered in previous acquisitions of the items or work from the 8(a) contractors and/or other contractors;

(d) The impact of any delay in delivery;

(e) Whether the items or work have previously been acquired using small business set-asides; and

(f) Any other pertinent information about known 8(a) contractors, the items, or the work. This includes any information concerning the firms' capabilities. When necessary, the contracting agency shall make an independent review of the factors in [19.803\(a\)](#) and other aspects of the firms' capabilities which would ensure the satisfactory performance of the requirement being considered for commitment to the 8(a) Program.

#### 19.804-2 Agency offering.

(a) After completing its evaluation, the agency must notify the SBA of the extent of its plans to place 8(a) contracts with the SBA for specific quantities of items or work. The notification must identify the time frames within which prime contract and subcontract actions must be completed in order for the agency to meet its responsibilities. The notification must also contain the following information applicable to each prospective contract:

(1) A description of the work to be performed or items to be delivered, and a copy of the statement of work, if available.

(2) The estimated period of performance.

(3) The NAICS code that applies to the principal nature of the acquisition.

(4) The anticipated dollar value of the requirement, including options, if any.

(5) Any special restrictions or geographical limitations on the requirement (for construction, include the location of the work to be performed).

(6) Any special capabilities or disciplines needed for contract performance.

(7) The type of contract anticipated.

(8) The acquisition history, if any, of the requirement, including the names and addresses of any small business contractors that have performed this requirement during the previous 24 months.

(9) A statement that prior to the offering no solicitation for the specific acquisition has been issued as a small business, HUBZone, service-disabled veteran-owned small business set-aside, or a set-aside under the Women-Owned Small Business (WOSB) Program, and that no other public communication (such as a notice through the Governmentwide point of entry (GPE)) has been made showing the contracting agency's clear intention to set-aside the acquisition for small business, HUBZone small business, service-disabled veteran-owned small business concerns, or a set-aside under the WOSB Program.

(10) Identification of any particular 8(a) concern designated for consideration, including a brief justification, such as—

(i) The 8(a) concern, through its own efforts, marketed the requirement and caused it to be reserved for the 8(a) Program; or

(ii) The acquisition is a follow-on or renewal contract and the nominated concern is the incumbent.

(11) Bonding requirements, if applicable.

(12) Identification of all SBA field offices that have asked for the acquisition for the 8(a) Program.

(13) A request, if appropriate, that a requirement with an estimated contract value under the applicable competitive threshold be awarded as an 8(a) competitive contract (see [19.805-1\(d\)](#)).

(14) A request, if appropriate, that a requirement with a contract value over the applicable competitive threshold be awarded as a sole source contract (see [19.805-1\(b\)](#)).

(15) Any other pertinent and reasonably available data.

(b)(1) An agency offering a construction requirement for which no specific offeror is nominated should submit it to the SBA District Office for the geographical area where the work is to be performed.

(2) An agency offering a construction requirement on behalf of a specific offeror should submit it to the SBA District Office servicing that concern.

(3) Sole source requirements, other than construction, should be forwarded directly to the district office that services the nominated firm. If the contracting officer is not nominating a specific firm, the offering letter should be forwarded to the district office servicing the geographical area in which the contracting office is located.

(c) All requirements for 8(a) competition, other than construction, should be forwarded to the district office servicing the geographical area in which the contracting office is

**19.808 Contract negotiation.****19.808-1 Sole source.**

(a) The SBA may not accept for negotiation a sole-source 8(a) contract that exceeds \$20 million unless the requesting agency has completed a justification in accordance with the requirements of [6.303](#).

(b) The SBA is responsible for initiating negotiations with the agency within the time established by the agency. If the SBA does not initiate negotiations within the agreed time and the agency cannot allow additional time, the agency may, after notifying the SBA, proceed with the acquisition from other sources.

(c) The SBA should participate, whenever practicable, in negotiating the contracting terms. When mutually agreeable, the SBA may authorize the contracting activity to negotiate directly with the 8(a) contractor. Whether or not direct negotiations take place, the SBA is responsible for approving the resulting contract before award.

**19.808-2 Competitive.**

In competitive 8(a) acquisitions subject to [Part 15](#), the contracting officer conducts negotiations directly with the competing 8(a) firms. Conducting competitive negotiations among 8(a) firms prior to SBA's formal acceptance of the acquisition for the 8(a) Program may be grounds for SBA's not accepting the acquisition for the 8(a) Program.

**19.809 Preaward considerations.**

The contracting officer should request a preaward survey of the 8(a) contractor whenever considered useful. If the results of the preaward survey or other information available to the contracting officer raise substantial doubt as to the firm's ability to perform, the contracting officer must refer the matter to SBA for Certificate of Competency consideration under [Subpart 19.6](#).

**19.810 SBA appeals.**

(a) The SBA Administrator may submit the following matters for determination to the agency head if the SBA and the contracting officer fail to agree on them:

(1) The decision not to make a particular acquisition available for award under the 8(a) Program.

(2) A contracting officer's decision to reject a specific 8(a) firm for award of an 8(a) contract after SBA's acceptance of the requirement for the 8(a) Program.

(3) The terms and conditions of a proposed 8(a) contract, including the contracting activity's NAICS code designation and estimate of the fair market price.

(b) Notification of a proposed appeal to the agency head by the SBA must be received by the contracting officer within 5 working days after the SBA is formally notified of the contracting officer's decision. The SBA will provide the agency Director for Small and Disadvantaged Business Utilization a copy of this notification of the intent to appeal. The SBA must

send the written appeal to the head of the contracting activity within 15 working days of SBA's notification of intent to appeal or the contracting activity may consider the appeal withdrawn. Pending issuance of a decision by the agency head, the contracting officer must suspend action on the acquisition. The contracting officer need not suspend action on the acquisition if the contracting officer makes a written determination that urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for a decision.

(c) If the SBA appeal is denied, the decision of the agency head shall specify the reasons for the denial, including the reasons why the selected firm was determined incapable of performance, if appropriate. The decision shall be made a part of the contract file.

**19.811 Preparing the contracts.****19.811-1 Sole source.**

(a) The contract to be awarded by the agency to the SBA shall be prepared in accordance with agency procedures and in the same detail as would be required in a contract with a business concern. The contracting officer shall use the [Standard Form 26](#) as the award form, except for construction contracts, in which case the [Standard Form 1442](#) shall be used as required in [36.701\(a\)](#).

(b) The agency shall prepare the contract that the SBA will award to the 8(a) contractor in accordance with agency procedures, as if the agency were awarding the contract directly to the 8(a) contractor, except for the following:

(1) The award form shall cite [41 U.S.C. 3304\(a\)\(5\)](#) or [10 U.S.C. 2304\(c\)\(5\)](#) (as appropriate) as the authority for use of other than full and open competition.

(2) Appropriate clauses shall be included, as necessary, to reflect that the contract is between the SBA and the 8(a) contractor.

(3) The following items shall be inserted by the SBA:

(i) The SBA contract number.

(ii) The effective date.

(iii) The typed name of the SBA's contracting officer.

(iv) The signature of the SBA's contracting officer.

(v) The date signed.

(4) The SBA will obtain the signature of the 8(a) contractor prior to signing and returning the prime contract to the contracting officer for signature. The SBA will make every effort to obtain signatures and return the contract, and any subsequent bilateral modification, to the contracting officer within a maximum of 10 working days.

(c) Except in procurements where the SBA will make advance payments to its 8(a) contractor, the agency contracting officer may, as an alternative to the procedures in paragraphs (a) and (b) of this subsection, use a single contract document for both the prime contract between the agency and the SBA and its 8(a) contractor. The single contract document

shall contain the information in paragraphs (b) (1), (2), and (3) of this subsection. Appropriate blocks on the [Standard Form \(SF\) 26](#) or 1442 will be asterisked and a continuation sheet appended as a tripartite agreement which includes the following:

(1) Agency acquisition office, prime contract number, name of agency contracting officer and lines for signature, date signed, and effective date.

(2) The SBA office, the SBA contract number, name of the SBA contracting officer, and lines for signature and date signed.

(3) Name and lines for the 8(a) subcontractor's signature and date signed.

(d) For acquisitions not exceeding the simplified acquisition threshold, the contracting officer may use the alternative procedures in paragraph (c) of this subsection with the appropriate simplified acquisition forms.

### 19.811-2 Competitive.

(a) The contract will be prepared in accordance with [14.408-1\(d\)](#), except that appropriate blocks on the [Standard Form 26](#) or [1442](#) will be asterisked and a continuation sheet appended as a tripartite agreement which includes the following:

(1) The agency contracting activity, prime contract number, name of agency contracting officer, and lines for signature, date signed, and effective date.

(2) The SBA office, the SBA subcontract number, name of the SBA contracting officer and lines for signature and date signed.

(b) The process for obtaining signatures shall be as specified in [19.811-1\(b\)\(4\)](#).

### 19.811-3 Contract clauses.

(a) The contracting officer shall insert the clause at [52.219-11](#), Special 8(a) Contract Conditions, in contracts between the SBA and the agency when the acquisition is accomplished using the procedures of [19.811-1\(a\)](#) and (b).

(b) The contracting officer shall insert the clause at [52.219-12](#), Special 8(a) Subcontract Conditions, in contracts between the SBA and its 8(a) contractor when the acquisition is accomplished using the procedures of [19.811-1\(a\)](#) and (b).

(c) The contracting officer shall insert the clause at [52.219-17](#), Section 8(a) Award, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of [19.805](#) and in sole source awards which utilize the alternative procedure in [19.811-1\(c\)](#).

(d) The contracting officer shall insert the clause at [52.219-18](#), Notification of Competition Limited to Eligible 8(a) Concerns, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of [19.805](#).

(1) The clause at [52.219-18](#) with its Alternate I will be used when competition is to be limited to 8(a) concerns within one or more specific SBA districts pursuant to [19.804-2](#).

(2) The clause at [52.219-18](#) with its Alternate II will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see [19.102\(f\)\(4\)](#) and (5)).

(e) The contracting officer shall insert the clause at [52.219-14](#), Limitations on Subcontracting, in any solicitation and contract resulting from this subpart. This includes multiple-award contracts when orders may be set aside for 8(a) concerns as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#).

### 19.812 Contract administration.

(a) The contracting officer shall assign contract administration functions, as required, based on the location of the 8(a) contractor (see Federal Directory of Contract Administration Services Components (available via the Internet at <https://pubapp.dcma.mil/CASD/main.jsp>)).

(b) The agency shall distribute copies of the contract(s) in accordance with [Part 4](#). All contracts and modifications, if any, shall be distributed to both the SBA and the firm in accordance with the timeframes set forth in [4.201](#).

(c) To the extent consistent with the contracting activity's capability and resources, 8(a) contractors furnishing requirements shall be afforded production and technical assistance, including, when appropriate, identification of causes of deficiencies in their products and suggested corrective action to make such products acceptable.

(d) An 8(a) contract, whether in the base or an option year, must be terminated for convenience if the 8(a) concern to which it was awarded transfers ownership or control of the firm or if the contract is transferred or novated for any reason to another firm, unless the Administrator of the SBA waives the requirement for contract termination (13 CFR 124.515). The Administrator may waive the termination requirement only if certain conditions exist. Moreover, a waiver of the requirement for termination is permitted only if the 8(a) firm's request for waiver is made to the SBA prior to the actual relinquishment of ownership or control, except in the case of death or incapacity where the waiver must be submitted within 60 days after such an occurrence. The clauses in the contract entitled "Special 8(a) Contract Conditions" and "Special 8(a) Subcontract Conditions" require the SBA and the 8(a) subcontractor to notify the contracting officer when ownership of the firm is being transferred. When the contracting officer receives information that an 8(a) contractor is planning to transfer ownership or control to another firm, the contracting officer must take action immediately to preserve the option of waiving the termination requirement. The contracting officer should determine the timing of the proposed transfer and its effect on contract performance and mission support. If the contracting officer determines that the SBA does not intend to



## Subpart 19.13—Historically Underutilized Business Zone (HUBZone) Program

### 19.1301 General.

(a) The Historically Underutilized Business Zone (HUBZone) Act of 1997 ([15 U.S.C. 631](#) note) created the HUBZone Program.

(b) The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones, in an effort to increase employment opportunities, investment, and economic development in those areas.

### 19.1302 Applicability.

The procedures in this subpart apply to all Federal agencies that employ one or more contracting officers.

### 19.1303 Status as a HUBZone small business concern.

(a) Status as a HUBZone small business concern is determined by the Small Business Administration (SBA) in accordance with 13 CFR Part 126.

(b) If the SBA determines that a concern is a HUBZone small business concern, it will issue a certification to that effect and will add the concern to the List of Qualified HUBZone Small Business Concerns at [http://dsbs.sba.gov/dsbs/search/dsp\\_searchhubzone.cfm](http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm). Only firms on the list are HUBZone small business concerns, eligible for HUBZone preferences. HUBZone preferences apply without regard to the place of performance. Information on HUBZone small business concerns can also be obtained at [www.sba.gov/hubzone](http://www.sba.gov/hubzone) or by writing to the Director for the HUBZone Program (Director/HUB) at U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416 or at [hubzone@sba.gov](mailto:hubzone@sba.gov).

(c) A joint venture may be considered a HUBZone small business concern if it meets the criteria in the explanation of affiliates (see [19.101](#)).

(d) To be eligible for a HUBZone contract under this section, a HUBZone small business concern must be a HUBZone small business concern both at the time of its initial offer and at the time of contract award.

(e) A HUBZone small business concern may submit an offer for supplies as a nonmanufacturer if it meets the requirements of the nonmanufacturer rule set forth at 13 CFR 121.406(b)(1) and if the small business manufacturer providing the end item is also a HUBZone small business concern.

(1) There are no waivers to the nonmanufacturer rule for HUBZone contracts.

(2) For HUBZone contracts at or below \$25,000 in total value, a HUBZone small business concern may supply the end item of any manufacturer, including a large business, so long as the product acquired is manufactured or produced in the United States.

### 19.1304 Exclusions.

This subpart does not apply to—

(a) Requirements that can be satisfied through award to—  
 (1) Federal Prison Industries, Inc. (see [Subpart 8.6](#)); or  
 (2) AbilityOne participating non-profit agencies for the blind or severely disabled (see [Subpart 8.7](#));

(b) Orders under indefinite-delivery contracts (see subpart [16.5](#)). (But see [16.505\(b\)\(2\)\(i\)\(F\)](#) for discretionary set-asides of orders);

(c) Orders against Federal Supply Schedules (see subpart [8.4](#)). (But see [8.405-5](#) for discretionary set-asides of orders);

(d) Requirements currently being performed by an 8(a) participant or requirements SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program;

(e) Requirements that do not exceed the micro-purchase threshold; or

(f) Requirements for commissary or exchange resale items.

### 19.1305 HUBZone set-aside procedures.

(a) The contracting officer—

(1) Shall comply with [19.203](#) before deciding to set aside an acquisition under the HUBZone Program;

(2) May set aside acquisitions exceeding the micro-purchase threshold for competition restricted to HUBZone small business concerns when the requirements of paragraph (b) of this section can be satisfied; and

(3) Shall consider HUBZone set-asides before considering HUBZone sole source awards (see [19.1306](#)) or small business set-asides (see subpart [19.5](#)).

(b) To set aside an acquisition for competition restricted to HUBZone small business concerns, the contracting officer must have a reasonable expectation that—

(1) Offers will be received from two or more HUBZone small business concerns; and

(2) Award will be made at a fair market price.

(c) If the contracting officer receives only one acceptable offer from a qualified HUBZone small business concern in response to a set aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from HUBZone small business concerns, the HUBZone set-aside shall be withdrawn and the requirement, if still valid, set aside for small business concerns, as appropriate (see [19.203](#)).

(d) The procedures at [19.202-1](#) and, except for acquisitions not exceeding the simplified acquisition threshold, at [19.402](#) apply to this section.

(1) When the SBA intends to appeal a contracting officer's decision to reject a recommendation of the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) to set aside an acquisition for competition restricted to HUBZone small busi-

ness concerns, the SBA procurement center representative shall notify the contracting officer, in writing, of its intent within 5 business days of receiving the contracting officer's notice of rejection.

(2) Upon receipt of notice of SBA's intent to appeal, the contracting officer shall suspend action on the acquisition unless the head of the contracting activity makes a written determination that urgent and compelling circumstances, which significantly affect the interests of the Government, exist.

(3) Within 15 business days of SBA's notification to the contracting officer, SBA must file its formal appeal with the head of the agency, or the appeal will be deemed withdrawn. The head of the agency shall reply to SBA within 15 business days of receiving the appeal. The decision of the head of the agency shall be final.

#### **19.1306 HUBZone sole source awards.**

(a) A contracting officer shall consider a contract award to a HUBZone small business concern on a sole source basis (see [6.302-5\(b\)\(5\)](#)) before considering a small business set-aside (see [19.203](#) and subpart [19.5](#)), provided none of the exclusions at [19.1304](#) apply; and—

(1) The contracting officer does not have a reasonable expectation that offers would be received from two or more HUBZone small business concerns;

(2) The anticipated price of the contract, including options, will not exceed—

(i) \$6.5 million for a requirement within the North American Industry Classification System (NAICS) codes for manufacturing; or

(ii) \$4 million for a requirement within all other NAICS codes;

(3) The requirement is not currently being performed by an 8(a) participant under the provisions of [Subpart 19.8](#) or has been accepted as a requirement by SBA under [Subpart 19.8](#);

(4) The acquisition is greater than the simplified acquisition threshold (see [Part 13](#));

(5) The HUBZone small business concern has been determined to be a responsible contractor with respect to performance; and

(6) Award can be made at a fair and reasonable price.

(b) The SBA has the right to appeal the contracting officer's decision not to make a HUBZone sole source award.

#### **19.1307 Price evaluation preference for HUBZone small business concerns.**

(a) The price evaluation preference for HUBZone small business concerns shall be used in acquisitions conducted using full and open competition. The preference shall not be used—

(1) Where price is not a selection factor so that a price evaluation preference would not be considered (e.g., Architect/Engineer acquisitions); or

(2) Where all fair and reasonable offers are accepted (e.g., the award of multiple award schedule contracts).

(b) The contracting officer shall give offers from HUBZone small business concerns a price evaluation preference by adding a factor of 10 percent to all offers, except—

(1) Offers from HUBZone small business concerns that have not waived the evaluation preference; or

(2) Otherwise successful offers from small business concerns.

(c) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors, such as transportation costs or rent-free use of Government property, shall be added to the offer to establish the base offer before adding the factor of 10 percent.

(d) A concern that is both a HUBZone small business concern and a small disadvantaged business concern shall receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see [Subpart 19.11](#)). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer. These individual preference and adjustment amounts shall both be added to the base offer to arrive at the total evaluated price for that offer.

(e) When the two highest rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation preference, the contracting officer shall award the contract to the HUBZone small business concern.

#### **19.1308 Performance of work requirements (limitations on subcontracting) for general construction or construction by special trade contractors.**

(a) Before issuing a solicitation for general construction or construction by special trade contractors, the contracting officer shall determine if at least two HUBZone small business concerns can spend at least 50 percent of the cost of contract performance to be incurred for personnel on their own employees or subcontract employees of other HUBZone small business concerns.

(b) The clause at [52.219-3](#), Notice of HUBZone Set-Aside or Sole Source Award, or [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns, shall be used, as applicable, with its Alternate I to waive the 50 percent requirement (see [19.1309](#)) if at least two HUBZone small business concerns cannot meet the conditions of paragraph (a); but, the HUBZone prime contractor can still meet the following—

### Subpart 19.14—Service-Disabled Veteran-Owned Small Business Procurement Program

#### 19.1401 General.

(a) The Veterans Benefit Act of 2003 ([15 U.S.C. 657f](#)) created the procurement program for small business concerns owned and controlled by service-disabled veterans (commonly referred to as the “Service-Disabled Veteran-owned Small Business (SDVOSB) Procurement Program”).

(b) The purpose of the Service-Disabled Veteran-Owned Small Business Program is to provide Federal contracting assistance to service-disabled veteran-owned small business concerns.

#### 19.1402 Applicability.

The procedures in this subpart apply to all Federal agencies that employ one or more contracting officers.

#### 19.1403 Status as a service-disabled veteran-owned small business concern.

(a) Status as a service-disabled veteran-owned small business concern is determined in accordance with 13 CFR Parts 125.8 through 125.13; also see [19.307](#).

(b) At the time that a service-disabled veteran-owned small business concern submits its offer, it must represent to the contracting officer that it is a—

(1) Service-disabled veteran-owned small business concern; and

(2) Small business concern under the North American Industry Classification System (NAICS) code assigned to the procurement.

(c) A joint venture may be considered a service-disabled veteran owned small business concern if—

(1) At least one member of the joint venture is a service-disabled veteran-owned small business concern, and makes the representations in paragraph (b) of this section;

(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement;

(3) The joint venture meets the requirements of paragraph 7 of the explanation of Affiliates in [19.101](#); and

(4) The joint venture meets the requirements of 13 CFR 125.15(b).

(d) Any service-disabled veteran-owned small business concern (nonmanufacturer) must meet the requirements in [19.102\(f\)](#) to receive a benefit under this program.

#### 19.1404 Exclusions.

This subpart does not apply to—

(a) Requirements that can be satisfied through award to—

(1) Federal Prison Industries, Inc. (see [Subpart 8.6](#));

(2) AbilityOne participating non-profit agencies for the blind or severely disabled (see [Subpart 8.7](#));

(b) Orders under indefinite-delivery contracts (see subpart [16.5](#)). (But see [16.505\(b\)\(2\)\(i\)\(F\)](#) for discretionary set-asides of orders);

(c) Orders against Federal Supply Schedules (see subpart [8.4](#)). (But see [8.405-5](#) for discretionary set-asides of orders); or

(d) Requirements currently being performed by an 8(a) participant or requirements SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program.

#### 19.1405 Service-disabled veteran-owned small business set-aside procedures.

(a) The contracting officer—

(1) Shall comply with [19.203](#) before deciding to set aside an acquisition under the SDVOSB Program;

(2) May set-aside acquisitions exceeding the micro-purchase threshold for competition restricted to SDVOSB concerns when the requirements of paragraph (b) of this section can be satisfied; and

(3) Shall consider SDVOSB set-asides before considering SDVOSB sole source awards (see [19.1406](#)) or small business set-asides (see subpart [19.5](#)).

(b) To set aside an acquisition for competition restricted to service-disabled veteran-owned small business concerns, the contracting officer must have a reasonable expectation that—

(1) Offers will be received from two or more service-disabled veteran-owned small business concerns; and

(2) Award will be made at a fair market price.

(c) If the contracting officer receives only one acceptable offer from a service-disabled veteran-owned small business concern in response to a set-aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from service-disabled veteran-owned small business concerns, the service-disabled veteran-owned set-aside shall be withdrawn and the requirement, if still valid, set aside for small business concerns, as appropriate (see [19.203](#)).

(d) The procedures at [19.202-1](#) and, except for acquisitions not exceeding the simplified acquisition threshold, at [19.402](#) apply to this section. When the SBA intends to appeal a contracting officer’s decision to reject a recommendation of the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) to set aside an acquisition for competition restricted to service-disabled veteran-owned small business concerns, the SBA procurement center representative shall notify the contracting officer, in writing, of its intent within 5 working days of receiving the contracting officer’s notice of rejection. Upon receipt of notice of SBA’s intent to appeal, the contracting

officer shall suspend action on the acquisition unless the head of the contracting activity makes a written determination that urgent and compelling circumstances, which significantly affect the interests of the Government, exist. Within 15 working days of SBA's notification to the contracting officer, SBA shall file its formal appeal with the head of the contracting activity, or that agency may consider the appeal withdrawn. The head of the contracting activity shall reply to SBA within 15 working days of receiving the appeal. The decision of the head of the contracting activity shall be final.

**19.1406 Sole source awards to service-disabled veteran-owned small business concerns.**

(a) A contracting officer shall consider a contract award to a SDVOSB concern on a sole source basis (see [6.302-5\(b\)\(6\)](#)), before considering small business set-asides (see [19.203](#) and subpart [19.5](#)) provided none of the exclusions of [19.1404](#) apply and—

(1) The contracting officer does not have a reasonable expectation that offers would be received from two or more service-disabled veteran-owned small business concerns;

(2) The anticipated award price of the contract, including options, will not exceed—

(i) \$6 million for a requirement within the NAICS codes for manufacturing; or

(ii) \$3.5 million for a requirement within any other NAICS code;

(3) The requirement is not currently being performed by an 8(a) participant under the provisions of [Subpart 19.8](#) or has been accepted as a requirement by SBA under [Subpart 19.8](#);

(4) The service-disabled veteran-owned small business concern has been determined to be a responsible contractor with respect to performance; and

(5) Award can be made at a fair and reasonable price.

(b) The SBA has the right to appeal the contracting officer's decision not to make a service-disabled veteran-owned small business sole source award.

**19.1407 Contract clauses.**

The contracting officer shall insert the clause [52.219-27](#), Notice of Service-Disabled Veteran-Owned Small Business Set-Aside, in solicitations and contracts for acquisitions that are set aside or reserved for, or awarded on a sole source basis to, service-disabled veteran-owned small business concerns under [19.1405](#) and [19.1406](#). This includes multiple-award contracts when orders may be set aside for service-disabled veteran-owned small business concerns as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#).

## Subpart 19.15—Women-Owned Small Business (WOSB) Program

### 19.1500 General.

(a) Section 8(m) of the Small Business Act ([15 U.S.C. 637\(m\)](#)) created the Women-Owned Small Business (WOSB) Program.

(b) The purpose of the WOSB Program is to ensure women-owned small business concerns have an equal opportunity to participate in Federal contracting and to assist agencies in achieving their women-owned small business participation goals (see 13 part CFR 127).

(c) An economically disadvantaged women-owned small business (EDWOSB) concern or WOSB concern eligible under the WOSB Program is a subcategory of “women-owned small business concern” as defined in [2.101](#).

### 19.1501 Definition.

“WOSB Program Repository” means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

### 19.1502 Applicability.

The procedures in this subpart apply to all Federal agencies that employ one or more contracting officers.

### 19.1503 Status.

(a) Status as an EDWOSB concern or WOSB concern eligible under the WOSB Program is determined in accordance with 13 CFR part 127.

(b) The contracting officer shall verify that the offeror—

- (1) Is registered in the System for Award Management (SAM);
- (2) Is self-certified as an EDWOSB or WOSB concern in SAM; and
- (3) Has submitted documents verifying its eligibility at the time of initial offer to the WOSB Program Repository. The contract shall not be awarded until all required documents are received.

(c)(1) An EDWOSB concern or WOSB concern eligible under the WOSB Program that has been certified by a SBA approved third party certifier, (which includes SBA certification under the 8(a) Program), must provide the following eligibility requirement documents—

- (i) The third-party certification;
- (ii) SBA’s WOSB Program Certification form (SBA Form 2413 for WOSB concerns eligible under the WOSB Program and SBA Form 2414 for EDWOSB concerns); and
- (iii) The joint venture agreement, if applicable.

(2) An EDWOSB concern or WOSB concern eligible under the WOSB Program that has not been certified by an

SBA approved third party certifier or by SBA under the 8(a) Program, must provide the following documents:

- (i) The U.S. birth certificate, naturalization documentation, or unexpired U.S. passport for each woman owner.
- (ii) The joint venture agreement, if applicable.
- (iii) For limited liability companies, articles of organization (also referred to as certificate of organization or articles of formation) and any amendments, and the operating agreement and any amendments.
- (iv) For corporations, articles of incorporation and any amendments, by-laws and any amendments, all issued stock certificates, including the front and back copies, signed in accord with the by-laws, stock ledger, and voting agreements, if any.
- (v) For partnerships, the partnership agreement and any amendments.
- (vi) For sole proprietorships, corporations, limited liability companies and partnerships if applicable, the assumed/fictitious name certificate(s).
- (vii) SBA’s WOSB Program Certification form (SBA Form 2413 for WOSB concerns eligible under the WOSB Program and SBA Form 2414 for EDWOSB concerns).

(viii) For EDWOSB concerns, in addition to the above, the SBA Form 413, Personal Financial Statement, available to the public at <http://www.sba.gov/tools/Forms/index.html>, for each woman claiming economic disadvantage.

(d)(1) A contracting officer may accept a concern’s self-certification as accurate for a specific procurement reserved for award under this subpart if—

- (i) The apparent successful WOSB eligible under the WOSB Program or EDWOSB offeror provided the required documents;
- (ii) There has been no protest or other credible information that calls into question the concern’s eligibility as an EDWOSB concern or WOSB concern eligible under the WOSB Program; and
- (iii) There has been no decision issued by SBA as a result of a current eligibility examination finding the concern did not qualify as an EDWOSB concern or WOSB concern eligible under the WOSB Program at the time it submitted its initial offer.

(2) The contracting officer shall file a status protest in accordance with [19.308](#) if—

- (i) There is information that questions the eligibility of a concern; or
- (ii) The concern fails to provide all of the required documents to verify its eligibility.

(e) If there is a decision issued by SBA as a result of a current eligibility examination finding that the concern did not qualify as an EDWOSB concern or WOSB concern eligible under the WOSB Program, the contracting officer may termi-

nate the contract, and shall not exercise any option nor award further task or delivery orders. The contracting officer shall not count or include the award toward the small business accomplishments for an EDWOSB concern or WOSB concern eligible under the WOSB Program and must update FPDS from the date of award.

(f) A joint venture may be considered an EDWOSB concern or WOSB concern eligible under the WOSB Program if it meets the requirements of 13 CFR 127.506.

(g) An EDWOSB concern or WOSB concern eligible under the WOSB Program that is a non-manufacturer, as defined in 13 CFR 121.406(b), may submit an offer on a requirement set aside for an EDWOSB concern or a WOSB concern eligible under the WOSB Program with a NAICS code for supplies, if it meets the requirements under the non-manufacturer rule set forth in that regulation.

#### 19.1504 Exclusions.

This subpart does not apply to—

(a) Requirements that an 8(a) concern is currently performing under the 8(a) Program or that SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program;

(b) Requirements that can be satisfied through award to—

(1) Federal Prison Industries, Inc. (see subpart [8.6](#)); or

(2) AbilityOne participating non-profit agencies for the blind or severely disabled (see subpart [8.7](#));

(c) Orders under indefinite-delivery contracts (see subpart [16.5](#)). (But see [16.505](#)(b)(2)(i)(F) for discretionary set-asides of orders); or

(d) Orders against Federal Supply Schedules (see subpart [8.4](#)). (But see [8.405-5](#) for discretionary set-asides of orders.)

#### 19.1505 Set-aside procedures.

(a) The contracting officer—

(1) Shall comply with [19.203](#) before deciding to set aside an acquisition under the WOSB Program.

(2) May set aside acquisitions exceeding the micro-purchase threshold for competition restricted to EDWOSB concerns or WOSB concerns eligible under the WOSB Program in those NAICS codes in which SBA has determined that WOSB concerns eligible under the WOSB program are underrepresented or substantially underrepresented in Federal procurement, as specified on SBA's Web site at <http://www.sba.gov/WOSB>.

(b) For requirements in NAICS codes designated by SBA as underrepresented, a contracting officer may restrict competition to EDWOSB concerns if the contracting officer has a reasonable expectation based on market research that—

(1) Two or more EDWOSB concerns will submit offers for the contract and;

(2) Contract award will be made at a fair and reasonable price.

(c) A contracting officer may restrict competition to WOSB concerns eligible under the WOSB Program (including EDWOSB concerns), for requirements in NAICS codes designated by SBA as substantially underrepresented if there is a reasonable expectation based on market research that—

(1) Two or more WOSB concerns eligible under the WOSB Program (including EDWOSB concerns), will submit offers and;

(2) Contract award may be made at a fair and reasonable price.

(d) The contracting officer may make an award, if only one acceptable offer is received from a qualified EDWOSB concern or WOSB concern eligible under the WOSB Program.

(e) The contracting officer must check whether the apparently successful offeror filed all the required eligibility documents, and file a status protest if any documents are missing. See [19.1503](#)(d)(2).

(f) If no acceptable offers are received from an EDWOSB concern or WOSB concern eligible under the WOSB Program, the set-aside shall be withdrawn and the requirement, if still valid, must be considered for set aside in accordance with [19.203](#) and subpart [19.5](#).

(g) If the contracting officer rejects a recommendation by SBA's Procurement Center Representative—

(1) The contracting officer shall notify the procurement center representative as soon as practicable;

(2) SBA shall notify the contracting officer of its intent to appeal the contracting officer's decision no later than five business days after receiving notice of the contracting officer's decision;

(3) The contracting officer shall suspend further action regarding the procurement until the head of the agency issues a written decision on the appeal, unless the head of the agency makes a written determination that urgent and compelling circumstances which significantly affect the interests of the United States compel award of the contract;

(4) Within 15 business days of SBA's notification to the head of the contracting activity, SBA shall file a formal appeal to the head of the agency, or the appeal will be determined withdrawn; and

(5) The head of the agency, or designee, shall specify in writing the reasons for a denial of an appeal brought under this section.

#### 19.1506 Contract clauses.

(a) The contracting officer shall insert the clause [52.219-29](#), Notice of Set-Aside for Economically Disadvantaged Women-owned Small Business Concerns, in solicitations and contracts for acquisitions that are set aside or reserved for economically disadvantaged women-owned

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**22.000 Scope of part.**

This part—

- (a) Deals with general policies regarding contractor labor relations as they pertain to the acquisition process;
- (b) Prescribes contracting policy and procedures for implementing pertinent labor laws; and
- (c) Prescribes contract clauses with respect to each pertinent labor law.

**22.001 Definitions.**

“Administrator” or “Administrator, Wage and Hour Division,” as used in this part, means the—

Administrator  
 Wage and Hour Division  
 Employment Standards Administration  
 U.S. Department of Labor  
 Washington, DC 20210

or an authorized representative.

“e98” means the Department of Labor’s approved electronic application (<http://www.wdol.gov>), whereby a contracting officer submits pertinent information to the Department of Labor and requests a Service Contract Labor Standards statute wage determination directly from the Wage and Hour Division.

“Service contract” means any Government contract, or subcontract thereunder, the principal purpose of which is to furnish services in the United States through the use of service employees, except as exempted by [41 U.S.C. chapter 67](#), Service Contract Labor Standards; see [22.1003-3](#) and [22.1003-4](#)). See [22.1003-5](#) and 29 CFR 4.130 for a partial list of services covered by the Service Contract Labor Standards statute.

“Service employee” means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in 29 CFR part 541. The term “service employee” includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

“Wage Determinations OnLine (WDOL)” means the Government Internet website for both Construction Wage Rate Requirements statute and Service Contract Labor Standards statute wage determinations available at <http://www.wdol.gov>.

**Subpart 22.1—Basic Labor Policies**

**22.101 Labor relations.**

**22.101-1 General.**

(a) Agencies shall maintain sound relations with industry and labor to ensure (1) prompt receipt of information involving labor relations that may adversely affect the Government acquisition process and (2) that the Government obtains needed supplies and services without delay. All matters regarding labor relations shall be handled in accordance with agency procedures.

(b)(1) Agencies shall remain impartial concerning any dispute between labor and contractor management and not undertake the conciliation, mediation, or arbitration of a labor dispute. To the extent practicable, agencies should ensure that the parties to the dispute use all available methods for resolving the dispute, including the services of the National Labor Relations Board, Federal Mediation and Conciliation Service, the National Mediation Board and other appropriate Federal, State, local, or private agencies.

(2) For use of project labor agreements, see subpart [22.5](#).

(c) Agencies should, when practicable, exchange information concerning labor matters with other affected agencies to ensure a uniform Government approach concerning a particular plant or labor-management dispute.

(d) Agencies should take other actions concerning labor relations problems to the extent consistent with their acquisition responsibilities. For example, agencies should—

(1) Notify the agency responsible for conciliation, mediation, arbitration, or other related action of the existence of any labor dispute affecting or threatening to affect agency acquisition programs;

(2) Furnish to the parties to a dispute factual information pertinent to the dispute’s potential or actual adverse impact on these programs, to the extent consistent with security regulations; and

(3) Seek a voluntary agreement between management and labor, notwithstanding the continuance of the dispute, to permit uninterrupted acquisition of supplies and services. This shall only be done, however, if the attempt to obtain voluntary agreement does not involve the agency in the merits of the dispute and only after consultation with the agency responsible for conciliation, mediation, arbitration, or other related action.

(e) The head of the contracting activity may designate programs or requirements for which it is necessary that contractors be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay the timely contract performance (see [22.103-5\(a\)](#)).

**22.101-2 Contract pricing and administration.**

(a) Contractor labor policies and compensation practices, whether or not included in labor-management agreements, are not acceptable bases for allowing costs in cost-reimbursement contracts or for recognition of costs in pricing fixed-price contracts if they result in unreasonable costs to the Government. For a discussion of allowable costs resulting from labor-management agreements, see [31.205-6\(b\)](#).

(b) Labor disputes may cause work stoppages that delay the performance of Government contracts. Contracting officers shall impress upon contractors that each contractor shall be held accountable for reasonably avoidable delays. Standard contract clauses dealing with default, excusable delays, etc., do not relieve contractors or subcontractors from the responsibility for delays that are within the contractors' or their subcontractors' control. A delay caused by a strike that the contractor or subcontractor could not reasonably prevent can be excused; however, it cannot be excused beyond the point at which a reasonably diligent contractor or subcontractor could have acted to end the strike by actions such as—

(1) Filing a charge with the National Labor Relations Board to permit the Board to seek injunctive relief in court;

(2) Using other available Government procedures; and

(3) Using private boards or organizations to settle disputes.

(c) Strikes normally result in changing patterns of cost incurrence and therefore may have an impact on the allowability of costs for cost-reimbursement contracts or for recognition of costs in pricing fixed-price contracts. Certain costs may increase because of strikes; *e.g.*, guard services and attorney's fees. Other costs incurred during a strike may not fluctuate (*e.g.*, "fixed costs" such as rent and depreciation), but because of reduced production, their proportion of the unit cost of items produced increases. All costs incurred during strikes shall be carefully examined to ensure recognition of only those costs necessary for performing the contract in accordance with the Government's essential interest.

(d) If, during a labor dispute, the inspectors' safety is not endangered, the normal functions of inspection at the plant of a Government contractor shall be continued without regard to the existence of a labor dispute, strike, or picket line.

**22.101-3 Reporting labor disputes.**

The office administering the contract shall report, in accordance with agency procedures, any potential or actual labor disputes that may interfere with performing any contracts under its cognizance. If a contract contains the clause at [52.222-1](#), Notice to the Government of Labor Disputes, the contractor also must report any actual or potential dispute that may delay contract performance.

**22.101-4 Removal of items from contractors' facilities affected by work stoppages.**

(a) Items shall be removed from contractors' facilities affected by work stoppages in accordance with agency procedures. Agency procedures should allow for the following:

(1) Determine whether removal of items is in the Government's interest. Normally the determining factor is the critical needs of an agency program.

(2) Attempt to arrange with the contractor and the union representative involved their approval of the shipment of urgently required items.

(3) Obtain appropriate approvals from within the agency.

(4) Determine who will remove the items from the plant(s) involved.

(b) Avoid the use or appearance of force and prevent incidents that might detrimentally affect labor-management relations.

(c) When two or more agencies' requirements are or may become involved in the removal of items, the contract administration office shall ensure that the necessary coordination is accomplished.

**22.102 Federal and State labor requirements.****22.102-1 Policy.**

Agencies shall cooperate, and encourage contractors to cooperate with Federal and State agencies responsible for enforcing labor requirements such as—

(a) Safety;

(b) Health and sanitation;

(c) Maximum hours and minimum wages;

(d) Equal employment opportunity;

(e) Child and convict labor;

(f) Age discrimination;

(g) Disabled and Vietnam veteran employment;

(h) Employment of workers with disabilities; and

(i) Eligibility for employment under United States immigration laws.

**22.102-2 Administration.**

(a) Agencies shall cooperate with, and encourage contractors to use to the fullest extent practicable, the United States Employment Service (USES) and its affiliated local State Employment Service offices in meeting contractors' labor requirements. These requirements may be to staff new or expanding plant facilities, including requirements for workers in all occupations and skills from local labor market areas or through the Federal-State employment clearance system.

(b) Local State employment offices are operated throughout the United States, Puerto Rico, Guam, and the U.S. Virgin Islands. In addition to providing recruitment assistance to contractors, cooperation with the local State Employment

Service offices will further the national program of maintaining continuous assessment of manpower requirements and resources on a national and local basis.

(c)(1) The U.S. Department of Labor is responsible for the administration and enforcement of the Occupational Safety and Health Act. The Department of Labor's Wage and Hour Division is responsible for administration and enforcement of numerous wage and hour statutes including—

(i) [40 U.S.C. chapter 31](#), subchapter IV, Wage Rate Requirements (Construction);

(ii) [40 U.S.C. chapter 37](#), Contract Work Hours and Safety Standards;

(iii) The Copeland Act ([18 U.S.C. 874](#) and [40 U.S.C. 3145](#));

(iv) [41 U.S.C. chapter 65](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000;

(v) [41 U.S.C. chapter 67](#), Service Contract Labor Standards.

(2) Contracting officers should contact the Wage and Hour Division's regional offices when required by the subparts relating to these statutes unless otherwise specified. Addresses for these offices may be found at 29 CFR 1, Appendix B.

## 22.103 Overtime.

### 22.103-1 Definition.

“Normal workweek,” as used in this subpart, means, generally, a workweek of 40 hours. Outside the United States and its outlying areas, a workweek longer than 40 hours is considered normal if—

(1) The workweek does not exceed the norm for the area, as determined by local custom, tradition, or law; and

(2) The hours worked in excess of 40 in the workweek are not compensated at a premium rate of pay.

### 22.103-2 Policy.

Contractors shall perform all contracts, so far as practicable, without using overtime, particularly as a regular employment practice, except when lower overall costs to the Government will result or when it is necessary to meet urgent program needs. Any approved overtime, extra-pay shifts, and multishifts should be scheduled to achieve these objectives.

### 22.103-3 Procedures.

(a) Solicitations normally shall not specify delivery or performance schedules that may require overtime at Government expense.

(b) In negotiating contracts, contracting officers should, consistent with the Government's needs, attempt to—

(1) Ascertain the extent that offers are based on the payment of overtime and shift premiums; and

(2) Negotiate contract prices or estimated costs without these premiums or obtain the requirement from other sources.

(c) When it becomes apparent during negotiations of applicable contracts (see [22.103-5\(b\)](#)) that overtime will be required in contract performance, the contracting officer shall secure from the contractor a request for all overtime to be used during the life of the contract, to the extent that the overtime can be estimated with reasonable certainty. The contractor's request shall contain the information required by paragraph (b) of the clause at [52.222-2](#), Payment for Overtime Premiums.

### 22.103-4 Approvals.

(a) The contracting officer shall review the contractor's request for overtime. Approval of the use of overtime may be granted by an agency approving official after determining in writing that overtime is necessary to—

(1) Meet essential delivery or performance schedules;

(2) Make up for delays beyond the control and without the fault or negligence of the contractor; or

(3) Eliminate foreseeable extended production bottlenecks that cannot be eliminated in any other way.

(b) Approval by the designated official of use and total dollar amount of overtime is required before inclusion of an amount in paragraph (a) of the clause at [52.222-2](#), Payment for Overtime Premiums.

(c) Contracting officer approval of payment of overtime premiums is required for time-and-materials and labor-hour contracts (see paragraph (a)(8) of the clause at [52.232-7](#), Payments Under Time-and-Materials and Labor-Hour Contracts).

(d) No approvals are required for paying overtime premiums under other types of contracts.

(e) Approvals by the agency approving official (see [22.103-4\(a\)](#)) may be for an individual contract, project, program, plant, division, or company, as practical.

(f) During contract performance, contractor requests for overtime exceeding the amount authorized by paragraph (a) of the clause at [52.222-2](#), Payment for Overtime Premiums, shall be submitted as stated in paragraph (b) of the clause to the office administering the contract. That office will review the request and if it approves, send the request to the contracting officer. If the contracting officer determines that the requested overtime should be approved in whole or in part, the contracting officer shall request the approval of the agency's designated approving official and modify paragraph (a) of the clause to reflect any approval.

(g) Overtime premiums at Government expense should not be approved when the contractor is already obligated, without the right to additional compensation, to meet the required delivery date.

(h) When the use of overtime is authorized under a contract, the office administering the contract and the auditor should periodically review the use of overtime to ensure that it is allowable in accordance with the criteria in [Part 31](#). Only overtime premiums for work in those departments, sections, etc., of the contractor's plant that have been individually evaluated and the necessity for overtime confirmed shall be considered for approval.

(i) Approvals for using overtime shall ordinarily be prospective, but, if justified by emergency circumstances, approvals may be retroactive.

**22.103-5 Contract clauses.**

(a) The contracting officer shall insert the clause at [52.222-1](#), Notice to the Government of Labor Disputes, in solicitations and contracts that involve programs or requirements that have been designated under [22.101-1\(e\)](#).

(b) The contracting officer shall include the clause at [52.222-2](#), Payment for Overtime Premiums, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold; unless—

(1) A cost-reimbursement contract for operation of vessels is contemplated; or

(2) A cost-plus- incentive-fee contract that will provide a swing from the target fee of at least plus or minus 3 percent and a contractor's share of at least 10 percent is contemplated.

## Subpart 22.2—Convict Labor

### 22.201 General.

(a) Executive Order 11755, December 29, 1973, as amended by Executive Order 12608, September 9, 1987, and Executive Order 12943, December 13, 1994, states: “The development of the occupational and educational skills of prison inmates is essential to their rehabilitation and to their ability to make an effective return to free society. Meaningful employment serves to develop those skills. It is also true, however, that care must be exercised to avoid either the exploitation of convict labor or any unfair competition between convict labor and free labor in the production of goods and services.” The Executive order does not prohibit the contractor, in performing the contract, from employing—

- (1) Persons on parole or probation;
- (2) Persons who have been pardoned or who have served their terms;
- (3) Federal prisoners; or
- (4) Nonfederal prisoners authorized to work at paid employment in the community under the laws of a jurisdiction listed in the Executive order if—
  - (i) The worker is paid or is in an approved work training program on a voluntary basis;
  - (ii) Representatives of local union central bodies or similar labor union organizations have been consulted;
  - (iii) Paid employment will not—
    - (A) Result in the displacement of employed workers;
    - (B) Be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality; or

(C) Impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those for work of a similar nature in the locality where the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended.

(b) Department of Justice regulations authorize the Director of the Bureau of Justice Assistance to exercise the power and authority vested in the Attorney General by the Executive order to certify and to revoke the certification of work-release laws or regulations (see 28 CFR 0.94-1(b)).

### 22.202 Contract clause.

Insert the clause at [52.222-3](#), Convict Labor, in solicitations and contracts above the micro-purchase threshold, when the contract will be performed in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands; unless—

(a) The contract will be subject to [41 U.S.C. chapter 65](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (see [subpart 22.6](#)), which contains a separate prohibition against the employment of convict labor;

(b) The supplies or services are to be purchased from Federal Prison Industries, Inc. (see [subpart 8.6](#)); or

(c) The acquisition involves the purchase, from any State prison, of finished supplies that may be secured in the open market or from existing stocks, as distinguished from supplies requiring special fabrication.

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## Subpart 22.3—Contract Work Hours and Safety Standards Act

### 22.300 Scope of subpart.

This subpart prescribes policies and procedures for applying the requirements of [40 U.S.C. chapter 37](#), Contract Work Hours and Safety Standards (the statute) to contracts that may require or involve laborers or mechanics. In this subpart, the term “laborers or mechanics” includes apprentices, trainees, helpers, watchmen, guards, firefighters, fireguards, and workmen who perform services in connection with dredging or rock excavation in rivers or harbors, but does not include any employee employed as a seaman.

### 22.301 Statutory requirement.

The statute requires that certain contracts contain a clause specifying that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than 40 hours in any workweek unless paid for all such overtime hours at not less than 1 1/2 times the basic rate of pay.

### 22.302 Liquidated damages and overtime pay.

(a) When an overtime computation discloses under-payments, the responsible contractor or subcontractor must pay the affected employee any unpaid wages and pay liquidated damages to the Government. The contracting officer must assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the statute.

(b) If the contractor or subcontractor fails or refuses to comply with overtime pay requirements of the statute and the funds withheld by Federal agencies for labor standards violations do not cover the unpaid wages due laborers and mechanics and the liquidated damages due the Government, make payments in the following order—

(1) Pay laborers and mechanics the wages they are owed (or prorate available funds if they do not cover the entire amount owed); and

(2) Pay liquidated damages.

(c) If the head of an agency finds that the administratively determined liquidated damages due under paragraph (a) of this section are incorrect, or that the contractor or subcontractor inadvertently violated the statute despite the exercise of due care, the agency head may—

(1) Reduce the amount of liquidated damages assessed for liquidated damages of \$500 or less;

(2) Release the contractor or subcontractor from the liability for liquidated damages of \$500 or less; or

(3) Recommend that the Secretary of Labor reduce or waive liquidated damages over \$500.

(d) After the contracting officer determines the liquidated damages and the contractor makes appropriate payments, disburse any remaining assessments in accordance with agency procedures.

### 22.303 Administration and enforcement.

The procedures and reports required for construction contracts in [subpart 22.4](#) also apply to investigations of alleged violations of the statute on other than construction contracts.

### 22.304 Variations, tolerances, and exemptions.

(a) The Secretary of Labor, under [40 U.S.C. 3706](#), upon the Secretary’s initiative or at the request of any Federal agency, may provide reasonable limitations and allow variations, tolerances, and exemptions to and from any or all provisions of the statute (see 29 CFR 5.15).

(b) The Secretary of Labor may make variations, tolerances, and exemptions from the regulatory requirements of applicable parts of 29 CFR when the Secretary finds that such action is necessary and proper in the public interest or to prevent injustice and undue hardship (see 29 CFR 5.14).

### 22.305 Contract clause.

Insert the clause at [52.222-4](#), Contract Work Hours and Safety Standards—Overtime Compensation, in solicitations and contracts (including, for this purpose, basic ordering agreements) when the contract may require or involve the employment of laborers or mechanics. However, do not include the clause in solicitations and contracts—

(a) Valued at or below \$150,000;

(b) For commercial items;

(c) For transportation or the transmission of intelligence;

(d) To be performed outside the United States, Puerto Rico, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act ([43 U.S.C. 1331](#)) (29 CFR 5.15);

(e) For work to be done solely in accordance with [41 U.S.C. chapter 65](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (see [subpart 22.6](#));

(f) For supplies that include incidental services that do not require substantial employment of laborers or mechanics; or

(g) Exempt under regulations of the Secretary of Labor (29 CFR 5.15).

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## Subpart 22.4—Labor Standards for Contracts Involving Construction

### 22.400 Scope of subpart.

This subpart implements the statutes which prescribe labor standards requirements for contracts in excess of \$2,000 for construction, alteration, or repair, including painting and decorating, of public buildings and public works. (See definition of “Construction, alteration, or repair” in section 22.401.) Labor relations requirements prescribed in other subparts of [Part 22](#) may also apply.

### 22.401 Definitions.

As used in this subpart—

“Apprentice” means a person—

(1) Employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS), or with a State Apprenticeship Agency recognized by OATELS; or

(2) Who is in the first 90 days of probationary employment as an apprentice in an apprenticeship program, and is not individually registered in the program, but who has been certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

“Construction, alteration, or repair” means all types of work done by laborers and mechanics employed by the construction contractor or construction subcontractor on a particular building or work at the site thereof, including without limitations—

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (1)(i) and (ii) of the “site of the work” definition of this section, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the “site of work” definition of this section; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the “site of the work” definition in paragraph (1)(ii) of this section, and the physical place or places where the building or work will remain (paragraph (1)(i) in the “site of the work” definition of this section).

“Laborers or mechanics.”— (1) Means—

(i) Workers, utilized by a contractor or subcontractor at any tier, whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial;

(ii) Apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards statute, watchmen and guards;

(iii) Working foremen who devote more than 20 percent of their time during a workweek performing duties of a laborer or mechanic, and who do not meet the criteria of 29 CFR part 541, for the time so spent; and

(iv) Every person performing the duties of a laborer or mechanic, regardless of any contractual relationship alleged to exist between the contractor and those individuals; and

(2) Does not include workers whose duties are primarily executive, supervisory (except as provided in paragraph (1)(iii) of this definition), administrative, or clerical, rather than manual. Persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 CFR part 541 are not deemed to be laborers or mechanics.

“Public building or public work” means building or work, the construction, prosecution, completion, or repair of which, as defined in this section, is carried on directly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency.

“Site of the work.”— (1) Means—

(i) *The primary site of the work.* The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any.* Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the “primary site of the work” as defined in paragraphs (1)(i) of “the secondary site of the work” as defined in paragraph (1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work”, even if the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

“Trainee” means a person registered and receiving on-the-job training in a construction occupation under a program which has been approved in advance by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS), as meeting its standards for on-the-job training programs and which has been so certified by that Administration.

“Wages” means the basic hourly rate of pay; any contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a bona fide fringe benefit fund, plan, or program; and the rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing bonafide fringe benefits to laborers and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the laborers and mechanics affected. The fringe benefits enumerated in the Construction Wage Rate Requirements statute include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing; unemployment benefits; life insurance, disability insurance, sickness insurance, or accident insurance; vacation or holiday pay; defraying costs of apprenticeship or other similar programs; or other bona fide fringe benefits. Fringe benefits do not include benefits required by other Federal, State, or local law.

#### 22.402 Applicability.

(a) *Contracts for construction work.* (1) The requirements of this subpart apply—

(i) Only if the construction work is, or reasonably can be foreseen to be, performed at a particular site so that wage rates can be determined for the locality, and only to construction work that is performed by laborers and mechanics at the site of the work;

(ii) To dismantling, demolition, or removal of improvements if a part of the construction contract, or if construction at that site is anticipated by another contract as provided in [Subpart 37.3](#);

(iii) To the manufacture or fabrication of construction materials and components conducted in connection with the construction and on the site of the work by the contractor or a subcontractor under a contract otherwise subject to this subpart; and

(iv) To painting of public buildings or public works, whether performed in connection with the original construction or as alteration or repair of an existing structure.

(2) The requirements of this subpart do not apply to—

(i) The manufacturing of components or materials off the site of the work or their subsequent delivery to the site by the commercial supplier or materialman;

(ii) Contracts requiring construction work that is so closely related to research, experiment, and development that it cannot be performed separately, or that is itself the subject of research, experiment, or development (see paragraph (b) of this section for applicability of this subpart to research and development contracts or portions thereof involving construction, alteration, or repair of a public building or public work);

(iii) Employees of railroads operating under collective bargaining agreements that are subject to the Railway Labor Act; or

(iv) Employees who work at contractors’ or subcontractors’ permanent home offices, fabrication shops, or tool yards not located at the site of the work. However, if the employees go to the site of the work and perform construction activities there, the requirements of this subpart are applicable for the actual time so spent, not including travel unless the employees transport materials or supplies to or from the site of the work.

(b) *Nonconstruction contracts involving some construction work.* (1) The requirements of this subpart apply to construction work to be performed as part of nonconstruction contracts (supply, service, research and development, etc.) if—

(i) The construction work is to be performed on a public building or public work;

(ii) The contract contains specific requirements for a substantial amount of construction work exceeding the monetary threshold for application of the Construction Wage Rate Requirements statute (the word “substantial” relates to the type and quantity of construction work to be performed and not merely to the total value of construction work as compared to the total value of the contract); and

(iii) The construction work is physically or functionally separate from, and is capable of being performed on a segregated basis from, the other work required by the contract.

(2) The requirements of this subpart do not apply if—

(i) The construction work is incidental to the furnishing of supplies, equipment, or services (for example, the requirements do not apply to simple installation or alteration at a public building or public work that is incidental to furnishing supplies or equipment under a supply contract; however, if a substantial and segregable amount of construction, alteration, or repair is required, such as for installation of heavy generators or large refrigerator systems or for plant modification or rearrangement, the requirements of this subpart apply); or

(ii) The construction work is so merged with non-construction work or so fragmented in terms of the locations or time spans in which it is to be performed, that it is not capable of being segregated as a separate contractual requirement.

### 22.403 Statutory and regulatory requirements.

#### 22.403-1 Construction Wage Rate Requirements statute.

[40 U.S.C. chapter 31](#), subchapter IV, Wage Rate Requirements (Construction), formerly known as the Davis-Bacon Act, provides that contracts in excess of \$2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the United States, shall contain a clause (see [52.222-6](#)) that no laborer or mechanic employed directly upon the site of the work shall receive less than the prevailing wage rates as determined by the Secretary of Labor.

#### 22.403-2 Copeland Act.

The Copeland (Anti-Kickback) Act ([18 U.S.C. 874](#) and [40 U.S.C. 3145](#)) makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment. The Copeland Act also requires each contractor and subcontractor to furnish weekly a statement of compliance with respect to the wages paid each employee during the preceding week. Contracts subject to the Copeland Act shall

contain a clause (see [52.222-10](#)) requiring contractors and subcontractors to comply with the regulations issued by the Secretary of Labor under the Copeland Act.

#### 22.403-3 Contract Work Hours and Safety Standards.

[40 U.S.C. chapter 37](#), Contract Work Hours and Safety Standards, requires that certain contracts (see [22.305](#)) contain a clause (see [52.222-4](#)) specifying that no laborer or mechanic doing any part of the work contemplated by the contract shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1 1/2 times the basic rate of pay (see [22.301](#)).

#### 22.403-4 Department of Labor regulations.

(a) Under the statutes referred to in this [22.403](#) and Reorganization Plan No. 14 of 1950 (3 CFR 1949-53 Comp, p. 1007), the Secretary of Labor has issued regulations in Title 29, Subtitle A, *Code of Federal Regulations*, prescribing standards and procedures to be observed by the Department of Labor and the Federal contracting agencies. Those standards and procedures applicable to contracts involving construction are implemented in this subpart.

(b) The Department of Labor regulations include—

(1) Part 1, relating to Construction Wage Rate Requirements statute minimum wage rates;

(2) Part 3, relating to the Copeland (Anti-Kickback) Act and requirements for submission of weekly statements of compliance and the preservation and inspection of weekly payroll records;

(3) Part 5, relating to enforcement of the (i) Construction Wage Rate Requirements statute, (ii) Contract Work Hours and Safety Standards statute and (iii) Copeland (Anti-Kickback) Act;

(4) Part 6, relating to rules of practice for appealing the findings of the Administrator, Wage and Hour Division, in enforcement cases under the various labor statutes, and by which Administrative Law Judge hearings are held; and

(5) Part 7, relating to rules of practice by which contractors and other interested parties may appeal to the Department of Labor Administrative Review Board, decisions issued by the Administrator, Wage and Hour Division, or administrative law judges under the various labor statutes.

(c) Refer all questions relating to the application and interpretation of wage determinations (including the classifications therein) and the interpretation of the Department of Labor regulations in this subsection to the Administrator, Wage and Hour Division.

#### 22.404 Construction Wage Rate Requirements statute wage determinations.

The Department of Labor is responsible for issuing wage determinations reflecting prevailing wages, including fringe benefits. The wage determinations apply only to those labor-

ers and mechanics employed by a contractor upon the site of the work including drivers who transport to or from the site materials and equipment used in the course of contract operations. Determinations are issued for different types of construction, such as building, heavy, highway, and residential (referred to as rate schedules), and apply only to the types of construction designated in the determination.

#### 22.404-1 Types of wage determinations.

(a) *General wage determinations.* (1) A general wage determination contains prevailing wage rates for the types of construction designated in the determination, and is used in contracts performed within a specified geographical area. General wage determinations contain no expiration date and remain valid until modified, superseded, or canceled by the Department of Labor. Once incorporated in a contract, a general wage determination normally remains effective for the life of the contract, unless the contracting officer exercises an option to extend the term of the contract (see [22.404-12](#)). These determinations shall be used whenever possible. They are issued at the discretion of the Department of Labor either upon receipt of an agency request or on the Department of Labor's own initiative.

(2) General wage determinations are published on the WDOL website. General wage determinations are effective on the publication date of the wage determination or upon receipt of the wage determination by the contracting agency, whichever occurs first. "Publication" within the meaning of this section shall occur on the first date the wage determination is published on the WDOL. Archived Construction Wage Rate Requirements statute general wage determinations that are no longer current may be accessed in the "Archived DB WD" database on WDOL for information purposes only. Contracting officers may not use an archived wage determination in a contract action without obtaining prior approval of the Department of Labor. To obtain prior approval, contact the Department of Labor, Wage and Hour Division, using <http://www.wdol.gov>, or contact the procurement agency labor advisor listed on <http://www.wdol.gov>.

(b) *Project wage determinations.* A project wage determination is issued at the specific request of a contracting agency. It is used only when no general wage determination applies, and is effective for 180 calendar days from the date of the determination. However, if a determination expires before contract award, it may be possible to obtain an extension to the 180-day life of the determination (see [22.404-5\(b\)\(2\)](#)). Once incorporated in a contract, a project wage determination normally remains effective for the life of the contract, unless the contracting officer exercises an option to extend the term of the contract (see [22.404-12](#)).

#### 22.404-2 General requirements.

(a) The contracting officer must incorporate only the appropriate wage determinations in solicitations and contracts and must designate the work to which each determination or part thereof applies. The contracting officer must not include project wage determinations in contracts or options other than those for which they are issued. When exercising an option to extend the term of a contract, the contracting officer must select the most current wage determination(s) from the same schedule(s) as the wage determination(s) incorporated into the contract.

(b) If the wage determination is a general wage determination or a project wage determination containing more than one rate schedule, the contracting officer shall either include only the rate schedules that apply to the particular types of construction (building, heavy, highway, etc.) or include the entire wage determination and clearly indicate the parts of the work to which each rate schedule shall be applied. Inclusion by reference is not permitted.

(c) The Wage and Hour Division has issued the following general guidelines for use in selecting the proper schedule(s) of wage rates:

(1) *Building* construction is generally the construction of sheltered enclosures with walk-in access, for housing persons, machinery, equipment, or supplies. It typically includes all construction of such structures, installation of utilities and equipment (both above and below grade level), as well as incidental grading, utilities and paving, unless there is an established area practice to the contrary.

(2) *Residential* construction is generally the construction, alteration, or repair of single family houses or apartment buildings of no more than four (4) stories in height, and typically includes incidental items such as site work, parking areas, utilities, streets and sidewalks, unless there is an established area practice to the contrary.

(3) *Highway* construction is generally the construction, alteration, or repair of roads, streets, highways, runways, taxiways, alleys, parking areas, and other similar projects that are not incidental to "building," "residential," or "heavy" construction.

(4) *Heavy* construction includes those projects that are not properly classified as either "building," "residential," or "highway," and is of a catch-all nature. Such heavy projects may sometimes be distinguished on the basis of their individual characteristics, and separate schedules issued (e.g., "dredging," "water and sewer line," "dams," "flood control," etc.).

(5) When the nature of a project is not clear, it is necessary to look at additional factors, with primary consideration given to locally established area practices. If there is any

(4) If an effective modification of the wage determination for the primary site of the work is received by the contracting officer after bid opening, but before award, the contracting officer shall follow the procedures in [22.404-5\(b\)\(2\)\(i\)](#) or (ii).

(5) If an effective modification is received by the contracting officer after award, the contracting officer shall modify the contract to incorporate the wage modification retroactive to the date of award and equitably adjust the contract price for any increased or decreased cost of performance resulting from any changed wage rates. If the modification does not change any wage rates and would not warrant contract price adjustment, the contracting officer shall modify the contract to include the number and date of the modification.

(6) If an award is not made within 90 days after bid opening, any modification to a general wage determination which is published on the WDOL before award, shall be effective for any resultant contract unless an extension of the 90-day period is obtained from the Administrator, Wage and Hour Division. An agency head may request such an extension from the Administrator. The request must be supported by a written finding, which shall include a brief statement of factual support, that the extension is necessary and proper in the public interest to prevent injustice, undue hardship, or to avoid serious impairment in the conduct of Government business. The contracting officer shall follow the procedures in [22.404-5\(b\)\(2\)](#).

(c) The following applies when contracting by negotiation:

(1) All written actions modifying wage determinations received by the contracting agency before contract award, or modifications to general wage determinations published on the WDOL before award, shall be effective.

(2) If an effective wage modification is received by the contracting officer before award, the contracting officer shall follow the procedures in [22.404-5\(c\)\(3\)](#) or (4).

(3) If an effective wage modification is received by the contracting officer after award, the contracting officer shall follow the procedures in [22.404-6\(b\)\(5\)](#).

(d) The following applies when modifying a contract to exercise an option to extend the term of a contract:

(1) A modified wage determination is effective if—

(i) The contracting agency receives a written action from the Department of Labor prior to exercise of the option, or within 45 days after submission of a wage determination request ([22.404-3\(c\)](#)), whichever is later; or

(ii) The Department of Labor publishes the modification to a general wage determination on the WDOL before exercise of the option.

(2) If the contracting officer receives an effective modified wage determination either before or after execution of the contract modification to exercise the option, the contracting officer must modify the contract to incorporate the modi-

fied wage determination, and any changed wage rates, effective as of the date that the option to extend was effective.

#### **22.404-7 Correction of wage determinations containing clerical errors.**

Upon the Department of Labor's own initiative or at the request of the contracting agency, the Administrator, Wage and Hour Division, may correct any wage determination found to contain clerical errors. Such corrections will be effective immediately, and will apply to any solicitation or active contract. Before contract award, the contracting officer must follow the procedures in [22.404-5\(b\)\(1\)](#) or (2)(i) or (ii) in sealed bidding, and the procedures in [22.404-5\(c\)\(3\)](#) or (4) in negotiations. After contract award, the contracting officer must follow the procedures at [22.404-6\(b\)\(5\)](#), except that for contract modifications to exercise an option to extend the term of the contract, the contracting officer must follow the procedures at [22.404-6\(d\)\(2\)](#).

#### **22.404-8 Notification of improper wage determination before award.**

(a) The following written notifications by the Department of Labor shall be effective immediately without regard to [22.404-6](#) if received by the contracting officer prior to award:

(1) A solicitation includes the wrong wage determination or the wrong rate schedule; or

(2) A wage determination is withdrawn by the Administrative Review Board.

(b) In sealed bidding, the contracting officer shall proceed in accordance with the following:

(1) If the notification of an improper wage determination for the primary site of the work reaches the contracting officer before bid opening, the contracting officer shall postpone the bid opening date, if necessary, to allow a reasonable time to—

(i) Obtain the appropriate determination if a new wage determination is required;

(ii) Amend the solicitation to incorporate the determination (or rate schedule); and

(iii) Permit bidders to amend their bids. If the appropriate wage determination does not change any wage rates and would not warrant amended bids, the contracting officer shall amend the solicitation to include the number and date of the new determination.

(2) If the notification of an improper wage determination for the primary site of the work reaches the contracting officer after bid opening but before award, the contracting officer shall delay awarding the contract, if necessary, and if required, obtain the appropriate wage determination. The appropriate wage determination shall be processed in accordance with [22.404-5\(b\)\(2\)\(i\)](#) or (ii).

(c) In negotiated acquisitions, the contracting officer shall delay award, if necessary, and process the notification of an

improper wage determination for the primary site of the work in the manner prescribed for a new wage determination at [22.404-5\(c\)\(3\)](#).

**22.404-9 Award of contract without required wage determination.**

(a) If a contract is awarded without the required wage determination (*i.e.*, incorporating no determination, containing a clearly inapplicable general wage determination, or containing a project determination which is inapplicable because of an inaccurate description of the project or its location), the contracting officer shall initiate action to incorporate the required determination in the contract immediately upon discovery of the error. If a required wage determination (valid determination in effect on the date of award) is not available, the contracting officer shall expeditiously request a wage determination from the Department of Labor, including a statement explaining the circumstances and giving the date of the contract award.

(b) The contracting officer shall—

(1) Modify the contract to incorporate the required wage determination (retroactive to the date of award) and equitably adjust the contract price if appropriate; or

(2) Terminate the contract.

**22.404-10 Posting wage determinations and notice.**

The contractor must keep a copy of the applicable wage determination (and any approved additional classifications) posted at the site of the work in a prominent place where the workers can easily see it. The contracting officer shall furnish to the contractor, Department of Labor Form WH-1321, Notice to Employees Working on Federal and Federally Financed Construction Projects, for posting with the wage rates. The name, address, and telephone number of the Government officer responsible for the administration of the contract shall be indicated in the poster to inform workers to whom they may submit complaints or raise questions concerning labor standards.

**22.404-11 Wage determination appeals.**

The Secretary of Labor has established an Administrative Review Board which decides appeals of final decisions made by the Department of Labor concerning Construction Wage Rate Requirements statute wage determinations. A contracting agency or other interested party may file a petition for review under the procedures in 29 CFR Part 7 if reconsideration by the Administrator has been sought pursuant to 29 CFR 1.8 and denied.

**22.404-12 Labor standards for contracts containing construction requirements and option provisions that extend the term of the contract.**

(a) Each time the contracting officer exercises an option to extend the term of a contract for construction, or a contract that includes substantial and segregable construction work, the contracting officer must modify the contract to incorporate the most current wage determination.

(b) If a contract with an option to extend the term of the contract has indefinite-delivery or indefinite-quantity construction requirements, the contracting officer must incorporate the wage determination incorporated into the contract at the exercise of the option into task orders issued during that option period. The wage determination will be effective for the complete period of performance of those task orders without further revision.

(c) The contracting officer must include in fixed-price contracts a clause that specifies one of the following methods, suitable to the interest of the Government, to provide an allowance for any increases or decreases in labor costs that result from the inclusion of the current wage determination at the exercise of an option to extend the term of the contract:

(1) The contracting officer may provide the offerors the opportunity to bid or propose separate prices for each option period. The contracting officer must not further adjust the contract price as a result of the incorporation of a new or revised wage determination at the exercise of each option to extend the term of the contract. Generally, this method is used in construction-only contracts (with options to extend the term) that are not expected to exceed a total of 3 years.

(2) The contracting officer may include in the contract a separately specified pricing method that permits an adjustment to the contract price or contract labor unit price at the exercise of each option to extend the term of the contract. At the time of option exercise, the contracting officer must incorporate a new wage determination into the contract, and must apply the specific pricing method to calculate the contract price adjustment. An example of a contract pricing method that the contracting officer might separately specify is incorporation in the solicitation and resulting contract of the pricing data from an annually published unit pricing book (*e.g.*, the U.S. Army Computer-Aided Cost Estimating System or similar commercial product), which is multiplied in the contract by a factor proposed by the contractor (*e.g.*, .95 or 1.1). At option exercise, the contracting officer incorporates the pricing data from the latest annual edition of the unit pricing book, multiplied by the factor agreed to in the basic contract. The contracting officer must not further adjust the contract price as a result of the incorporation of the new or revised wage determination.



(3) The contracting officer may provide for a contract price adjustment based solely on a percentage rate determined by the contracting officer using a published economic indicator incorporated into the solicitation and resulting contract. At the exercise of each option to extend the term of the contract, the contracting officer will apply the percentage rate, based on the economic indicator, to the portion of the contract price or contract unit price designated in the contract clause as labor costs subject to the provisions of the Construction Wage Rate Requirements statute. The contracting officer must insert 50 percent as the estimated portion of the contract price that is labor unless the contracting officer determines, prior to issuance of the solicitation, that a different percentage is more appropriate for a particular contract or requirement. This percentage adjustment to the designated labor costs must be the only adjustment made to cover increases in wages and/or benefits resulting from the incorporation of a new or revised wage determination at the exercise of the option.

(4) The contracting officer may provide a computation method to adjust the contract price to reflect the contractor's actual increase or decrease in wages and fringe benefits (combined) to the extent that the increase is made to comply with, or the decrease is voluntarily made by the contractor as a result of incorporation of, a new or revised wage determination at the exercise of the option to extend the term of the contract. Generally, this method is appropriate for use only if contract requirements are predominately services subject to the Service Contract Labor Standards statute and the construction requirements are substantial and segregable. The methods used to adjust the contract price for the service requirements and the construction requirements would be similar.

#### 22.405 [Reserved]

#### 22.406 Administration and enforcement.

##### 22.406-1 Policy.

(a) *General.* Contracting agencies are responsible for ensuring the full and impartial enforcement of labor standards in the administration of construction contracts. Contracting agencies shall maintain an effective program that shall include—

(1) Ensuring that contractors and subcontractors are informed, before commencement of work, of their obligations under the labor standards clauses of the contract;

(2) Adequate payroll reviews, on-site inspections, and employee interviews to determine compliance by the contractor and subcontractors, and prompt initiation of corrective action when required;

(3) Prompt investigation and disposition of complaints; and

(4) Prompt submission of all reports required by this subpart.

(b) *Preconstruction letters and conferences.* Before construction begins, the contracting officer shall inform the contractor of the labor standards clauses and wage determination requirements of the contract and of the contractor's and any subcontractor's responsibilities under the contract. Unless it is clear that the contractor is fully aware of the requirements, the contracting officer shall issue an explanatory letter and/or arrange a conference with the contractor promptly after award of the contract.

##### 22.406-2 Wages, fringe benefits, and overtime.

(a) In computing wages paid to a laborer or mechanic, the contractor may include only the following items:

(1) Amounts paid in cash to the laborer or mechanic, or deducted from payments under the conditions set forth in 29 CFR 3.5.

(2) Contributions (except those required by Federal, State, or local law) the contractor makes irrevocably to a trustee or a third party under any bona fide plan or program to provide for medical or hospital care, pensions, compensation for injuries or illness resulting from occupational activity, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, or any other bona fide fringe benefit.

(3) Other contributions or anticipated costs for bona fide fringe benefits to the extent expressly approved by the Secretary of Labor.

(b)(1) The contractor may satisfy the obligation under the clause at [52.222-6](#), Construction Wage Rate Requirements, by providing wages consisting of any combination of contributions or costs as specified in paragraph (a) of this subsection, if the total cost of the combination is not less than the total of the basic hourly rate and fringe benefits payments prescribed in the wage determination for the classification of laborer or mechanic concerned.

(2) Wages provided by the contractor and fringe benefits payments required by the wage determination may include items that are not stated as exact cash amounts. In these cases, the hourly cash equivalent of the cost of these items shall be determined by dividing the employer's contributions or costs by the employee's hours worked during the period covered by the costs or contributions. For example, if a contractor pays a monthly health insurance premium of \$112 for a particular employee who worked 125 hours during the month, the hourly cash equivalent is determined by dividing \$112 by 125 hours, which equals \$0.90 per hour. Similarly, the calculation of hourly cash equivalent for nine paid holidays per year for an employee with a hourly rate of pay of \$5.00 is determined by multiplying \$5.00 by 72 (9 days at 8 hours each), and dividing

the result of \$360 by the number of hours worked by the employee during the year. If the interested parties (contractor, contracting officer, and employees or their representative) cannot agree on the cash equivalent, the contracting officer shall submit the question for final determination to the Department of Labor as prescribed by agency procedures. The information submitted shall include—

(i) A comparison of the payments, contributions, or costs in the wage determination with those made or proposed as equivalents by the contractor; and

(ii) The comments and recommendations of the contracting officer.

(c) In computing required overtime payments, (*i.e.*, 1 1/2 times the basic hourly rate of pay) the contractor shall use the basic hourly rate of pay in the wage determination, or the basic hourly rate actually paid by the contractor, if higher. The basic rate of pay includes employee contributions to fringe benefits, but excludes the contractor's contributions, costs, or payment of cash equivalents for fringe benefits. Overtime shall not be computed on a rate lower than the basic hourly rate in the wage determination.

#### 22.406-3 Additional classifications.

(a) If any laborer or mechanic is to be employed in a classification that is not listed in the wage determination applicable to the contract, the contracting officer, pursuant to the clause at [52.222-6](#), Construction Wage Rate Requirements, shall require that the contractor submit to the contracting officer, [Standard Form \(SF\) 1444](#), Request for Authorization of Additional Classification and Rate, which, along with other pertinent data, contains the proposed additional classification and minimum wage rate including any fringe benefits payments.

(b) Upon receipt of [SF 1444](#) from the contractor, the contracting officer shall review the request to determine whether it meets the following criteria:

(1) The classification is appropriate and the work to be performed by the classification is not performed by any classification contained in the applicable wage determination.

(2) The classification is utilized in the area by the construction industry.

(3) The proposed wage rate, including any fringe benefits, bears a reasonable relationship to the wage rates in the wage determination in the contract.

(c)(1) If the criteria in paragraph (b) of this subsection are met and the contractor and the laborers or mechanics to be employed in the additional classification (if known) or their representatives agree to the proposed additional classification, and the contracting officer approves, the contracting officer shall submit a report (including a copy of [SF 1444](#)) of that action to the Administrator, Wage and Hour Division, for

approval, modification, or disapproval of the additional classification and wage rate (including any amount designated for fringe benefits); or

(2) If the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed additional classification, or if the criteria are not met, the contracting officer shall submit a report (including a copy of [SF 1444](#)) giving the views of all interested parties and the contracting officer's recommendation to the Administrator, Wage and Hour Division, for determination of appropriate classification and wage rate.

(d)(1) Within 30 days of receipt of the report, the Administrator, Wage and Hour Division, will complete action and so advise the contracting officer, or will notify the contracting officer that additional time is necessary.

(2) Upon receipt of the Department of Labor's action, the contracting officer shall forward a copy of the action to the contractor, directing that the classification and wage rate be posted in accordance with paragraph (a) of the clause at [52.222-6](#) and that workers in the affected classification receive no less than the minimum rate indicated from the first day on which work under the contract was performed in the classification.

(e) In each option to extend the term of the contract, if any laborer or mechanic is to be employed during the option in a classification that is not listed (or no longer listed) on the wage determination incorporated in that option, the contracting officer must require that the contractor submit a request for conformance using the procedures noted in paragraphs (a) through (d) of this section.

#### 22.406-4 Apprentices and trainees.

(a) The contracting officer shall review the contractor's employment and payment records of apprentices and trainees made available pursuant to the clause at [52.222-8](#), Payrolls and Basic Records, to ensure that the contractor has complied with the clause at [52.222-9](#), Apprentices and Trainees.

(b) If a contractor has classified employees as apprentices, trainees, or helpers without complying with the requirements of the clause at [52.222-9](#), the contracting officer shall reject the classification and require the contractor to pay the affected employees at the rates applicable to the classification of the work actually performed.

#### 22.406-5 Subcontracts.

In accordance with the requirements of the clause at [52.222-11](#), Subcontracts (Labor Standards), the contractor and subcontractors at any tier are required to submit a fully executed [SF 1413](#), Statement and Acknowledgment, upon award of each subcontract.

**22.406-6 Payrolls and statements.**

(a) *Submission.* In accordance with the clause at [52.222-8](#), Payrolls and Basic Records, the contractor must submit or cause to be submitted, within 7 calendar days after the regular payment date of the payroll week covered, for the contractor and each subcontractor, (1) copies of weekly payrolls applicable to the contract, and (2) weekly payroll statements of compliance. The contractor may use the Department of Labor [Form WH-347](#), Payroll (For Contractor's Optional Use), or a similar form that provides the same data and identical representation.

(b) *Withholding for nonsubmission.* If the contractor fails to submit copies of its or its subcontractors' payrolls promptly, the contracting officer shall, from any payment due to the contractor, withhold approval of an amount that the contracting officer considers necessary to protect the interest of the Government and the employees of the contractor or any subcontractor.

(c) *Examination.* (1) The contracting officer shall examine the payrolls and payroll statements to ensure compliance with the contract and any statutory or regulatory requirements. Particular attention should be given to—

- (i) The correctness of classifications and rates;
- (ii) Fringe benefits payments;
- (iii) Hours worked;
- (iv) Deductions; and

(v) Disproportionate employment ratios of laborers, apprentices or trainees to journeymen.

(2) Fringe benefits payments, contributions made, or costs incurred on other than a weekly basis shall be considered as a part of weekly payments to the extent they are creditable to the particular weekly period involved and are otherwise acceptable.

(d) *Preservation.* The contracting agency shall retain payrolls and statements of compliance for 3 years after completion of the contract and make them available when requested by the Department of Labor at any time during that period. Submitted payrolls shall not be returned to a contractor or subcontractor for any reason, but copies thereof may be furnished to the contractor or subcontractor who submitted them, or to a higher tier contractor or subcontractor.

(e) *Disclosure of payroll records.* Contractor payroll records in the Government's possession must be carefully protected from any public disclosure which is not required by law, since payroll records may contain information in which the contractor's employees have a privacy interest, as well as information in which the contractor may have a proprietary interest that the Government may be obliged to protect. Questions concerning release of this information may involve the Freedom of Information Act (FOIA).

**22.406-7 Compliance checking.**

(a) *General.* The contracting officer shall make checks and investigations on all contracts covered by this subpart as may be necessary to ensure compliance with the labor standards requirements of the contract.

(b) *Regular compliance checks.* Regular compliance checking includes the following activities:

(1) Employee interviews to determine correctness of classifications, rates of pay, fringe benefits payments, and hours worked. (See [Standard Form 1445](#).)

(2) On-site inspections to check type of work performed, number and classification of workers, and fulfillment of posting requirements.

(3) Payroll reviews to ensure that payrolls of prime contractors and subcontractors have been submitted on time and are complete and in compliance with contract requirements.

(4) Comparison of the information in this paragraph (b) with available data, including daily inspector's report and daily logs of construction, to ensure consistency.

(c) *Special compliance checks.* Situations that may require special compliance checks include —

(1) Inconsistencies, errors, or omissions detected during regular compliance checks; or

(2) Receipt of a complaint alleging violations. If the complaint is not specific enough, the complainant shall be so advised and invited to submit additional information.

**22.406-8 Investigations.**

Conduct labor standards investigations when available information indicates such action is warranted. In addition, the Department of Labor may conduct an investigation on its own initiative or may request a contracting agency to do so.

(a) *Contracting agency responsibilities.* Conduct an investigation when a compliance check indicates that substantial or willful violations may have occurred or violations have not been corrected.

(1) The investigation must—

(i) Include all aspects of the contractor's compliance with contract labor standards requirements;

(ii) Not be limited to specific areas raised in a complaint or uncovered during compliance checks; and

(iii) Use personnel familiar with labor laws and their application to contracts.

(2) Do not disclose contractor employees' oral or written statements taken during an investigation or the employee's identity to anyone other than an authorized Government official without that employee's prior signed consent.

(3) Send a written request to the Administrator, Wage and Hour Division, to obtain—

(i) Investigation and enforcement instructions; or

(ii) Available pertinent Department of Labor files.

(4) Obtain permission from the Department of Labor before disclosing material obtained from Labor Department

files, other than computations of back wages and liquidated damages and summaries of back wages due, to anyone other than Government contract administrators.

(b) *Investigation report.* The contracting officer must review the investigation report on receipt and make preliminary findings. The contracting officer normally must not base adverse findings solely on employee statements that the employee does not wish to have disclosed. However, if the investigation establishes a pattern of possible violations that are based on employees' statements that are not authorized for disclosure, the pattern itself may support a finding of noncompliance.

(c) *Contractor Notification.* After completing the review, the contracting officer must—

(1) Provide the contractor any written preliminary findings and proposed corrective actions, and notice that the contractor has the right to request that the basis for the findings be made available and to submit written rebuttal information.

(2) Upon request, provide the contractor with rationale for the findings. However, under no circumstances will the contracting officer permit the contractor to examine the investigation report. Also, the contracting officer must not disclose the identity of any employee who filed a complaint or who was interviewed, without the prior consent of the employee.

(3)(i) The contractor may rebut the findings in writing within 60 days after it receives a copy of the preliminary findings. The rebuttal becomes part of the official investigation record. If the contractor submits a rebuttal, evaluate the preliminary findings and notify the contractor of the final findings.

(ii) If the contracting officer does not receive a timely rebuttal, the contracting officer must consider the preliminary findings final.

(4) If appropriate, request the contractor to make restitution for underpaid wages and assess liquidated damages. If the request includes liquidated damages, the request must state that the contractor has 60 days to request relief from such assessment.

(d) *Contracting officer's report.* After taking the actions prescribed in paragraphs (b) and (c) of this subsection—

(1) The contracting officer must prepare and forward a report of any violations, including findings and supporting evidence, to the agency head. [Standard Form 1446](#), Labor Standards Investigation Summary Sheet, is the first page of the report; and

(2) The agency head must process the report as follows:

(i) The contracting officer must send a detailed enforcement report to the Administrator, Wage and Hour Division, within 60 days after completion of the investigation, if—

(A) A contractor or subcontractor underpaid by \$1,000 or more;

(B) The contracting officer believes that the violations are aggravated or willful (or there is reason to believe that the contractor has disregarded its obligations to employees and subcontractors under the Construction Wage Rate Requirements statute);

(C) The contractor or subcontractor has not made restitution; or

(D) Future compliance has not been assured.

(ii) If the Department of Labor expressly requested the investigation and none of the conditions in paragraph (d)(2)(i) of this subsection exist, submit a summary report to the Administrator, Wage and Hour Division. The report must include—

(A) A summary of any violations;

(B) The amount of restitution paid;

(C) The number of workers who received restitution;

(D) The amount of liquidated damages assessed under the Contract Work Hours and Safety Standards statute;

(E) Corrective measures taken; and

(F) Any information that may be necessary to review any recommendations for an appropriate adjustment in liquidated damages.

(iii) If none of the conditions in paragraphs (d)(2)(i) or (ii) of this subsection are present, close the case and retain the report in the appropriate contract file.

(iv) If substantial evidence is found that violations are willful and in violation of a criminal statute, (generally [18 U.S.C. 874](#) or [1001](#)), forward the report (supplemented if necessary) to the Attorney General of the United States for prosecution if the facts warrant. Notify the Administrator, Wage and Hour Division, when the report is forwarded for the Attorney General's consideration.

(e) *Department of Labor investigations.* The Department of Labor will furnish the contracting officer an enforcement report detailing violations found and any corrective action taken by the contractor, in investigations that disclose—

(1) Underpayments totaling \$1,000 or more;

(2) Aggravated or willful violations (or, when the contracting officer believes that the contractor has disregarded its obligations to employees and subcontractors under the Construction Wage Rate Requirements statute); or

(3) Potential assessment of liquidated damages under the Contract Work Hours and Safety Standards statute.

(f) *Other investigations.* The Department of Labor will provide a letter summarizing the findings of the investigation to the contracting officer for all investigations that are not described in paragraph (e) of this subsection.

#### **22.406-9 Withholding from or suspension of contract payments.**

(a) *Withholding from contract payments.* If the contracting officer believes a violation exists (see [22.406-8](#)), or upon

request of the Department of Labor, the contracting officer must withhold from payments due the contractor an amount equal to the estimated wage underpayment and estimated liquidated damages due the United States under the Contract Work Hours and Safety Standards statute. (See [22.302](#).)

(1) If the contracting officer believes a violation exists or upon request of the Department of Labor, the contracting officer must withhold funds from any current Federal contract or Federally assisted contract with the same prime contractor that is subject to either Construction Wage Rate Requirements statute or Contract Work Hours and Safety Standards statute requirements.

(2) If a subsequent investigation confirms violations, the contracting officer must adjust the withholding as necessary. However, if the Department of Labor requested the withholding, the contracting officer must not reduce or release the withholding without written approval of the Department of Labor.

(3) Use withheld funds as provided in paragraph (c) of this subsection to satisfy assessed liquidated damages, and unless the contractor makes restitution, validated wage underpayments.

(b) *Suspension of contract payments.* If a contractor or subcontractor fails or refuses to comply with the labor standards clauses of the Construction Wage Rate Requirements statute and related statutes, the agency, upon its own action or upon the written request of the Department of Labor, must suspend any further payment, advance, or guarantee of funds until the violations cease or until the agency has withheld sufficient funds to compensate employees for back wages, and to cover any liquidated damages due.

(c) *Disposition of contract payments withheld or suspended—*

(1) *Forwarding wage underpayments to the Comptroller General.* Upon final administrative determination, if the contractor or subcontractor has not made restitution, the contracting officer must forward to the appropriate disbursing office [Standard Form \(SF\) 1093](#), Schedule of Withholdings Under the Construction Wage Rate Requirements statute ([40 U.S.C. chapter 37, subchapter IV](#)) and/or Contract Work Hours and Safety Standards statute ([40 U.S.C. chapter 37](#)). Attach to the [SF 1093](#) a list of the name, social security number, and last known address of each affected employee; the amount due each employee; employee claims if feasible; and a brief rationale for restitution. Also, the contracting officer must indicate if restitution was not made because the employee could not be located. The Government may assist underpaid employees in preparation of their claims. The disbursing office must submit the [SF 1093](#) with attached additional data and the funds withheld (by check) to the Comptroller General (Claims Section).

(2) *Returning of withheld funds to contractor.* When funds withheld exceed the amount required to satisfy vali-

dated wage underpayments and assessed liquidated damages, return the funds to the contractor.

(3) *Limitation on forwarding or returning funds.* If the Department of Labor requested the withholding or if the findings are disputed (see [22.406-10\(e\)](#)), the contracting officer must not forward the funds to the Comptroller General, or return them to the contractor without approval by the Department of Labor.

(4) *Liquidated damages.* Upon final administrative determination, the contracting officer must dispose of funds withheld or collected for liquidated damages in accordance with agency procedures.

#### **22.406-10 Disposition of disputes concerning construction contract labor standards enforcement.**

(a) The areas of possible differences of opinion between contracting officers and contractors in construction contract labor standards enforcement include—

- (1) Misclassification of workers;
- (2) Hours of work;
- (3) Wage rates and payment;
- (4) Payment of overtime;
- (5) Withholding practices; and

(6) The applicability of the labor standards requirements under varying circumstances.

(b) Generally, these differences are settled administratively at the project level by the contracting agency. If necessary, these differences may be settled with assistance from the Department of Labor.

(c) When requesting the contractor to take corrective action in labor violation cases, the contracting officer shall inform the contractor of the following:

(1) Disputes concerning the labor standards requirements of the contract are handled under the contract clause at [52.222-14](#), Disputes Concerning Labor Standards, and not under the clause at [52.233-1](#), Disputes.

(2) The contractor may appeal the contracting officer's findings or part thereof by furnishing the contracting officer a complete statement of the reasons for the disagreement with the findings.

(d) The contracting officer shall promptly transmit the contracting officer's findings and the contractor's statement to the Administrator, Wage and Hour Division.

(e) The Administrator, Wage and Hour Division, will respond directly to the contractor or subcontractor, with a copy to the contracting agency. The contractor or subcontractor may appeal the Administrator's findings in accordance with the procedures outlined in Labor Department Regulations (29 CFR 5.11). Hearings before administrative law judges are conducted in accordance with 29 CFR Part 6, and hearings before the Labor Department Administrative Review Board are conducted in accordance with 29 CFR Part 7.

(f) The Administrator, Wage and Hour Division, may institute debarment proceedings against the contractor or subcontractor if the Administrator finds reasonable cause to believe that the contractor or subcontractor has committed willful or aggravated violations of the Contract Work Hours and Safety Standards statute or the Copeland (Anti-Kickback) Act, or any of the applicable statutes listed in 29 CFR 5.1 other than the Construction Wage Rate Requirements statute, or has committed violations of the Construction Wage Rate Requirements statute that constitute a disregard of its obligations to employees or subcontractors under [40 U.S.C. 3144](#).

#### 22.406-11 Contract terminations.

If a contract or subcontract is terminated for violation of the labor standards clauses, the contracting agency shall submit a report to the Administrator, Wage and Hour Division, and the Comptroller General. The report shall include—

- (a) The number of the terminated contract;
- (b) The name and address of the terminated contractor or subcontractor;
- (c) The name and address of the contractor or subcontractor, if any, who is to complete the work;
- (d) The amount and number of the replacement contract, if any; and
- (e) A description of the work.

#### 22.406-12 Cooperation with the Department of Labor.

(a) The contracting agency shall cooperate with representatives of the Department of Labor in the inspection of records, interviews with workers, and all other aspects of investigations undertaken by the Department of Labor. When requested, the contracting agency shall furnish to the Secretary of Labor any available information on contractors, subcontractors, current and previous contracts, and the nature of the contract work.

(b) If a Department of Labor representative undertakes an investigation at a construction project, the contracting officer shall inquire into the scope of the investigation, and request to be notified immediately of any violations discovered under the Construction Wage Rate Requirements statute, the Contract Work Hours and Safety Standards statute, or the Copeland (Anti-Kickback) Act.

#### 22.406-13 Semiannual enforcement reports.

A semiannual report on compliance with and enforcement of the construction labor standards requirements of the Construction Wage Rate Requirements statute and Contract Work Hours and Safety Standards statute is required from each contracting agency. The reporting periods are October 1 through March 31 and April 1 through September 30. The reports shall only contain information as to the enforcement actions of the contracting agency and shall be prepared as prescribed in Department of Labor memoranda and submitted to the

Department of Labor within 30 days after the end of the reporting period. This report has been assigned interagency report control number 1482-DOL-SA.

#### 22.407 Solicitation provision and contract clauses.

(a) Insert the following clauses in solicitations and contracts in excess of \$2,000 for construction within the United States:

- (1) [52.222-6](#), Construction Wage Rate Requirements.
- (2) [52.222-7](#), Withholding of Funds.
- (3) [52.222-8](#), Payrolls and Basic Records.
- (4) [52.222-9](#), Apprentices and Trainees.
- (5) [52.222-10](#), Compliance with Copeland Act Requirements.
- (6) [52.222-11](#), Subcontracts (Labor Standards).
- (7) [52.222-12](#), Contract Termination-Debarment.
- (8) [52.222-13](#), Compliance with Construction Wage Rate Requirements and Related Regulations.
- (9) [52.222-14](#), Disputes Concerning Labor Standards.
- (10) [52.222-15](#), Certification of Eligibility.

(b) Insert the clause at [52.222-16](#), Approval of Wage Rates, in solicitations and contracts in excess of \$2,000 for cost-reimbursement construction to be performed within the United States, except for contracts with a State or political subdivision thereof.

(c) A contract that is not primarily for construction may contain a requirement for some construction work to be performed in the United States. If under [22.402](#)(b) the requirements of this subpart apply to the construction work, insert in such solicitations and contracts the applicable construction labor standards clauses required in this section and identify the item or items of construction work to which the clauses apply.

(d) [Reserved]

(e) Insert the clause at [52.222-30](#), Construction Wage Rate Requirements—Price Adjustment (None or Separately Specified Pricing Method), in solicitations and contracts if the contract is expected to be—

(1) A fixed-price contract subject to the Construction Wage Rate Requirements statute that will contain option provisions by which the contracting officer may extend the term of the contract, and the contracting officer determines the most appropriate contract price adjustment method is the method at [22.404-12](#)(c)(1) or (2); or

(2) A cost-reimbursable type contract subject to the Construction Wage Rate Requirements statute that will contain option provisions by which the contracting officer may extend the term of the contract.

(f) Insert the clause at [52.222-31](#), Construction Wage Rate Requirements-Price Adjustment (Percentage Method), in solicitations and contracts if the contract is expected to be a fixed-price contract subject to the Construction Wage Rate Requirements statute that will contain option provisions by

which the contracting officer may extend the term of the contract, and the contracting officer determines the most appropriate contract price adjustment method is the method at [22.404-12\(c\)\(3\)](#).

(g) Insert the clause at [52.222-32](#), Construction Wage Rate Requirements-Price Adjustment (Actual Method), in solicitations and contracts if the contract is expected to be a fixed-price contract subject to the Construction Wage Rate Requirements statute that will contain option provisions by which the

contracting officer may extend the term of the contract, and the contracting officer determines the most appropriate method to establish contract price is the method at [22.404-12\(c\)\(4\)](#).

(h) Insert the provision at [52.222-5](#), Construction Wage Rate Requirements—Secondary Site of the Work, in solicitations in excess of \$2,000 for construction within the United States.

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## Subpart 22.6—Contracts For Materials, Supplies, Articles, and Equipment Exceeding \$15,000

### 22.601 [Reserved]

### 22.602 Statutory requirements.

Except for the exemptions at [22.604](#), all contracts subject to [41 U.S.C. chapter 65](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (the statute), and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation (all the stock of which is beneficially owned by the United States) for the manufacture or furnishing of materials, supplies, articles, and equipment (referred to in this subpart as supplies) in any amount exceeding \$15,000, shall include or incorporate by reference the stipulations required by the statute pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions.

### 22.603 Applicability.

The requirements in [22.602](#) apply to contracts (including for this purpose, indefinite-delivery contracts, basic ordering agreements, and blanket purchase agreements) and subcontracts under Section 8(a) of the Small Business Act, for the manufacture or furnishing of supplies that—

- (a) Will be performed in the United States, Puerto Rico, or the U.S. Virgin Islands;
- (b) Exceed or may exceed \$15,000; and
- (c) Are not exempt under [22.604](#).

### 22.604 Exemptions.

#### 22.604-1 Statutory exemptions.

Contracts for acquisition of the following supplies are exempt from the statute:

- (a) Any item in those situations where the contracting officer is authorized by the express language of a statute to purchase “in the open market” generally (such as commercial items, see [Part 12](#)); or where a specific purchase is made under the conditions described in [6.302-2](#) in circumstances where immediate delivery is required by the public exigency.
- (b) Perishables, including dairy, livestock, and nursery products.
- (c) Agricultural or farm products processed for first sale by the original producers.
- (d) Agricultural commodities or the products thereof purchased under contract by the Secretary of Agriculture.

#### 22.604-2 Regulatory exemptions.

(a) Contracts for the following acquisitions are fully exempt from the statute (see 41 CFR 50-201.603):

- (1) Public utility services.
- (2) Supplies manufactured outside the United States, Puerto Rico, and the U.S. Virgin Islands.
- (3) Purchases against the account of a defaulting contractor where the stipulations of the statute were not included in the defaulted contract.
- (4) Newspapers, magazines, or periodicals, contracted for with sales agents or publisher representatives, which are to be delivered by the publishers thereof.

(b)(1) Upon the request of the agency head, the Secretary of Labor may exempt specific contracts or classes of contracts from the inclusion or application of one or more of the Act’s stipulations; provided, that the request includes a finding by the agency head stating the reasons why the conduct of Government business will be seriously impaired unless the exemption is granted.

(2) Those requests for exemption that relate solely to safety and health standards shall be transmitted to the—

Assistant Secretary for Occupational Safety and Health  
U.S. Department of Labor  
Washington, DC 20210.

All other requests shall be transmitted to the—

Administrator of the Wage and Hour Division  
U.S. Department of Labor  
Washington, DC 20210.

### 22.605 Rulings and interpretations of the statute.

(a) As authorized by the Act, the Secretary of Labor has issued rulings and interpretations concerning the administration of the statute (see 41 CFR 50-206). The substance of certain rulings and interpretations is as follows:

- (1) If a contract for \$15,000 or less is subsequently modified to exceed \$15,000, the contract becomes subject to the statute for work performed after the date of the modification.
- (2) If a contract for more than \$15,000 is subsequently modified by mutual agreement to \$15,000 or less, the contract is not subject to the statute for work performed after the date of the modification.
- (3) If a contract awarded to a prime contractor contains a provision whereby the prime contractor is made an agent of the Government, the prime contractor is required to include the stipulations of the statute in contracts in excess of \$15,000 awarded for and on behalf of the Government for supplies that are to be used in the construction and equipment of Government facilities.
- (4) If a contract subject to the statute is awarded to a contractor operating Government-owned facilities, the stipulations of the statute affect the employees of that contractor

the same as employees of contractors operating privately owned facilities.

(5) Indefinite-delivery contracts, including basic ordering agreements and blanket purchase agreements, are subject to the statute unless it can be determined in advance that the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement will not exceed \$15,000. A determination shall be made annually thereafter if the contract or agreement is extended, and the contract or agreement modified if necessary.

(b) [Reserved]

**22.606 [Reserved]**

**22.607 [Reserved]**

**22.608 Procedures.**

(a) *Award.* When a contract subject to the statute is awarded, the contracting officer, in accordance with regula-

tions or instructions issued by the Secretary of Labor and individual agency procedures, shall furnish to the contractor DOL publication WH-1313, Notice to Employees Working on Government Contracts.

(b) *Breach of stipulation.* In the event of a violation of a stipulation required under the statute, the contracting officer shall, in accordance with agency procedures, notify the appropriate regional office of the DOL, Wage and Hour Division (see 29 CFR part 1, Appendix B), and furnish any information available.

**22.609 [Reserved]**

**22.610 Contract clause.**

The contracting officer shall insert the clause at [52.222-20](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000, in solicitations and contracts covered by the statute (see [22.603](#), [22.604](#), and [22.605](#)).

## Subpart 22.10—Service Contract Labor Standards

### 22.1000 Scope of subpart.

This subpart prescribes policies and procedures implementing the provisions of [41 U.S.C. chapter 67](#), Service Contract Labor Standards (formerly known as the Service Contract Act of 1965), the applicable provisions of the Fair Labor Standards Act of 1938, as amended ([29 U.S.C. 201](#), *et seq.*), and related Secretary of Labor regulations and instructions (29 CFR parts 4, 6, 8, and 1925).

### 22.1001 Definitions.

As used in this subpart—

“Agency labor advisor” means an individual responsible for advising contracting agency officials on Federal contract labor matters.

“Contractor” includes a subcontractor at any tier whose subcontract is subject to the provisions of the statute.

“Multiple year contracts” means contracts having a term of more than 1 year regardless of fiscal year funding. The term includes multiyear contracts (see [17.103](#)).

“United States” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and the outer Continental Shelf as defined in the Outer Continental Shelf Lands Act ([43 U.S.C. 1331](#), *et seq.*), but does not include any other place subject to U.S. jurisdiction or any U.S. base or possession within a foreign country (29 CFR 4.112).

“Wage and Hour Division” means the unit in the Employment Standards Administration of the Department of Labor to which is assigned functions of the Secretary of Labor under the Service Contract Labor Standards statute.

“Wage determination” means a determination of minimum wages or fringe benefits made under [41 U.S.C. 6703](#) or 6707(c) applicable to the employment in a given locality of one or more classes of service employees.

### 22.1002 Statutory requirements.

#### 22.1002-1 General.

Service contracts over \$2,500 shall contain mandatory provisions regarding minimum wages and fringe benefits, safe and sanitary working conditions, notification to employees of the minimum allowable compensation, and equivalent Federal employee classifications and wage rates. Under [41 U.S.C. 6707\(d\)](#), service contracts may not exceed 5 years.

#### 22.1002-2 Wage determinations based on prevailing rates.

Contractors performing on service contracts in excess of \$2,500 to which no predecessor contractor’s collective bargaining agreement applies shall pay their employees at least the wages and fringe benefits found by the Department of Labor to prevail in the locality or, in the absence of a wage determination, the minimum wage set forth in the Fair Labor Standards Act.

#### 22.1002-3 Wage determinations based on collective bargaining agreements.

(a) Successor contractors performing on contracts in excess of \$2,500 for substantially the same services performed in the same locality must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) at least equal to those contained in any bona fide collective bargaining agreement entered into under the predecessor contract. This requirement is self-executing and is not contingent upon incorporating a wage determination or the wage and fringe benefit terms of the predecessor contractor’s collective bargaining agreement in the successor contract. This requirement will not apply if the Secretary of Labor determines—

(1) After a hearing, that the wages and fringe benefits are substantially at variance with those which prevail for services of a similar character in the locality; or

(2) That the wages and fringe benefits are not the result of arm’s length negotiations.

(b) Paragraphs in this [subpart 22.10](#) which deal with this statutory requirement and the Department of Labor’s implementing regulations are [22.1010](#), concerning notification to contractors and bargaining representatives of procurement dates; [22.1012-2](#), explaining when a collective bargaining agreement will not apply due to late receipt by the contracting officer; and [22.1013](#) and [22.1021](#), explaining when the application of a collective bargaining agreement can be challenged due to a variance with prevailing rates or lack of arm’s length bargaining.

#### 22.1002-4 Application of the Fair Labor Standards Act minimum wage.

No contractor or subcontractor holding a service contract for any dollar amount shall pay any of its employees working on the contract less than the minimum wage specified in section 6(a)(1) of the Fair Labor Standards Act ([29 U.S.C. 206](#)).

### 22.1003 Applicability.

#### 22.1003-1 General.

This [subpart 22.10](#) applies to all Government contracts, the principal purpose of which is to furnish services in the United

States through the use of service employees, except as exempted in [22.1003-3](#) and [22.1003-4](#) of this section, or any subcontract at any tier thereunder. This subpart does not apply to individual contract requirements for services in contracts not having as their principal purpose the furnishing of services. The nomenclature, type, or particular form of contract used by contracting agencies is not determinative of coverage.

#### **22.1003-2 Geographical coverage of the Act.**

The Service Contract Labor Standards statute applies to service contracts performed in the United States (see [22.1001](#)). The Service Contract Labor Standards statute does not apply to contracts performed outside the United States.

#### **22.1003-3 Statutory exemptions.**

The Service Contract Labor Standards statute does not apply to—

(a) Any contract for construction, alteration, or repair of public buildings or public works, including painting and decorating;

(b) Any work required to be done in accordance with the provisions of [41 U.S.C. chapter 65](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000;

(c) Any contract for transporting freight or personnel by vessel, aircraft, bus, truck, express, railroad, or oil or gas pipeline where published tariff rates are in effect;

(d) Any contract for furnishing services by radio, telephone, telegraph, or cable companies subject to the Communications Act of 1934;

(e) Any contract for public utility services;

(f) Any employment contract providing for direct services to a Federal agency by an individual or individuals; or

(g) Any contract for operating postal contract stations for the U.S. Postal Service.

#### **22.1003-4 Administrative limitations, variations, tolerances, and exemptions.**

(a) The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of the Service Contract Labor Standards statute other than [41 U.S.C. 6707\(f\)](#). These will be made only in special circumstances where it has been determined that the limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of Government business, and is in accord with the remedial purpose of the Service Contract Labor Standards statute to protect prevailing labor standards ([41 U.S.C. 6707\(b\)](#)). See 29 CFR 4.123 for a listing of administrative exemptions, tolerances, and variations. Requests for limitations, variances, tolerances, and exemptions from the Service Contract Labor Standards statute shall be submitted in writing through con-

tracting channels and the agency labor advisor to the Wage and Hour Administrator.

(b) In addition to the statutory exemptions cited in [22.1003-3](#) of this subsection, the Secretary of Labor has exempted the following types of contracts from all provisions of the Service Contract Labor Standards statute:

(1) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom.

(2) Any contract entered into by the U.S. Postal Service with an individual owner-operator for mail service if it is not contemplated at the time the contract is made that the owner-operator will hire any service employee to perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness, or accident.

(3) Contracts for the carriage of freight or personnel if such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act.

(c) *Contracts for maintenance, calibration or repair of certain equipment.*— (1) *Exemption.* The Secretary of Labor has exempted from the Service Contract Labor Standards statute contracts and subcontracts in which the primary purpose is to furnish maintenance, calibration, or repair of the following types of equipment, if the conditions at paragraph (c)(2) of this subsection are met:

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

(ii) Scientific equipment and medical apparatus or equipment if the application of micro-electronic circuitry or other technology of at least similar sophistication is an essential element (for example, Federal Supply Classification (FSC) Group 65, Class 6515, “Medical Diagnostic Equipment;” Class 6525, “X-Ray Equipment;” FSC Group 66, Class 6630, “Chemical Analysis Instruments;” and Class 6665, “Geographical and Astronomical Instruments;” are largely composed of the types of equipment exempted in this paragraph).

(iii) Office/business machines not otherwise exempt pursuant to paragraph (c)(1)(i) of this subsection, if such services are performed by the manufacturer or supplier of the equipment.

(2) *Conditions.* The exemption at paragraph (c)(1) of this subsection applies if all the following conditions are met for a contract (or a subcontract):

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

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, or repair of such equipment. As defined at 29 CFR 4.123(e)(1)(ii)(B)—

(A) An established catalog price is a price included in a catalog price list, schedule, or other form that is regularly maintained by the manufacturer or the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.

(B) An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor.

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

(iv) The apparent successful offeror certifies to the conditions in paragraph (c)(2)(i) through (iii) of this subsection. (See [22.1006\(e\)](#).)

(3) *Affirmative determination and contract award.*

(i) For source selections where the contracting officer has established a competitive range, if the contracting officer determines that one or more of the conditions in paragraphs [22.1003-4](#) (c)(2)(i) through (iii) of an offeror's certification will not be met, the contracting officer shall identify the deficiency to the offeror before receipt of the final proposal revisions. Unless the offeror provides a revised offer acknowledging applicability of the Service Contract Labor Standards statute or demonstrating to the satisfaction of the contracting officer an ability to meet all required conditions for exemption, the offer will not be further considered for award.

(ii) The contracting officer shall determine in writing the applicability of this exemption to the contract before contract award. If the apparent successful offeror will meet all conditions in paragraph (c)(2) of this subsection, the contracting officer shall make an affirmative determination and award the contract without the otherwise applicable Service Contract Labor Standards clause(s).

(iii) If the apparent successful offeror does not certify to the conditions in paragraph (c)(2)(i) through (iii) of this subsection, the contracting officer shall incorporate in the contract the Service Contract Act clause (see [22.1006\(a\)](#)) and, if the contract will exceed \$2,500, the appropriate Department of Labor wage determination (see [22.1007](#)).

(4) *Department of Labor determination.* (i) If the Department of Labor determines after award of the contract that any condition for exemption in paragraph (c)(2) of this

subsection has not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Labor Standards statute, effective as of the date of the Department of Labor determination. In such case, the procedures at 29 CFR 4.123(e)(1)(iv) and 29 CFR 4.5(c) shall be followed.

(ii) If the Department of Labor determines that any conditions in paragraph (c)(2) of this subsection have not been met with respect to a subcontract, the exemption shall be deemed inapplicable. The contractor may be responsible for ensuring that the subcontractor complies with the Service Contract Labor Standards statute, effective as of the date of the subcontract award.

(d) *Contracts for certain services.—* (1) *Exemption.* Except as provided in paragraph (d)(5) of this subsection, the Secretary of Labor has exempted from the Service Contract Labor Standards statute contracts and subcontracts in which the primary purpose is to provide the following services, if the conditions in paragraph (d)(2) of this subsection are met:

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

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

(iii) Hotel/motel services for conferences, including lodging and/or meals, that are part of the contract or subcontract for the conference (which must not include ongoing contracts for lodging on an as needed or continuing basis).

(iv) Maintenance, calibration, repair, and/or installation (where the installation is not subject to the Construction Wage Rate Requirements statute, as provided in 29 CFR 4.116(c)(2)) services for all types of equipment where the services are obtained from the manufacturer or supplier of the equipment under a contract awarded on a sole source basis.

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

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

(vii) Relocation services, including services of real estate brokers and appraisers to assist Federal employees or military personnel in buying and selling homes (which shall not include actual moving or storage of household goods and related services).

(2) *Conditions.* The exemption for the services in paragraph (d)(1) of this subsection applies if all the following conditions are met for a contract (or for a subcontract):

(i)(A) Except for services identified in paragraph (d)(1)(iv) of this subsection, the contractor will be selected for award based on other factors in addition to price or cost, with

the combination of other factors at least as important as price or cost; or

(B) The contract will be awarded on a sole source basis.

(ii) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the contractor (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations.

(iii) The contract services are furnished at prices that are, or are based on, established catalog or market prices. As defined at 29 CFR 4.123(e)(2)(ii)(C)—

(A) An established catalog price is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(B) An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor.

(iv) 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.

(v) The contractor will use the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for these employees and equivalent employees servicing commercial customers.

(vi) The contracting officer (or contractor with respect to a subcontract) determines in advance before issuing the solicitation, based on the nature of the contract requirements and knowledge of the practices of likely offerors, that all or nearly all offerors will meet the conditions in paragraph (d)(2)(ii) through (v) of this subsection. If the services are currently being performed under contract, the contracting officer (or contractor with respect to a subcontract) shall consider the practices of the existing contractor in making a determination regarding the conditions in paragraphs (d)(2)(ii) through (v) of this subsection.

(vii)(A) The apparent successful offeror certifies that the conditions in paragraphs (d)(2)(ii) through (v) will be met; and

(B) For other than sole source awards, the contracting officer determines that the same certification is obtained from substantially all other offerors that are—

(1) In the competitive range, if discussions are to be conducted (see FAR [15.306\(c\)](#)); or

(2) Considered responsive, if award is to be made without discussions (see FAR [15.306\(a\)](#)).

(3) *Contract award or resolicitation.* (i) If the apparent successful offeror does not certify to the conditions, the contracting officer shall insert in the contract the applicable Service Contract Labor Standards clause(s) (see [22.1006](#)) and, if the contract will exceed \$2,500, the appropriate Department of Labor wage determination (see [22.1007](#)).

(ii) The contracting officer shall award the contract without the otherwise applicable Service Contract Labor Standards clause(s) if—

(A) The apparent successful offeror certifies to the conditions in paragraphs (d)(2)(ii) through (v) of this subsection;

(B) The contracting officer determines that the same certification is obtained from substantially all other offerors that are—

(1) In the competitive range, if discussions are to be conducted (see FAR [15.306](#)); or

(2) Considered responsive, if award is to be made without discussions (see FAR [15.306\(a\)](#)); and

(C) The contracting officer has no reason to doubt the certification.

(iii) If the conditions in paragraph (d)(3)(ii) of this subsection are not met, then the contracting officer shall resolicit, amending the solicitation by removing the exemption provision from the solicitation as prescribed at [22.1006\(e\)\(3\)](#). The contract will include the applicable Service Contract Labor Standards clause(s) as prescribed at [22.1006](#) and, if the contract will exceed \$2,500, the appropriate Department of Labor wage determination (see [22.1007](#)).

(4) *Department of Labor determination.* (i) If the Department of Labor determines after award of the contract that any conditions for exemption at paragraph (d)(2) of this subsection have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Labor Standards statute. In such case, the procedures at 29 CFR 4.123(e)(2)(iii) and 29 CFR 4.5(c) shall be followed.

(ii) If the Department of Labor determines that any conditions in paragraph (d)(2) of this subsection have not been met with respect to a subcontract, the exemption shall be deemed inapplicable. The contractor may be responsible for ensuring that the subcontractor complies with the Service Contract Labor Standards statute, effective as of the date of the subcontract award.

(5) *Exceptions.* The exemption at paragraph (d)(1) of this subsection does not apply to solicitations and contracts (subcontracts)—

(i) Awarded under , [41 U.S.C. chapter 85](#), Committee for Purchase from People Who Are Blind or Severely Disabled (see [subpart 8.7](#)).

(ii) For the operation of a Government facility, or part of a Government facility (but may be applicable to subcontracts for services); or

(iii) Subject to [41 U.S.C. 6707\(c\)](#) (see [22.1002-3](#)).

**22.1003-5 Some examples of contracts covered.**

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

- (a) Motor pool operation, parking, taxicab, and ambulance services.
- (b) Packing, crating, and storage.
- (c) Custodial, janitorial, housekeeping, and guard services.
- (d) Food service and lodging.
- (e) Laundry, dry-cleaning, linen-supply, and clothing alteration and repair services.
- (f) Snow, trash, and garbage removal.
- (g) Aerial spraying and aerial reconnaissance for fire detection.
- (h) Some support services at installations, including grounds maintenance and landscaping.
- (i) Certain specialized services requiring specific skills, such as drafting, illustrating, graphic arts, stenographic reporting, or mortuary services.
- (j) Electronic equipment maintenance and operation and engineering support services.
- (k) Maintenance and repair of all types of equipment, for example, aircraft, engines, electrical motors, vehicles, and electronic, office and related business and construction equipment. (But see [22.1003-4\(c\)\(1\)](#) and [\(d\)\(1\)\(iv\)](#).)
- (l) Operation, maintenance, or logistics support of a Federal facility.
- (m) Data collection, processing and analysis services.

**22.1003-6 Repair distinguished from remanufacturing of equipment.**

(a) Contracts principally for remanufacturing of equipment which is so extensive as to be equivalent to manufacturing are subject to [41 U.S.C. chapter 65](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000, rather than to the Service Contract Labor Standards statute. Remanufacturing shall be deemed to be manufacturing when the criteria in either subparagraphs (a)(1) or (a)(2) of this subsection are met.

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

- (i) The item or equipment is required to be completely or substantially torn down into individual component parts.
- (ii) Substantially all of the parts are reworked, rehabilitated, altered and/or replaced.
- (iii) The parts are reassembled so as to furnish a totally rebuilt item or piece of equipment.
- (iv) Manufacturing processes similar to those which were used in the manufacturing of the item or piece of equipment are utilized.
- (v) The disassembled components, if usable (except for situations where the number of items or pieces of equip-

ment involved are too few to make it practicable) are commingled with existing inventory and, as such, lose their identification with respect to a particular piece of equipment.

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

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

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

- (i) The item or equipment is required to be completely or substantially torn down.
- (ii) Outmoded parts are replaced.
- (iii) The item or equipment is rebuilt or reassembled.
- (iv) The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition.
- (v) The work is performed in a facility owned or operated by the contractor.

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

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

(2) Repair of typewriters and other office equipment (but see [22.1003-4\(c\)\(1\)](#) and [\(d\)\(1\)\(iv\)](#)).

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

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

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

**22.1003-7 Questions concerning applicability of the Service Contract Labor Standards statute.**

If the contracting officer questions the applicability of the Service Contract Labor Standards statute to an acquisition, the contracting officer shall request the advice of the agency labor advisor. Unresolved questions shall be submitted in a timely manner to the Administrator, Wage and Hour Division, for determination.

**22.1004 Department of Labor responsibilities and regulations.**

Under the Service Contract Labor Standards statute, the Secretary of Labor is authorized and directed to enforce the provisions of the Service Contract Labor Standards statute, make rules and regulations, issue orders, hold hearings, make decisions, and take other appropriate action. The Department of Labor has issued implementing regulations on such matters as—

- (a) Service contract labor standards provisions and procedures (29 CFR Part 4, Subpart A);
- (b) Wage determination procedures (29 CFR part 4, subparts A and B);
- (c) Application of the Service Contract Labor Standards statute (rulings and interpretations) (29 CFR Part 4, Subpart C);
- (d) Compensation standards (29 CFR Part 4, Subpart D);
- (e) Enforcement (29 CFR Part 4, Subpart E);
- (f) Safe and sanitary working conditions (29 CFR Part 1925);
- (g) Rules of practice for administrative proceedings enforcing service contract labor standards (29 CFR Part 6); and
- (h) Practice before the Administrative Review Board (29 CFR part 8).

**22.1005 [Reserved]****22.1006 Solicitation provisions and contract clauses.**

(a)(1) The contracting officer shall insert the clause at [52.222-41](#), Service Contract Labor Standards, in solicitations and contracts (except as provided in paragraph (a)(2) of this section) if the contract is subject to the Service Contract Labor Standards statute and is—

- (i) Over \$2,500; or
- (ii) For an indefinite dollar amount and the contracting officer does not know in advance that the contract amount will be \$2,500 or less.

(2) The contracting officer shall not insert the clause at [52.222-41](#) (or any of the associated Service Contract Labor Standards statute clauses as prescribed in this section for possible use when [52.222-41](#) applies) in the resultant contract if—

- (i) The solicitation includes the provision at—
  - (A) [52.222-48](#), Exemption from Application of the Service Contract Labor Standards statute to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification;
  - (B) [52.222-52](#), Exemption from Application of the Service Contract Labor Standards statute to Contracts for Certain Services—Certification; or
  - (C) Either of the comparable certifications is checked as applicable in the provision at [52.204-8\(c\)\(2\)\(iii\)](#) or (iv) or [52.212-3\(k\)](#); and

(ii) The contracting officer has made the determination, in accordance with paragraphs (c)(3) or (d)(3) of subsection [22.1003-4](#), that the Service Contract Labor Standards statute does not apply to the contract. (In such case, insert the clause at [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements, or [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements, in the contract, in accordance with the prescription at paragraph (e)(2)(ii) or (e)(4)(ii) of this subsection).

(b) The contracting officer shall insert the clause at [52.222-42](#), Statement of Equivalent Rates for Federal Hires, in solicitations and contracts if the contract amount is expected to be over \$2,500 and the Service Contract Labor Standards statute is applicable. (See [22.1016](#).)

(c)(1) The contracting officer shall insert the clause at [52.222-43](#), Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts), or another clause which accomplishes the same purpose, in solicitations and contracts if the contract is expected to be a fixed-price, time-and-materials, or labor-hour service contract containing the clause at [52.222-41](#), Service Contract Labor Standards, and is a multiple year contract or is a contract with options to renew which exceeds the simplified acquisition threshold. The clause may be used in contracts that do not exceed the simplified acquisition threshold. The clause at [52.222-43](#), Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts), applies to both contracts subject to area prevailing wage determinations and contracts subject to the incumbent contractor's collective bargaining agreement in effect during this contract's preceding contract period (see [22.1002-2](#) and [22.1002-3](#)). Contracting officers shall ensure that contract prices or contract unit price labor rates are adjusted only to the extent that a contractor's increases or decreases in applicable wages and fringe benefits are made to comply with the requirements set forth in the clauses at [52.222-43](#) (subparagraphs (d)(1), (2) and (3)), or [52.222-44](#) (subparagraphs (b)(1) and (2)). (For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The contractor actually paid \$4.10. The new wage determination increases the minimum rate to \$4.50. The contractor increases the rate actually paid to \$4.75 per hour. The allowable price adjustment is \$.40 per hour.)

(2) The contracting officer shall insert the clause at [52.222-44](#), Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment, in solicitations and contracts if the contract is expected to be a fixed-price, time-and-materials, or labor-hour service contract containing the clause at [52.222-41](#), Service Contract Labor Standards, exceeds the simplified acquisition threshold, and is not a multiple year contract or is not a contract with options to renew. The clause may be used in contracts that do not exceed the simplified acquisition threshold. The clause at [52.222-44](#), Fair Labor Standards Act and Service Contract Labor Standards—Price



Adjustment, applies to both contracts subject to area prevailing wage determinations and contracts subject to contractor collective bargaining agreements (see [22.1002-2](#) and [22.1002-3](#)).

(3) The clauses prescribed in paragraph [22.1006\(c\)\(1\)](#) cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a wage determination in connection with (i) exercise of a contract option or (ii) extension of a multiple year contract into a new program year. If a clause prescribed in [16.203-4\(d\)](#) is used, it must not conflict with, or duplicate payment under, the clauses prescribed in this paragraph [22.1006\(c\)](#).

(d) [Reserved]

(e)(1) The contracting officer shall insert the provision at [52.222-48](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Certification, in solicitations that—

(i) Include the clause at [52.222-41](#), Service Contract Labor Standards; and

(ii) The contract may be exempt from the Service Contract Labor Standards statute in accordance with [22.1003-4\(c\)](#).

(2) The contracting officer shall insert the clause at [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements—

(i) In solicitations that include the provision at [52.222-48](#), or the comparable provision is checked as applicable in the clause at [52.204-8\(c\)\(2\)\(iii\)](#) or [52.212-3\(k\)\(1\)](#); and

(ii) In resulting contracts in which the contracting officer has determined, in accordance with [22.1003-4\(c\)\(3\)](#), that the Service Contract Labor Standards statute does not apply.

(3)(i) Except as provided in paragraph (e)(3)(ii) of this section, the contracting officer shall insert the provision at [52.222-52](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Certification, in solicitations that—

(A) Include the clause at [52.222-41](#), Service Contract Labor Standards, and

(B) The contract may be exempt from the Service Contract Labor Standards statute in accordance with [22.1003-4\(d\)](#).

(ii) When resoliciting in accordance with [22.1003-4\(d\)\(3\)\(iii\)](#), amend the solicitation by removing the provision at [52.222-52](#) from the solicitation.

(4) The contracting officer shall insert the clause at [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements—

(i) In solicitations that include the provision at [52.222-52](#), or the comparable provision is checked as applicable in [52.204-8\(c\)\(2\)\(iv\)](#) or [52.212-3\(k\)\(2\)](#); and

(ii) In resulting contracts in which the contracting officer has determined, in accordance with [22.1003-4\(d\)\(3\)](#), that the Service Contract Labor Standards statute does not apply.

(f) The contracting officer shall insert the clause at [52.222-49](#), Service Contract Labor Standards-Place of Performance Unknown, if using the procedures prescribed in [22.1009-4](#).

#### **22.1007 Requirement to obtain wage determinations.**

The contracting officer shall obtain wage determinations for the following service contracts:

(a) Each new solicitation and contract in excess of \$2,500.

(b) Each contract modification which brings the contract above \$2,500 and—

(1) Extends the existing contract pursuant to an option clause or otherwise; or

(2) Changes the scope of the contract whereby labor requirements are affected significantly.

(c) Each multiple year contract in excess of \$2,500 upon—

(1) Annual anniversary date if the contract is subject to annual appropriations; or

(2) Biennial anniversary date if the contract is not subject to annual appropriations and its proposed term exceeds 2 years—unless otherwise advised by the Wage and Hour Division.

#### **22.1008 Procedures for obtaining wage determinations.**

##### **22.1008-1 Obtaining wage determinations.**

(a) Contracting officers may obtain most prevailing wage determinations using the WDOL website. Contracting officers may also use the Department of Labor's e98 electronic process, located on the WDOL website, to request a wage determination directly from the Department of Labor. If the WDOL database does not contain the applicable prevailing wage determination for a contract action, the contracting officer must use the e98 process to request a wage determination from the Department of Labor.

(b) In using the e98 process to obtain prevailing wage determinations, contracting officers shall provide as complete and accurate information on the e98 as possible. Contracting officers shall ensure that the email address submitted on an e98 request is accurate.

(c) The contracting officer must anticipate the amount of time required to gather the information necessary to obtain a wage determination, including sufficient time, if necessary, to contact the Department of Labor to request wage determinations that are not available through use of the WDOL.

(d) Although the WDOL website provides assistance to the contracting agency to select the correct wage determination, the contracting agency remains responsible for the wage determination selected. If the contracting agency has used the e98 process, the Department of Labor will respond to the contracting agency based on the information provided on the e98. The contracting agency may rely upon the Department of

Labor response as the correct wage determination for the contract.

(e) To obtain the applicable wage determination for each contract action, the contracting officer shall determine the following information concerning the service employees expected to be employed by the contractor and any subcontractors in performing the contract:

(1) Determine the classes of service employees to be utilized in performance of the contract using the Wage and Hour Division's *Service Contract Act Directory of Occupations* (Directory). The Directory can be found on WDOL's Library Page, and is for sale by the Superintendent of Documents, U.S. Government Printing Office.

(2) Determine the locality where the services will be performed (see [22.1009](#)).

(3) Determine whether [41 U.S.C. 6707\(c\)](#) applies (see [22.1008-2](#), [22.1010](#) and [22.1002-2](#)).

(4) Determine the wage rate that would be paid each class if employed by the agency and subject to the wage provisions of [5 U.S.C. 5341](#) and/or 5332 (see [22.1016](#)).

(f) If the contracting officer has questions regarding the procedures for obtaining a wage determination, or questions regarding the selection of a wage determination, the contracting officer should request assistance from the agency labor advisor.

#### **22.1008-2 Successorship with incumbent contractor collective bargaining agreement.**

(a) Early in the acquisition cycle, the contracting officer shall determine whether [41 U.S.C. 6707\(c\)](#) affects the new acquisition. The contracting officer shall determine whether there is a predecessor contract covered by the Service Contract Labor Standards statute and, if so, whether the incumbent prime contractor or its subcontractors and any of their employees have a collective bargaining agreement.

(b) [41 U.S.C. 6707\(c\)](#) provides that a successor contractor must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) to service employees at least equal to those agreed upon by a predecessor contractor under the following conditions:

(1) The services to be furnished under the proposed contract will be substantially the same as services being furnished by an incumbent contractor whose contract the proposed contract will succeed.

(2) The services will be performed in the same locality.

(3) The incumbent prime contractor or subcontractor is furnishing such services through the use of service employees whose wages and fringe benefits are the subject of one or more collective bargaining agreements.

(c) The application of [41 U.S.C. 6707\(c\)](#) is subject to the following limitations:

(1) [41 U.S.C. 6707\(c\)](#) will not apply if the incumbent contractor enters into a collective bargaining agreement for the first time and the agreement does not become effective until after the expiration of the incumbent's contract.

(2) If the incumbent contractor enters into a new or revised collective bargaining agreement during the period of the incumbent's performance on the current contract, the terms of the new or revised agreement shall not be effective for the purposes of [41 U.S.C. 6707\(c\)](#) under the following conditions:

(i)(A) In sealed bidding, the contracting agency receives notice of the terms of the collective bargaining agreement less than 10 days before bid opening and finds that there is not reasonable time still available to notify bidders (see [22.1002-2\(a\)](#)); or

(B) For contractual actions other than sealed bidding, the contracting agency receives notice of the terms of the collective bargaining agreement after award, provided that the start of performance is within 30 days of award (see [22.1002-2\(b\)](#)); and

(ii) The contracting officer has given both the incumbent contractor and its employees' collective bargaining agent timely written notification of the applicable acquisition dates (see [22.1010](#)).

(d)(1) If [41 U.S.C. 6707\(c\)](#) applies, the contracting officer shall obtain a copy of any collective bargaining agreement between an incumbent contractor or subcontractor and its employees. Obtaining a copy of an incumbent contractor's collective bargaining agreement may involve coordination with the administrative contracting officer responsible for administering the predecessor contract. (Paragraph (m) of the clause at [52.222-41](#), Service Contract Labor Standards, requires the incumbent prime contractor to furnish the contracting officer a copy of each collective bargaining agreement.)

(2) If the contracting officer has timely received the collective bargaining agreement, the contracting officer may use the WDOL website to prepare a wage determination referencing the agreement and incorporate that wage determination, attached to a complete copy of the collective bargaining agreement, into the successor contract action. In using the WDOL process, it is not necessary to submit a copy of the collective bargaining agreement to the Department of Labor unless requested to do so.

(3) The contracting officer may also use the e98 process on WDOL to request that the Department of Labor prepare the cover wage determination. The Department of Labor's response to the e98 may include a request for the contracting officer to submit a complete copy of the collective bargaining agreement. Any questions regarding the applicability of the Service Contract Labor Standards statute to a collective bargaining agreement should be directed to the agency labor advisor.

(e)(1) [41 U.S.C. 6707\(c\)](#) will not apply if the Secretary of Labor determines (i) after a hearing, that the wages and fringe benefits in the predecessor contractor's collective bargaining agreement are substantially at variance with those which pre-

vail for services of a similar character in the locality, or (ii) that the wages and fringe benefits in the predecessor contractor's collective bargaining agreement are not the result of arm's length negotiations (see [22.1013](#) and [22.1021](#)). The Department of Labor (DOL) has concluded that contingent collective bargaining agreement provisions that attempt to limit a contractor's obligations by means such as requiring issuance of a wage determination by the DOL, requiring inclusion of the wage determination in the contract, or requiring the Government to adequately reimburse the contractor, generally reflect a lack of arm's length negotiations.

(2) If the contracting officer's review (see [22.1013](#)) indicates that monetary provisions of the collective bargaining agreement may be substantially at variance or may not have been reached as a result of arm's length bargaining, the contracting officer shall immediately contact the agency labor advisor to consider if further action is warranted.

(f) If the services are being furnished at more than one location and the collectively bargained wage rates and fringe benefits are different at different locations or do not apply to one or more locations, the contracting officer shall identify the locations to which the agreements apply.

(g) If the collective bargaining agreement does not apply to all service employees under the contract, the contracting officer shall access WDOL to obtain the prevailing wage determination for those service employee classifications that are not covered by the collective bargaining agreement. The contracting officer shall separately list in the solicitation and contract the service employee classifications—

- (1) Subject to the collective bargaining agreement; and
- (2) Not subject to any collective bargaining agreement.

## **22.1009 Place of performance unknown.**

### **22.1009-1 General.**

If the place of performance is unknown, the contracting officer may use the procedures in this section. The contracting officer should first attempt to identify the specific places or geographical areas where the services might be performed (see [22.1009-2](#)) and then may follow the procedures either in [22.1009-3](#) or in [22.1009-4](#).

### **22.1009-2 Attempt to identify possible places of performance.**

The contracting officer should attempt to identify the specific places or geographical areas where the services might be performed. The following may indicate possible places of performance:

- (a) Locations of previous contractors and their competitors.
- (b) Databases available via the Internet for lists of prospective offerors and contractors.
- (c) Responses to a presolicitation notice (see [5.204](#)).

### **22.1009-3 All possible places of performance identified.**

(a) If the contracting officer can identify all the possible places or areas of performance (even though the actual place of performance will not be known until the successful offeror is chosen), the contracting officer shall obtain a wage determination for each locality where services may be performed (see [22.1008](#)).

(b) If the contracting officer subsequently learns of any potential offerors in previously unidentified places before the closing date for submission of offers, the contracting officer shall—

(1) Obtain wage determinations for the additional places of performance and amend the solicitation to include all wage determinations. If necessary, the contracting officer shall extend the time for submission of final offers; and

- (2) Follow the procedures in [22.1009-4](#).

### **22.1009-4 All possible places of performance not identified.**

If the contracting officer believes that there may be offerors interested in performing in unidentified places or areas, the contracting officer may use the following procedures:

(a) Include the following information in the synopsis and solicitation:

- (1) That the place of performance is unknown.
- (2) The possible places or areas of performance that the contracting officer has already identified.
- (3) That the contracting officer will obtain wage determinations for additional possible places of performance if asked to do so in writing.
- (4) The time and date by which offerors must notify the contracting officer of additional places of performance.

(b) Include the information required by paragraphs (a)(2) and (a)(4) of this section in the clause at [52.222-49](#), Service Contract Labor Standards—Place of Performance Unknown (see [22.1006\(f\)](#)). The closing date for receipt of offerors' requests for wage determinations for additional possible places of performance should allow reasonable time for potential offerors to review the solicitation and determine their interest in competing. Generally, 10 to 15 days from the date of issuance of the solicitation may be considered a reasonable period of time.

(c) The procedures in [14.304](#) shall apply to late receipt of offerors' requests for wage determinations for additional places of performance. However, late receipt of an offeror's request for a wage determination for additional places of performance does not preclude the offeror's competing for the proposed acquisition.

(d) If the contracting officer receives any timely requests for wage determinations for additional places of performance the contracting officer shall—

- (1) Obtain wage determinations for the additional places of performance; and

(2) Amend the solicitation to include all wage determinations and, if necessary, extend the time for submission of final offers.

(e) If the successful offeror did not make a timely request for a wage determination and will perform in a place of performance for which the contracting officer therefore did not request a wage determination, the contracting officer shall—

(1) Award the contract;

(2) Obtain a wage determination; and

(3) Incorporate the wage determination in the contract, retroactive to the date of contract award and with no adjustment in contract price, pursuant to the clause at [52.222-49](#), Service Contract Labor Standards–Place of Performance Unknown.

#### **22.1010 Notification to interested parties under collective bargaining agreements.**

(a) The contracting officer should determine whether the incumbent prime contractor's or its subcontractors' service employees performing on the current contract are represented by a collective bargaining agent. If there is a collective bargaining agent, the contracting officer shall give both the incumbent contractor and its employees' collective bargaining agent written notification of—

(1) The forthcoming successor contract and the applicable acquisition dates (issuance of solicitation, opening of bids, commencement of negotiations, award of contract, or start of performance, as the case may be); or

(2) The forthcoming contract modification and applicable acquisition dates (exercise of option, extension of contract, change in scope, or start of performance, as the case may be); or

(3) The forthcoming multiple year contract anniversary date (annual anniversary date or biennial date, as the case may be).

(b) This written notification must be given at least 30 days in advance of the earliest applicable acquisition date or the applicable annual or biennial anniversary date in order for the time-of-receipt limitations in paragraphs [22.1012-2\(a\)](#) and (b) to apply. The contracting officer shall retain a copy of the notification in the contract file.

#### **22.1011 [Reserved]**

#### **22.1012 Applicability of revisions to wage determinations.**

##### **22.1012-1 Prevailing wage determinations.**

(a)(1) The Wage and Hour Administrator may issue revisions to prevailing wage determinations periodically. The need for inclusion of a revised prevailing wage determination in a solicitation, contract or contract modification (see [22.1007](#)) is determined by the date of receipt of the revised

prevailing wage determination by the contracting agency. (Note the distinction between receipt by the agency and receipt by the contracting officer which may occur later.)

(i) For purposes of using WDOL, the time of receipt by the contracting agency shall be the first day of publication of the revised prevailing wage determination on the website.

(ii) For purposes of using the e98 process, the time of receipt by the contracting agency shall be the date the agency receives actual notice of a new or revised prevailing wage determination from the Department of Labor as an e98 response.

(2) In selecting a prevailing wage determination from the WDOL website for use in a solicitation or other contract action, the contracting officer shall monitor the WDOL website to determine whether the applicable wage determination has been revised. Revisions published on the WDOL website or otherwise communicated to the contracting officer within the timeframes prescribed at [22.1012-1\(b\)](#) and (c) are effective and must be included in the resulting contract. Monitoring can be accomplished by use of the WDOL website's "Alert Service".

(b) The following shall apply when contracting by sealed bidding: a revised prevailing wage determination shall not be effective if it is received by the contracting agency less than 10 days before the opening of bids, and the contracting officer finds that there is not reasonable time to incorporate the revision in the solicitation.

(c) For contractual actions other than sealed bidding, a revised prevailing wage determination received by the contracting agency after award of a new contract or a modification as specified in [22.1007\(b\)](#) shall not be effective provided that the start of performance is within 30 days of the award or the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award or the specified modification, and if contract performance does not commence within 30 days of the award or the specified modification, any revision received by the contracting agency not less than 10 days before commencement of the work shall be effective.

(d) If the contracting officer has submitted an e98 to the Department of Labor requesting a prevailing wage determination and has not received a response within 10 days, the contracting officer shall contact the Wage and Hour Division by telephone to determine when the wage determination can be expected. (The telephone number is provided on the e98 website.)

##### **22.1012-2 Wage determinations based on collective bargaining agreements.**

(a) In sealed bidding, a new or changed collective bargaining agreement shall not be effective under [41 U.S.C. 6707\(c\)](#) if the contracting agency has received notice of the terms of the new or changed collective bargaining agreement less than

10 days before bid opening and the contracting officer determines that there is not reasonable time to incorporate the new or changed terms of the collective bargaining agreement in the solicitation.

(b) For contractual actions other than sealed bidding, a new or changed collective bargaining agreement shall not be effective under [41 U.S.C. 6707\(c\)](#) if notice of the terms of the new or changed collective bargaining agreement is received by the contracting agency after award of a successor contract or a modification as specified in [22.1007\(b\)](#), provided that the contract start of performance is within 30 days of the award of the contract or of the specified modification. If the contract does not specify a start of performance date which is within 30 days of the award of the contract or of the specified modification, or if contract performance does not commence within 30 days of the award of the contract or of the specified modification, any notice of the terms of a new or changed collective bargaining agreement received by the agency not less than 10 days before commencement of the work shall be effective for purposes of the successor contract under [41 U.S.C. 6707\(c\)](#).

(c) The limitations in paragraphs (a) and (b) of this subsection shall apply only if timely notification required in [22.1010](#) has been given.

(d) If the contracting officer has submitted an e98 to Department of Labor requesting a wage determination based on a collective bargaining agreement and has not received a response from the Department of Labor within 10 days, the contracting officer shall contact the Wage and Hour Division by telephone to determine when the wage determination can be expected. (The telephone number is provided on the e98 website.) If the Department of Labor is unable to provide the wage determination by the latest date needed to maintain the acquisition schedule, the contracting officer shall incorporate the collective bargaining agreement itself in a solicitation or other contract action (*e.g.*, exercise of option) and include a wage determination referencing that collective bargaining agreement created by use of the WDOL website (see [22.1008-1\(d\)\(2\)](#)).

#### **22.1013 Review of wage determination.**

(a) *Based on incumbent collective bargaining agreement.*  
 (1) If wages, fringe benefits, or periodic increases provided for in a collective bargaining agreement vary substantially from those prevailing for similar services in the locality, the contracting officer shall immediately contact the agency labor advisor to consider instituting the procedures in [22.1021](#).

(1) If the contracting officer believes that an incumbent or predecessor contractor's agreement was not the result of arm's length negotiations, the contracting officer shall contact the agency labor advisor to determine appropriate action.

(b) *Based on other than incumbent collective bargaining agreement.* Upon receiving a wage determination not predicated upon a collective bargaining agreement, the contracting officer shall ascertain—

(1) If the wage determination does not conform with wages and fringe benefits prevailing for similar services in the locality; or

(2) If the wage determination contains significant errors or omissions. If either subparagraph (b)(1) or (b)(2) of this section is evident, the contracting officer shall contact the agency labor advisor to determine appropriate action.

#### **22.1014 Delay over 60 days in bid opening or commencement of work.**

If a wage determination was obtained through the e98 process, and bid opening, or commencement of work under a negotiated contract has been delayed, for whatever reason, more than 60 days from the date indicated on the previously submitted e98, the contracting officer shall submit a new e98. Any revision of a wage determination received by the contracting agency as a result of that communication shall supersede the earlier response as the wage determination applicable to the particular acquisition subject to the time frames in [22.1012-1\(b\)](#) and (c).

#### **22.1015 Discovery of errors by the Department of Labor.**

If the Department of Labor discovers and determines, whether before or after a contract award, that a contracting officer made an erroneous determination that the Service Contract Labor Standards statute did not apply to a particular acquisition or failed to include an appropriate wage determination in a covered contract, the contracting officer, within 30 days of notification by the Department of Labor, shall include in the contract the clause at [52.222-41](#) and any applicable wage determination issued by the Administrator. If the contract is subject to [41 U.S.C. 6707\(c\)](#), the Administrator may require retroactive application of that wage determination. The contracting officer shall equitably adjust the contract price to reflect any changed cost of performance resulting from incorporating a wage determination or revision.

#### **22.1016 Statement of equivalent rates for Federal hires.**

(a) The statement required under the clause at [52.222-42](#), Statement of Equivalent Rates for Federal Hires, (see [22.1006\(b\)](#)) shall set forth those wage rates and fringe benefits that would be paid by the contracting activity to the various classes of service employees expected to be utilized under the contract if [5 U.S.C. 5332](#) (General Schedule—white collar) and/or [5 U.S.C. 5341](#) (Wage Board—blue collar) were applicable.

(b) Procedures for computation of these rates are as follows:

(1) Wages paid blue collar employees shall be the basic hourly rate for each class. The rate shall be Wage Board pay schedule step two for nonsupervisory service employees and step three for supervisory service employees.

(2) Wages paid white collar employees shall be an hourly rate for each class. The rate shall be obtained by dividing the general pay schedule step one biweekly rate by 80.

(3) Local civilian personnel offices can assist in determining and providing grade and salary data.

#### 22.1017 [Reserved]

#### 22.1018 Notification to contractors and employees.

The contracting officer shall take the following steps to ensure that service employees are notified of minimum wages and fringe benefits.

(a) As soon as possible after contract award, inform the contractor of the labor standards requirements of the contract relating to the Service Contract Labor Standards statute and of the contractor's responsibilities under these requirements, unless it is clear that the contractor is fully informed.

(b) At the time of award, furnish the contractor Department of Labor Publication WH-1313, Notice to Employees Working on Government Contracts, for posting at a prominent and accessible place at the worksite before contract performance begins. The publication advises employees of the compensation (wages and fringe benefits) required to be paid or furnished under the Service Contract Labor Standards statute and satisfies the notice requirements in paragraph (g) of the clause at [52.222-41](#), Service Contract Labor Standards.

(c) Attach any applicable wage determination to Publication WH-1313.

#### 22.1019 Additional classes of service employees.

(a) If the contracting officer is aware that contract performance involves classes of service employees not included in the wage determination, the contracting officer shall require the contractor to classify the unlisted classes so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between the unlisted classifications and the classifications listed in the determination (see paragraph (c) of the clause at [52.222-41](#), Service Contract Labor Standards). The contractor shall initiate the conforming procedure before unlisted classes of employees perform contract work. The contractor shall submit [Standard Form \(SF\) 1444](#), Request For Authorization of Additional Classification and Rate. The contracting officer shall review the proposed classification and rate and promptly submit the completed [SF 1444](#) (which must include information regarding the agreement or disagreement of the employees' representative or the employees themselves together with the agency recommendation) and all other pertinent information to the Wage and Hour Division. Within 30 days of receipt of the request, the Wage and Hour

Division will (1) approve, modify, or disapprove the request when the parties are in agreement or (2) render a final determination in the event of disagreement among the parties. If the Wage and Hour Division will require more than 30 days to take action, it will notify the contracting officer within 30 days of receipt of the request that additional time is necessary.

(b) Some wage determinations will list a series of classes within a job classification family, for example, Computer Operators, level I, II, and III, or Electronic Technicians, level I, II, and III, or Clerk Typist, level I and II. Generally, level I is the lowest level. It is the entry level, and establishment of a lower level through conformance is not permissible. Further, trainee classifications may not be conformed. Helpers in skilled maintenance trades (for example, electricians, machinists, and automobile mechanics) whose duties constitute, in fact, separate and distinct jobs may also be used if listed on the wage determination, but may not be conformed. Conformance may not be used to artificially split or subdivide classifications listed in the wage determination. However, conforming procedures may be used if the work which an employee performs under the contract is not within the scope of any classification listed on the wage determination, regardless of job title. (See 29 CFR 4.152.)

(c) Subminimum rates for apprentices, student learners, and disabled workers are permissible in accordance with paragraph (q) of the clause at [52.222-41](#), Service Contract Labor Standards.

#### 22.1020 Seniority lists.

If a contract is performed at a Federal facility where employees may be hired/retained by a succeeding contractor, the incumbent prime contractor is required to furnish a certified list of all service employees on the contractor's or subcontractor's payroll during the last month of the contract, together with anniversary dates of employment, to the contracting officer no later than 10 days before contract completion. (See paragraph (n) of the clause at [52.222-41](#), Service Contract Labor Standards.) At the commencement of the succeeding contract, the contracting officer shall provide a copy of the list to the successor contractor for determining employee eligibility for vacation or other fringe benefits which are based upon length of service, including service with predecessor contractors if such benefit is required by an applicable wage determination.

#### 22.1021 Request for hearing.

(a) A contracting agency or other interested party may request a hearing on an issue presented in [22.1013\(a\)](#). To obtain a hearing for the contracting agency, the contracting officer shall submit a written request through appropriate channels (ordinarily the agency labor advisor) to—

Administrator, Wage and Hour Division  
Employment Standards Administration  
U.S. Department of Labor  
Washington, DC 20210

(b) A request for a substantial variance hearing shall include sufficient data to show that the rates at issue vary substantially from those prevailing for similar services in the locality. The request shall also include—

- (1) The number of the wage determinations at issue;
- (2) The name of the contracting agency whose contract is involved;
- (3) A brief description of the services to be performed under the contract;
- (4) The status of the procurement and any estimated procurement dates, such as bid opening, contract award, and commencement date of the contract or its follow-up option period;
- (5) A statement of the applicant's case, setting forth in detail the reasons why the applicant believes that a substantial variance exists with respect to some or all of the wages and/or fringe benefits;
- (6) Names and addresses (to the extent known) of interested parties; and
- (7) Any other data required by the Administrator.

(c) A request for an arm's length hearing shall include—

- (1) A statement of the applicant's case, setting forth in detail the reasons why the applicant believes that the wages and fringe benefits contained in the collective bargaining agreement were not reached as a result of arm's length negotiations;
  - (2) A statement regarding the status of the procurement and any estimated procurement dates, such as bid opening, contract award, and commencement date of the contract or its follow-up option period; and
  - (3) Names and addresses (to the extent known) of interested parties.
- (d) Unless the Administrator determines that extraordinary circumstances exist, the Administrator will not consider requests for a hearing unless received as follows:
- (1) For sealed bid contracts, more than 10 days before the award of the contract; or
  - (2) For negotiated contracts and for contracts with provisions exceeding the initial term by option, before the commencement date of the contract or the follow-up option period.

#### **22.1022 Withholding of contract payments.**

Any violations of the clause at [52.222-41](#), Service Contract Labor Standards, as amended, renders the responsible contractor liable for the amount of any deductions, rebates, refunds, or underpayments (which includes nonpayment) of compensation due employees performing the contract. The

contracting officer may withhold—or, upon written request of the Department of Labor from a level no lower than that of Deputy Regional Administrator, Wage and Hour Division, Employment Standards Administration, Department of Labor, shall withhold—the amount needed to pay such underpaid employees from accrued payments due the contractor on the contract, or on any other prime contract (whether subject to the Service Contract Labor Standards statute or not) with the contractor. The agency shall place the amount withheld in a deposit fund. Such withheld funds shall be transferred to the Department of Labor for disbursement to the underpaid employees on order of the Secretary (or authorized representatives), and Administrative Law Judge, or the Administrative Review Board. In addition, the Department of Labor has given blanket approval to forward withheld funds pending completion of an investigation or other administrative proceeding when disposition of withheld funds remains the final action necessary to close out a contract.

#### **22.1023 Termination for default.**

As provided by the Service Contract Labor Standards statute, any contractor failure to comply with the requirements of the contract clauses related to the Service Contract Labor Standards statute may be grounds for termination for default (see paragraph (k) of the clause at [52.222-41](#), Service Contract Labor Standards).

#### **22.1024 Cooperation with the Department of Labor.**

The contracting officer shall cooperate with Department of Labor representatives in the examination of records, interviews with service employees, and all other aspects of investigations undertaken by the Department. When asked, agencies shall furnish the Wage and Hour Administrator or a designee, any available information on contractors, subcontractors, their contracts, and the nature of the contract services. The contracting officer shall promptly refer, in writing to the appropriate regional office of the Department, apparent violations and complaints received. Employee complaints shall not be disclosed to the employer.

#### **22.1025 Ineligibility of violators.**

A list of persons or firms found to be in violation of the Service Contract Labor Standards statute is contained in the System for Award Management Exclusions (see [9.404](#)). No Government contract may be awarded to any violator so listed because of a violation of the Service Contract Labor Standards statute, or to any firm, corporation, partnership, or association in which the violator has a substantial interest, without the approval of the Secretary of Labor. This prohibition against award to an ineligible contractor applies to both prime and subcontracts.

**22.1026 Disputes concerning labor standards.**

Disputes concerning labor standards requirements of the contract are handled under paragraph (t) of the contract clause

at [52.222-41](#), Service Contract Labor Standards, and not under the clause at [52.233-1](#), Disputes. |



## Subpart 22.11—Professional Employee Compensation

### 22.1101 Applicability.

The Service Contract Act of 1965, now codified at [41 U.S.C. chapter 67](#), Service Contract Labor Standards, was enacted to ensure that Government contractors compensate their blue-collar service workers and some white-collar service workers fairly, but it does not cover bona fide executive, administrative, or professional employees.

### 22.1102 Definition.

“Professional employee,” as used in this subpart, means any person meeting the definition of “employee employed in a bona fide . . . professional capacity” given in 29 CFR 541. The term embraces members of those professions having a recognized status based upon acquiring professional knowledge through prolonged study. Examples of these professions include accountancy, actuarial computation, architecture, dentistry, engineering, law, medicine, nursing, pharmacy, the sciences (such as biology, chemistry, and physics, and teaching). To be a professional employee, a person must not only

be a professional but must be involved essentially in discharging professional duties.

### 22.1103 Policy, procedures, and solicitation provision.

All professional employees shall be compensated fairly and properly. Accordingly, the contracting officer shall insert the provision at [52.222-46](#), Evaluation of Compensation for Professional Employees, in solicitations for negotiated contracts when the contract amount is expected to exceed \$650,000 and services are to be provided which will require meaningful numbers of professional employees. This provision requires that offerors submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits for professional employees working on the contract. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure. Plans indicating unrealistically low professional employee compensation may be assessed adversely as one of the factors considered in making an award.

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## Subpart 22.12—Nondisplacement of Qualified Workers Under Service Contracts

### 22.1200 Scope of subpart.

This subpart prescribes policies and procedures for implementing Executive Order 13495 of January 30, 2009, Nondisplacement of Qualified Workers Under Service Contracts, and related Secretary of Labor regulations and instructions (see 29 CFR part 9).

### 22.1201 Definitions.

As used in this subpart—

“United States” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, and outer Continental Shelf as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331, *et seq.*), but does not include any other place subject to United States jurisdiction or any United States base or possession in a foreign country (see 29 CFR 4.112).

### 22.1202 Policy.

(a) When a service contract succeeds a contract for performance of the same or similar services, as defined at 29 CFR 9.2, at the same location, the successor contractor and its subcontractors are required to offer those service employees that are employed under the predecessor contract, and whose employment will be terminated as a result of the award of the successor contract, a right of first refusal of employment under the contract in positions for which they are qualified. Executive Order 13495 generally prohibits employment openings under the successor contract until such right of first refusal has been provided, when consistent with applicable law.

(b) Nothing in Executive Order 13495 shall be construed to permit a contractor or subcontractor to fail to comply with any provision of any other Executive order or law. For example, the requirements of the HUBZone Program (see subpart [19.13](#)), Executive Order 11246 (Equal Employment Opportunity), and the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 may, in certain circumstances, conflict with the requirements of Executive Order 13495. All applicable laws and Executive orders must be satisfied in tandem with, and if necessary prior to, the requirements of Executive Order 13495 and this subpart.

### 22.1203 Applicability.

#### 22.1203-1 General.

This subpart applies to service contracts that succeed contracts for the same or similar services (29 CFR 9.2) at the same location.

#### 22.1203-2 Exemptions.

(a) This subpart does not apply to—

(1) Contracts and subcontracts under the simplified acquisition threshold;

(2) Contracts or subcontracts awarded pursuant to 41 U.S.C. chapter 85, Committee for Purchase from People Who Are Blind or Severely Disabled;

(3) Guard, elevator operator, messenger, or custodial services provided to the Government under contracts or subcontracts with sheltered workshops employing the “severely handicapped” as described in 40 U.S.C. 593;

(4) Agreements for vending facilities entered into pursuant to the preference regulations issued under the Randolph Sheppard Act, 20 U.S.C. 107; or

(5) Service employees who were hired to work under a Federal service contract and one or more nonfederal service contracts as part of a single job, provided that the service employees were not deployed in a manner that was designed to avoid the purposes of this subpart.

(b) The exemptions in paragraphs (a)(2) through (a)(4) of this subsection apply when either the predecessor or successor contract has been awarded for services produced or provided by the “severely handicapped.”

#### 22.1203-3 Waiver.

(a) The senior procurement executive of the procuring agency may waive some or all of the provisions of this subpart after determining in writing that the application of this subpart would not serve the purposes of Executive Order 13495 or would impair the ability of the Federal Government to procure services on an economical and efficient basis. Such waivers may be made for a contract, subcontract, or purchase order, or with respect to a class of contracts, subcontracts, or purchase orders. See 29 CFR 9.4(d)(4) for regulatory provisions addressing circumstances in which a waiver could or would not be appropriate. The waiver must be reflected in a written analysis as described in 29 CFR 9.4(d)(4)(i) and must be completed by the contract solicitation date, or the waiver is inoperative. The senior procurement executive shall not redelegate this waiver authority.

(b)(1) When an agency exercises its waiver authority with respect to any contract, subcontract, or purchase order, the contracting officer shall direct the contractor to notify affected workers and their collective bargaining representative in writing, no later than five business days after the solicitation issuance date, of the agency’s determination. The notice shall include facts supporting the determination. The contracting officer’s failure to direct that the contractor provide the notice as provided in this subparagraph shall render the waiver decision inoperative, and the contracting officer shall include the clause at [52.222-17](#) in the solicitation.

(2) Where a contracting agency waives application to a class of contracts, subcontracts, or purchase orders, the con-

tracting officer shall, with respect to each individual solicitation, direct the contractor to notify incumbent workers and their collective bargaining representatives in writing, no later than five business days after each solicitation issuance date, of the agency's determination. The notice shall include facts supporting the determination. The contracting officer's failure to direct that the contractor provide the notice provided in this subparagraph shall render the waiver decision inoperative, and the contracting officer shall include the clause at [52.222-17](#) in the solicitation.

(3) In addition, the agency shall notify the Department of Labor of its waiver decision and provide the Department of Labor with a copy of its written analysis no later than five business days after the solicitation issuance date (see 29 CFR 9.4(d)(2)). Failure to comply with this notification requirement shall render the waiver decision inoperative, and the contracting officer shall include the clause at [52.222-17](#) in the solicitation. The waiver decision and related written analysis shall be sent to the following address: U.S. Department of Labor, Wage and Hour Division, Branch of Government Contracts Enforcement, 200 Constitution Avenue, Room S-3006, Washington, D.C. 20210, or email to: [Displaced@dol.gov](mailto:Displaced@dol.gov).

#### 22.1203-4 Method of job offer.

A job offer made by a successor contractor must be a bona fide express offer of employment on the contract. Each bona fide express offer made to a qualified service employee on the predecessor contract must have a stated time limit of not less than 10 days for an employee response. Prior to the expiration of the 10-day period, the contractor is prohibited from offering employment on the contract to any other person, subject to the exceptions at [22.1203-5](#). Any question concerning an employee's qualifications shall be decided based upon the individual's education and employment history, with particular emphasis on the employee's experience on the predecessor contract, and a contractor may utilize employment screening processes only when such processes are provided for by the contracting agency, are conditions of the service contract, and are consistent with the Executive Order. An offer of employment will be presumed to be bona fide even if it is not for a position similar to the one the employee previously held, but is one for which the employee is qualified, and even if it is subject to different employment terms and conditions, including changes to pay or benefits. (See 29 CFR 9.12(b) for regulatory provisions addressing circumstances in which a bona fide offer of employment can occur.)

#### 22.1203-5 Exceptions.

(a) A successor contractor or its subcontractors are not required to offer employment to any service employee of the predecessor contractor who—

- (1) Will be retained by the predecessor contractor.

(2) The successor contractor or any of its subcontractors reasonably believes, based on the particular service employee's past performance, has failed to perform suitably on the job. (See 29 CFR 9.12(c)(4) for regulatory provisions addressing circumstances in which this exception would or would not be appropriate.)

(b) A successor contractor or its subcontractors may employ under the contract any of its current service employees who (1) have worked for the successor contractor or its subcontractors for at least three months immediately preceding the commencement of the successor contract, and (2) would otherwise face lay-off or discharge.

(c) The successor contractor bears the responsibility of demonstrating the appropriateness of claiming any of the preceding exceptions and the exemption listed at [22.1203-2\(a\)\(5\)](#) involving nonfederal work.

#### 22.1203-6 Reduced staffing.

A successor contractor and its subcontractors may employ fewer service employees than the predecessor contractor employed in connection with performance of the work. Thus, the successor contractor need not offer employment on the contract to all service employees on the predecessor contract, but must offer employment only to the number of eligible service employees the successor contractor believes necessary to meet its anticipated staffing pattern. Where a successor contractor does not initially offer employment to all the predecessor contract service employees, the obligation to offer employment shall continue for 90 days after the successor contractor's first date of performance on the contract. (See 29 CFR 9.12(d) for regulatory provisions addressing circumstances in which reduced staffing can occur.)

#### 22.1204 Certified service employee lists.

(a) Not less than 30 days before completion of the contract, the predecessor contractor is required to furnish to the contracting officer a certified list of the names of all service employees working under the contract and its subcontracts at the time the list is submitted. The certified list must also contain anniversary dates of employment of each service employee under the contract and subcontracts for services. The information on this list is the same as that on the seniority list required by paragraph (n) of the clause at [52.222-41](#), Service Contract Labor Standards. If there are no changes to the workforce before the predecessor contract is completed, then the predecessor contractor is not required to submit a revised list 10 days prior to completion of performance and the requirements of [52.222-41\(n\)](#) are met. When there are changes to the workforce after submission of the 30-day list, the predecessor contractor shall submit a revised certified list not less than 10 days prior to performance completion.

(b) Immediately upon receipt of the certified service employee list but not before contract award, the contracting

### Subpart 22.15—Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

#### 22.1500 Scope.

This subpart applies to acquisitions of supplies that exceed the micro-purchase threshold.

#### 22.1501 Definitions.

As used in this subpart—

“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.

“List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor” means the list published by the Department of Labor in accordance with E.O. 13126 of June 12, 1999, Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor. The list identifies products, by their country of origin, that the Departments of Labor, Treasury, and State have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor.

#### 22.1502 Policy.

Agencies must take appropriate action to enforce the laws prohibiting the manufacture or importation of products that have been mined, produced, or manufactured wholly or in part by forced or indentured child labor, consistent with [19 U.S.C. 1307](#), [29 U.S.C. 201](#), *et seq.*, and [41 U.S.C. chapter 65](#). Agencies should make every effort to avoid acquiring such products.

#### 22.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.

(a) When issuing a solicitation for supplies expected to exceed the micro-purchase threshold, the contracting officer must check the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor (the List) ([www.dol.gov/ilab/](http://www.dol.gov/ilab/)) (see [22.1505\(a\)](#)). Appearance of a product on the List is not a bar to purchase of any such product mined, produced, or manufactured in the identified country, but rather is an alert that there is a reasonable basis to believe that such product may have been mined, produced, or manufactured by forced or indentured child labor.

(b) The requirements of this subpart that result from the appearance of any end product on the List do not apply to a

solicitation or contract if the identified country of origin on the List is—

(1) Canada, and the anticipated value of the acquisition is \$25,000 or more ([subpart 25.4](#));

(2) Israel, and the anticipated value of the acquisition is \$50,000 or more (see [25.406](#));

(3) Mexico, and the anticipated value of the acquisition is \$79,507 or more (see [subpart 25.4](#)); or

(4) Armenia, Aruba, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or the United Kingdom and the anticipated value of the acquisition is \$204,000 or more (see [25.402\(b\)](#)).

(c) Except as provided in paragraph (b) of this section, before the contracting officer may make an award for an end product (regardless of country of origin) of a type identified by country of origin on the List the offeror must certify that—

(1) It will not supply any end product on the List that was mined, produced, or manufactured in a country identified on the List for that product, as specified in the solicitation by the contracting officer in the Certification Regarding Knowledge of Child Labor for Listed End Products; or

(2)(i) It has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any end product to be furnished under the contract that is on the List and was mined, produced, or manufactured in a country identified on the List for that product; and

(ii) On the basis of those efforts, the offeror is unaware of any such use of child labor.

(d) Absent any actual knowledge that the certification is false, the contracting officer must rely on the offerors' certifications in making award decisions.

(e) Whenever a contracting officer has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture an end product furnished pursuant to a contract awarded subject to the certification required in paragraph (c) of this section, the contracting officer must refer the matter for investigation by the agency's Inspector General, the Attorney General, or the Secretary of the Treasury, whichever is determined appropriate in accordance with agency procedures, except to the extent that the end product is from the country listed in paragraph (b) of this section, under a contract exceeding the applicable threshold.

(f) Proper certification will not prevent the head of an agency from imposing remedies in accordance with section [22.1504\(a\)\(4\)](#) if it is later discovered that the contractor has furnished an end product or component that has in fact

been mined, produced, or manufactured, wholly or in part, using forced or indentured child labor.

#### **22.1504 Violations and remedies.**

(a) *Violations.* The Government may impose remedies set forth in paragraph (b) of this section for the following violations (note that the violations in paragraphs (a)(3) and (a)(4) of this section go beyond violations of the requirements relating to certification of end products) (see [22.1503](#)):

(1) The contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor.

(2) The contractor has failed to cooperate as required in accordance with the clause at [52.222-19](#), Child Labor Cooperation with Authorities and Remedies, with an investigation of the use of forced or indentured child labor by an Inspector General, the Attorney General, or the Secretary of the Treasury.

(3) The contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.

(4) The contractor has furnished an end product or component mined, produced, or manufactured, wholly or in part, by forced or indentured child labor. Remedies in paragraphs (b)(2) and (b)(3) of this section are inappropriate unless the contractor knew of the violation.

(b) *Remedies.* (1) The contracting officer may terminate the contract.

(2) The suspending official may suspend the contractor in accordance with the procedures in [subpart 9.4](#).

(3) The debarring official may debar the contractor for a period not to exceed 3 years in accordance with the procedures in [subpart 9.4](#).

#### **22.1505 Solicitation provision and contract clause.**

(a) Except as provided in paragraph (b) of [22.1503](#), insert the provision at [52.222-18](#), Certification Regarding Knowledge of Child Labor for Listed End Products, in all solicitations that are expected to exceed the micro-purchase threshold and are for the acquisition of end products (regardless of country of origin) of a type identified by country of origin on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, except solicitations for commercial items that include the provision at [52.212-3](#), Offeror Representations and Certifications—Commercial Items. The contracting officer must identify in paragraph (b) of the provision at [52.222-18](#), Certification Regarding Knowledge of Child Labor for Listed End Products, or paragraph (i)(1) of the provision at [52.212-3](#), any applicable end products and countries of origin from the List. For solicitations estimated to equal or exceed \$25,000, the contracting officer must exclude from the List in the solicitation end products from any countries identified at [22.1503](#)(b), in accordance with the specified thresholds.

(b) Insert the clause at [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies, in all solicitations and contracts for the acquisition of supplies that are expected to exceed the micro-purchase thresholds.

## Subpart 23.5—Drug-Free Workplace

### 23.500 Scope of subpart.

This subpart implements [41 U.S.C. chapter 81](#), Drug-Free Workplace.

### 23.501 Applicability.

This subpart applies to contracts, including contracts with 8(a) contractors under FAR [Subpart 19.8](#) and modifications that require a justification and approval (see [Subpart 6.3](#)), except contracts—

- (a) At or below the simplified acquisition threshold; however, the requirements of this subpart apply to all contracts of any value awarded to an individual;
- (b) For the acquisition of commercial items (see [Part 12](#));
- (c) Performed outside the United States and its outlying areas or any part of a contract performed outside the United States and its outlying areas;
- (d) By law enforcement agencies, if the head of the law enforcement agency or designee involved determines that application of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or
- (e) Where application would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.

### 23.502 Authority.

[41 U.S.C. chapter 81](#), Drug-Free Workplace.

### 23.503 Definitions.

As used in this subpart—

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act ([21 U.S.C. 812](#)), and as further defined in regulation at 21 CFR 1308.11–1308.15.

“Conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

“Employee” means an employee of a contractor directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other contract employee who has other than a minimal impact or involvement in contract performance.

“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

### 23.504 Policy.

(a) No offeror other than an individual shall be considered a responsible source (see [9.104-1\(g\)](#) and [19.602-1\(a\)\(2\)\(i\)](#)) for a contract that exceeds the simplified acquisition threshold, unless it agrees that it will provide a drug-free workplace by—

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employees about—

- (i) The dangers of drug abuse in the workplace;
- (ii) The contractor's policy of maintaining a drug-free workplace;
- (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Providing all employees engaged in performance of the contract with a copy of the statement required by paragraph (a)(1) of this section;

(4) Notifying all employees in writing in the statement required by paragraph (a)(1) of this section, that as a condition of employment on a covered contract, the employee will—

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notifying the contracting officer in writing within 10 days after receiving notice under subdivision (a)(4)(ii) of this section, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under paragraph (a)(4) of this section of a conviction, taking one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

- (i) Taking appropriate personnel action against such employee, up to and including termination; or
- (ii) Requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Making a good faith effort to maintain a drug-free workplace through implementation of paragraphs (a)(1) through (a)(6) of this section.

(b) No individual shall be awarded a contract of any dollar value unless that individual agrees not to engage in the unlaw-

ful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing the contract.

(c) For a contract of 30 days or more performance duration, the contractor shall comply with the provisions of paragraph (a) of this section within 30 days after contract award, unless the contracting officer agrees in writing that circumstances warrant a longer period of time to comply. Before granting such an extension, the contracting officer shall consider such factors as the number of contractor employees at the worksite, whether the contractor has or must develop a drug-free workplace program, and the number of contractor worksites. For contracts of less than 30 days performance duration, the contractor shall comply with the provisions of paragraph (a) of this section as soon as possible, but in any case, by a date prior to when performance is expected to be completed.

#### **23.505 Contract clause.**

Except as provided in [23.501](#), insert the clause at [52.223-6](#), Drug-Free Workplace, in solicitations and contracts.

#### **23.506 Suspension of payments, termination of contract, and debarment and suspension actions.**

(a) After determining in writing that adequate evidence to suspect any of the causes at paragraph (d) of this section

exists, the contracting officer may suspend contract payments in accordance with the procedures at [32.503-6\(a\)\(1\)](#).

(b) After determining in writing that any of the causes at paragraph (d) of this section exist, the contracting officer may terminate the contract for default.

(c) Upon initiating action under paragraph (a) or (b) of this section, the contracting officer shall refer the case to the agency suspension and debarment official, in accordance with agency procedures, pursuant to [Subpart 9.4](#).

(d) The specific causes for suspension of contract payments, termination of a contract for default, or suspension and debarment are—

(1) The contractor has failed to comply with the requirements of the clause at [52.223-6](#), Drug-Free Workplace; or

(2) The number of contractor employees convicted of violations of criminal drug statutes occurring in the workplace indicates that the contractor has failed to make a good faith effort to provide a drug-free workplace.

(e) A determination under this section to suspend contract payments, terminate a contract for default, or debar or suspend a contractor may be waived by the agency head for a particular contract, in accordance with agency procedures, only if such waiver is necessary to prevent a severe disruption of the agency operation to the detriment of the Federal Government or the general public (see [Subpart 9.4](#)). The waiver authority of the agency head cannot be delegated.



### Subpart 23.7—Contracting for Environmentally Preferable Products and Services

#### 23.700 Scope.

This subpart prescribes policies for acquiring environmentally preferable products and services.

#### 23.701 Definitions.

As used in this subpart—

“Computer monitor” means a video display unit used with a computer.

“Desktop computer” means a computer designed for use on a desk or table.

“Notebook computer” means a portable-style or laptop-style computer system.

“Personal computer product” means a notebook computer, a desktop computer, or a computer monitor, and any peripheral equipment that is integral to the operation of such items. For example, the desktop computer together with the keyboard, the mouse, and the power cord would be a personal computer product. Printers, copiers, and fax machines are not included in peripheral equipment, as used in this definition.

#### 23.702 Authorities.

(a) Resource Conservation and Recovery Act (RCRA) ([42 U.S.C. 6901](#), *et seq.*).

(b) National Energy Conservation Policy Act ([42 U.S.C. 8262g](#)).

(c) Pollution Prevention Act of 1990 ([42 U.S.C. 13101](#), *et seq.*).

(d) Farm Security and Rural Investment Act of 2002 (FSRIA) ([7 U.S.C. 8102](#)).

(e) Executive Order 13221 of July 31, 2001, Energy Efficient Standby Power Devices.

(f) Executive Order 13423 of January 24, 2007, Strengthening Federal Environmental, Energy, and Transportation Management.

(g) Executive Order 13514 of October 5, 2009, Federal Leadership in Environmental, Energy, and Economic Performance.

#### 23.703 Policy.

Agencies must—

(a) Implement cost-effective contracting preference programs promoting energy-efficiency, water conservation, and the acquisition of environmentally preferable products and services; and

(b) Employ acquisition strategies that affirmatively implement the following environmental objectives:

(1) Maximize the utilization of environmentally preferable products and services (based on EPA-issued guidance).

(2) Promote energy-efficiency and water conservation.

(3) Eliminate or reduce the generation of hazardous waste and the need for special material processing (including special handling, storage, treatment, and disposal).

(4) Promote the use of nonhazardous and recovered materials.

(5) Realize life-cycle cost savings.

(6) Promote cost-effective waste reduction when creating plans, drawings, specifications, standards, and other product descriptions authorizing material substitutions, extensions of shelf-life, and process improvements.

(7) Promote the use of biobased products.

(8) Purchase only plastic ring carriers that are degradable ([7 USC 8102\(c\)\(1\)](#), 40 CFR part 238).

#### 23.704 Electronic products environmental assessment tool.

(a) *General.* As required by E.O. 13423, agencies must ensure that they meet at least 95 percent of their annual acquisition requirement for electronic products with Electronic Product Environmental Assessment Tool (EPEAT)-registered electronic products, unless there is no EPEAT standard for such products. This policy applies to contracts performed in the United States, unless otherwise provided by agency procedures.

(b) *Personal computer products.* Personal computer products is a category of EPEAT-registered electronic products.

(1) The IEEE 1680 standard for personal computer products—

(i) Was issued by the Institute of Electrical and Electronics Engineers on April 28, 2006;

(ii) Is a voluntary consensus standard consistent with section 12(d) of Pub. L. 104-113 ([15 U.S.C. 272 note](#)), the “National Technology Transfer and Advancement Act of 1995”, (see [11.102\(c\)](#));

(iii) Meets EPA-issued guidance on environmentally preferable products and services; and

(iv) Is described in more detail at [www.epeat.net](#).

(2) A list of EPEAT-registered products that meet the IEEE 1680 standard can be found at [www.epeat.net](#).

(3) The IEEE 1680 standard sets forth required and optional criteria. EPEAT “Bronze” registered products must meet all required criteria. EPEAT “Silver” registered products meet all required criteria and 50 percent of the optional criteria. EPEAT “Gold” registered products meet all required criteria and 75 percent of the optional criteria. These are the levels discussed in clause 1.4 of the IEEE 1680 Standard. The clause at [52.223-16](#), IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products, makes EPEAT Bronze registration the standard that contractors must meet. In accordance with guidance from the Office of the Federal Environmental Executive encouraging agencies to procure EPEAT Silver registered products, Alternate I of the clause makes EPEAT Silver registration the standard that con-

tractors must meet. Agencies also may use EPEAT Silver or Gold registration in the evaluation of proposals.

(c) The agency shall establish procedures for granting exceptions to the requirement in paragraph (a) of this section, with the goal that the dollar value of exceptions granted will not exceed 5 percent of the total dollar value of electronic products acquired by the agency, for which EPEAT-registered products are available. For example, agencies may grant an exception if the agency determines that no EPEAT-registered product meets agency requirements, or that the EPEAT-registered product will not be cost effective over the life of the product.

**23.705 Contract clauses.**

(a) Insert the clause at [52.223-10](#), Waste Reduction Program, in all solicitations and contracts for contractor operation

of Government-owned or -leased facilities and all solicitations and contracts for support services at Government-owned or -operated facilities.

(b)(1) Unless an exception has been approved in accordance with [23.704\(c\)](#), insert the clause at [52.223-16](#), IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products, in all solicitations and contracts for—

- (i) Personal computer products;
- (ii) Services that require furnishing of personal computer products for use by the Government; or
- (iii) Contractor operation of Government-owned facilities.

(2) Agencies may use the clause with its Alternate I when there are sufficient EPEAT Silver registered products available to meet agency needs.

**Subpart 24.2—Freedom of Information Act**

**24.201 Authority.**

The Freedom of Information Act ([5 U.S.C. 552](#), as amended) provides that information is to be made available to the public either by—

- (a) Publication in the *Federal Register*;
- (b) Providing an opportunity to read and copy records at convenient locations; or
- (c) Upon request, providing a copy of a reasonably described record.

**24.202 Prohibitions.**

(a) A proposal in the possession or control of the Government, submitted in response to a competitive solicitation, shall not be made available to any person under the Freedom of Information Act. This prohibition does not apply to a proposal, or any part of a proposal, that is set forth or incorporated by reference in a contract between the Government and the contractor that submitted the proposal. (See [10 U.S.C. 2305\(g\)](#) and [41 U.S.C. 4702](#).)

(b) No agency shall disclose any information obtained pursuant to [15.403-3\(b\)](#) that is exempt from disclosure under the Freedom of Information Act. (See [10 U.S.C. 2306a\(d\)\(2\)\(C\)](#) and [41 U.S.C. 3505\(b\)\(3\)](#).)

(c) A dispute resolution communication that is between a neutral person and a party to alternative dispute resolution proceedings, and that may not be disclosed under [5 U.S.C. 574](#), is exempt from disclosure under the Freedom of Information Act ([5 U.S.C. 552\(b\)\(3\)](#)).

**24.203 Policy.**

(a) The Act specifies, among other things, how agencies shall make their records available upon public request, imposes strict time standards for agency responses, and exempts certain records from public disclosure. Each agency’s implementation of these requirements is located in its respective title of the *Code of Federal Regulations* and referenced in [Subpart 24.2](#) of its implementing acquisition regulations.

(b) Contracting officers may receive requests for records that may be exempted from mandatory public disclosure. The exemptions most often applicable are those relating to classified information, to trade secrets and confidential commercial or financial information, to interagency or intra-agency memoranda, or to personal and medical information pertaining to an individual. Other exemptions include agency personnel practices, and law enforcement. Since these requests often involve complex issues requiring an in-depth knowledge of a large and increasing body of court rulings and policy guidance, contracting officers are cautioned to comply with the implementing regulations of their agency and to obtain necessary guidance from the agency officials having Freedom of Information Act responsibility. If additional assistance is needed, authorized agency officials may contact the Department of Justice, Office of Information and Privacy. A Freedom of Information Act guide and other resources are available at the Department of Justice website under FOIA reference materials: <http://www.usdoj.gov/oip>.

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**25.000 Scope of part.**

- (a) This part provides policies and procedures for—
  - (1) Acquisition of foreign supplies, services, and construction materials; and
  - (2) Contracts performed outside the United States.
- (b) It implements [41 U.S.C. chapter 83](#), Buy American; trade agreements; and other laws and regulations.

**25.001 General.**

- (a) [41 U.S.C. chapter 83](#), Buy American—
  - (1) Restricts the purchase of supplies, that are not domestic end products, for use within the United States. A foreign end product may be purchased if the contracting officer determines that the price of the lowest domestic offer is unreasonable or if another exception applies (see [Subpart 25.1](#)); and
  - (2) Requires, with some exceptions, the use of only domestic construction materials in contracts for construction in the United States (see [Subpart 25.2](#)).
- (b) The restrictions in the Buy American statute are not applicable in acquisitions subject to certain trade agreements (see [Subpart 25.4](#)). In these acquisitions, end products and construction materials from certain countries receive nondiscriminatory treatment in evaluation with domestic offers. Generally, the dollar value of the acquisition determines which of the trade agreements applies. Exceptions to the applicability of the trade agreements are described in [Subpart 25.4](#).
- (c) The test to determine the country of origin for an end product under the Buy American statute (see the various country “end product” definitions in [25.003](#)) is different from the test to determine the country of origin for an end product

under the trade agreements, or the criteria for the representation on end products manufactured outside the United States (see [52.225-18](#)).

(1) The Buy American statute uses a two-part test to define a “domestic end product” or “domestic construction material” (manufactured in the United States and a formula based on cost of domestic components). The component test has been waived for acquisition of commercially available off-the-shelf items.

(2) Under the trade agreements, the test to determine country of origin is “substantial transformation” (*i.e.*, transforming an article into a new and different article of commerce, with a name, character, or use distinct from the original article).

(3) For the representation at [52.225-18](#), the only criterion is whether the place of manufacture of an end product is in the United States or outside the United States, without regard to the origin of the components.

(4) When using funds appropriated under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), the definition of “domestic manufactured construction material” requires manufacture in the United States but does not include a requirement with regard to the origin of the components. If the construction material consists wholly or predominantly of iron or steel, the iron or steel must be produced in the United States.

**25.002 Applicability of subparts.**

The following table shows the applicability of the subparts. [Subpart 25.5](#) provides comprehensive procedures for offer evaluation and examples.

SUBPART	SUPPLIES FOR USE		CONSTRUCTION		SERVICES PERFORMED	
	INSIDE U.S.	OUTSIDE U.S.	INSIDE U.S.	OUTSIDE U.S.	INSIDE U.S.	OUTSIDE U.S.
25.1 Buy American—Supplies	X	—	—	—	—	—
25.2 Buy American—Construction Materials	—	—	X	—	—	—
25.3 Contracts Performed Outside the United States	—	X	—	X	—	X
25.4 Trade Agreements	X	X	X	X	X	X
25.5 Evaluating Foreign Offers—Supply Contracts	X	X	—	—	—	—
25.6 American Recovery and Reinvestment Act—Buy American statute—Construction Materials			X			
25.7 Prohibited Sources	X	X	X	X	X	X
25.8 Other International Agreements and Coordination	X	X	—	X	—	X
25.9 Customs and Duties	X	—	—	—	—	—
25.10 Additional Foreign Acquisition Regulations	X	X	X	X	X	X
25.11 Solicitation Provisions and Contract Clauses	X	X	X	X	X	X

**25.003 Definitions.**

As used in this part—

“Caribbean Basin country” means any of the following countries: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago.

“Caribbean Basin country end product”—

(1) Means an article that—

(i)(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under [19 U.S.C. 2703\(b\)](#).

(A) For this reason, the following articles are not Caribbean Basin country end products:

(1) Tuna, prepared or preserved in any manner in airtight containers.

(2) Petroleum, or any product derived from petroleum.

(3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (*i.e.*, Afghanistan, Cuba, Laos, North Korea, and Vietnam).

(4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles.

(B) Access to the HTSUS to determine duty-free status of articles of the types listed in paragraph (1)(ii)(A)(4) of this definition is available via the Internet at <http://www.usitc.gov/tata/hts/>. In particular, see the following:

(1) General Note 3(c), Products Eligible for Special Tariff treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act; and

(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Civil aircraft and related articles” means—

(1) All aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard;

(2) The engines (and parts and components for incorporation into the engines) of these aircraft;

(3) Any other parts, components, and subassemblies for incorporation into the aircraft; and

(4) Any ground flight simulators, and parts and components of these simulators, for use with respect to the aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act.

“Component” means an article, material, or supply incorporated directly into an end product or construction material.

“Construction material” means an article, material, or supply brought to the construction site by a contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(1) For components purchased by the contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product or construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Designated country” means any of the following countries:



(1) A World Trade Organization Government Procurement Agreement country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu” (Chinese Taipei)) or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

“Designated country end product” means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

“Domestic construction material” means—

(1)(i) An unmanufactured construction material mined or produced in the United States;

(ii) A construction material manufactured in the United States, if—

(A) The cost of the components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(B) The construction material is a COTS item;

(2) Except that for use in subpart [25.6](#), see the definition in [25.601](#).

“Domestic end product” means—

(1) An unmanufactured end product mined or produced in the United States;

(2) An end product manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(ii) The end product is a COTS item.

“Domestic offer” means an offer of a domestic end product. When the solicitation specifies that award will be made on a group of line items, a domestic offer means an offer where the proposed price of the domestic end products exceeds 50 percent of the total proposed price of the group.

“Eligible offer” means an offer of an eligible product. When the solicitation specifies that award will be made on a group of line items, an eligible offer means a foreign offer where the combined proposed price of the eligible products and the domestic end products exceeds 50 percent of the total proposed price of the group.

“Eligible product” means a foreign end product, construction material, or service that, due to applicability of a trade agreement to a particular acquisition, is not subject to discriminatory treatment.

“End product” means those articles, materials, and supplies to be acquired for public use.

“Foreign construction material” means a construction material other than a domestic construction material.

“Foreign contractor” means a contractor or subcontractor organized or existing under the laws of a country other than the United States.

“Foreign end product” means an end product other than a domestic end product.

“Foreign offer” means any offer other than a domestic offer.

“Free Trade Agreement country” means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore.

“Free Trade Agreement country end product” means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply

contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Israeli end product” means an article that—

(1) Is wholly the growth, product, or manufacture of Israel; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Israel into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

“Least developed country” means any of the following countries: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia.

“Least developed country end product” means an article that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Noneligible offer” means an offer of a noneligible product.

“Noneligible product” means a foreign end product that is not an eligible product.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-made end product” means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

“World Trade Organization Government Procurement Agreement (WTO GPA) country” means any of the following countries: Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary,

Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom.

“WTO GPA country end product” means an article that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

## Subpart 25.1—Buy American—Supplies

### 25.100 Scope of subpart.

(a) This subpart implements—

(1) [41 U.S.C. chapter 83](#), Buy American;

(2) Executive Order 10582, December 17, 1954; and

(3) Waiver of the component test of the Buy American statute for acquisition of commercially available off-the-shelf (COTS) items in accordance with [41 U.S.C 1907](#).

(b) It applies to supplies acquired for use in the United States, including supplies acquired under contracts set aside for small business concerns, if—

(1) The supply contract exceeds the micro-purchase threshold; or

(2) The supply portion of a contract for services that involves the furnishing of supplies (*e.g.*, lease) exceeds the micro-purchase threshold.

### 25.101 General.

(a) The Buy American statute restricts the purchase of supplies that are not domestic end products. For manufactured end products, the Buy American statute uses a two-part test to define a domestic end product.

(1) The article must be manufactured in the United States; and

(2) The cost of domestic components must exceed 50 percent of the cost of all the components. In accordance with [41 U.S.C 1907](#), this component test of the Buy American statute has been waived for acquisitions of COTS items (see [12.505\(a\)](#)).

(b) The Buy American statute applies to small business set-asides. A manufactured product of a small business concern is a U.S.-made end product, but is not a domestic end product

unless it meets the component test in paragraph (a)(2) of this section.

(c) Exceptions that allow the purchase of a foreign end product are listed at [25.103](#). The unreasonable cost exception is implemented through the use of an evaluation factor applied to low foreign offers that are not eligible offers. The evaluation factor is not used to provide a preference for one foreign offer over another. Evaluation procedures and examples are provided in [Subpart 25.5](#).

### 25.102 Policy.

Except as provided in [25.103](#), acquire only domestic end products for public use inside the United States.

### 25.103 Exceptions.

When one of the following exceptions applies, the contracting officer may acquire a foreign end product without regard to the restrictions of the Buy American statute:

(a) *Public interest.* The head of the agency may make a determination that domestic preference would be inconsistent with the public interest. This exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American Act.

(b) *Nonavailability.* The Buy American statute does not apply with respect to articles, materials, or supplies if articles, materials, or supplies of the class or kind to be acquired, either as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(1) *Class determinations.*(i) A nonavailability determination has been made for the articles listed in [25.104](#). This determination does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. Government and nongovernment demand.

(ii) Before acquisition of an article on the list, the procuring agency is responsible to conduct market research appropriate to the circumstances, including seeking of domestic sources. This applies to acquisition of an article as—

(A) An end product; or

(B) A significant component (valued at more than 50 percent of the value of all the components).

(iii) The determination in paragraph (b)(1)(i) of this section does not apply if the contracting officer learns at any time before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available commercial quantities of a satisfactory quality to meet the requirements of the solicitation. The contracting officer must—

(A) Ensure that the appropriate Buy American statute provision and clause are included in the solicitation (see [22.1101\(a\)](#), [22.1101\(b\)](#), or [25.1102](#));

(B) Specify in the solicitation that the article is available domestically and that offerors and contractors may

not treat foreign components of the same class or kind as domestic components; and

(C) Submit a copy of supporting documentation to the appropriate council identified in [1.201-1](#), in accordance with agency procedures, for possible removal of the article from the list.

(2) *Individual determinations.* (i) The head of the contracting activity may make a determination that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(ii) If the contracting officer considers that the non-availability of an article is likely to affect future acquisitions, the contracting officer may submit a copy of the determination and supporting documentation to the appropriate council identified in [1.201-1](#), in accordance with agency procedures, for possible addition to the list in [25.104](#).

(3) A written determination is not required if all of the following conditions are present:

(i) The acquisition was conducted through use of full and open competition.

(ii) The acquisition was synopsized in accordance with [5.201](#).

(iii) No offer for a domestic end product was received.

(c) *Unreasonable cost.* The contracting officer may determine that the cost of a domestic end product would be unreasonable, in accordance with [25.105](#) and [Subpart 25.5](#).

(d) *Resale.* The contracting officer may purchase foreign end products specifically for commissary resale.

(e) *Information technology that is a commercial item.* The restriction on purchasing foreign end products does not apply to the acquisition of information technology that is a commercial item, when using fiscal year 2004 or subsequent fiscal year funds (Section 535(a) of Division F, Title V, Consolidated Appropriations Act, 2004, and similar sections in subsequent appropriations acts).

### 25.104 Nonavailable articles.

(a) The following articles have been determined to be non-available in accordance with [25.103\(b\)\(1\)\(i\)](#):

Acetylene, black.

Agar, bulk.

Anise.

Antimony, as metal or oxide.

Asbestos, amosite, chrysotile, and crocidolite.

Bamboo shoots.

Bananas.

Bauxite.

Beef, corned, canned.

Beef extract.

Bephenium hydroxynapthoate.

Bismuth.

Books, trade, text, technical, or scientific; newspapers; pamphlets; magazines; periodicals; printed briefs and films;

not printed in the United States and for which domestic editions are not available.

Brazil nuts, unroasted  
 Cadmium, ores and flue dust.  
 Calcium cyanamide.  
 Capers.  
 Cashew nuts.  
 Castor beans and castor oil.  
 Chalk, English.  
 Chestnuts.  
 Chicle.  
 Chrome ore or chromite.  
 Cinchona bark.  
 Cobalt, in cathodes, rondelles, or other primary ore and metal forms.  
 Cocoa beans.  
 Coconut and coconut meat, unsweetened, in shredded, desiccated, or similarly prepared form.  
 Coffee, raw or green bean.  
 Colchicine alkaloid, raw.  
 Copra.  
 Cork, wood or bark and waste.  
 Cover glass, microscope slide.  
 Crane rail (85-pound per foot).  
 Cryolite, natural.  
 Dammar gum.  
 Diamonds, industrial, stones and abrasives.  
 Emetine, bulk.  
 Ergot, crude.  
 Erythrityl tetranitrate.  
 Fair linen, altar.  
 Fibers of the following types: abaca, abace, agave, coir, flax, jute, jute burlaps, palmyra, and sisal.  
 Goat and kidskins.  
 Goat hair canvas.  
 Grapefruit sections, canned.  
 Graphite, natural, crystalline, crucible grade.  
 Hand file sets (Swiss pattern).  
 Handsewing needles.  
 Hemp yarn.  
 Hog bristles for brushes.  
 Hyoscine, bulk.  
 Ipecac, root.  
 Iodine, crude.  
 Kaurigum.  
 Lac.  
 Leather, sheepskin, hair type.  
 Lavender oil.  
 Manganese.  
 Menthol, natural bulk.  
 Mica.  
 Microprocessor chips (brought onto a Government construction site as separate units for incorporation into building systems during construction or repair and alteration of real property).

Modacrylic fiber.  
 Nickel, primary, in ingots, pigs, shots, cathodes, or similar forms; nickel oxide and nickel salts.  
 Nitroguanidine (also known as picrite).  
 Nux vomica, crude.  
 Oiticica oil.  
 Olive oil.  
 Olives (green), pitted or unpitted, or stuffed, in bulk.  
 Opium, crude.  
 Oranges, mandarin, canned.  
 Petroleum, crude oil, unfinished oils, and finished products.  
 Pine needle oil.  
 Pineapple, canned.  
 Platinum and related group metals, refined, as sponge, powder, ingots, or cast bars.  
 Pyrethrum flowers.  
 Quartz crystals.  
 Quebracho.  
 Quinidine.  
 Quinine.  
 Rabbit fur felt.  
 Radium salts, source and special nuclear materials.  
 Rosettes.  
 Rubber, crude and latex.  
 Rutile.  
 Santonin, crude.  
 Secretin.  
 Shellac.  
 Silk, raw and unmanufactured.  
 Spare and replacement parts for equipment of foreign manufacture, and for which domestic parts are not available.  
 Spices and herbs, in bulk.  
 Sugars, raw.  
 Swords and scabbards.  
 Talc, block, steatite.  
 Tantalum.  
 Tapioca flour and cassava.  
 Tartar, crude; tartaric acid and cream of tartar in bulk.  
 Tea in bulk.  
 Thread, metallic (gold).  
 Thyme oil.  
 Tin in bars, blocks, and pigs.  
 Triprolidine hydrochloride.  
 Tungsten.  
 Vanilla beans.  
 Venom, cobra.  
 Water chestnuts.  
 Wax, carnauba.  
 Wire glass.  
 Woods; logs, veneer, and lumber of the following species: Alaskan yellow cedar, angelique, balsa, ekki, greenheart, lignum vitae, mahogany, and teak.  
 Yarn, 50 Denier rayon.

Yeast, active dry and instant active dry.

(b) This list will be published in the *Federal Register* for public comment no less frequently than once every five years. Unsolicited recommendations for deletions from this list may be submitted at any time and should provide sufficient data and rationale to permit evaluation (see [1.502](#)).

**25.105 Determining reasonableness of cost.**

(a) The contracting officer—

(1) Must use the evaluation factors in paragraph (b) of this section unless the head of the agency makes a written determination that the use of higher factors is more appropriate. If the determination applies to all agency acquisitions, the agency evaluation factors must be published in agency regulations; and

(2) Must not apply evaluation factors to offers of eligible products if the acquisition is subject to a trade agreement under [Subpart 25.4](#).

(b) If there is a domestic offer that is not the low offer, and the restrictions of the Buy American statute apply to the low offer, the contracting officer must determine the reasonableness of the cost of the domestic offer by adding to the price of the low offer, inclusive of duty—

(1) 6 percent, if the lowest domestic offer is from a large business concern; or

(2) 12 percent, if the lowest domestic offer is from a small business concern. The contracting officer must use this factor, or another factor established in agency regulations, in small business set-asides if the low offer is from a small business concern offering the product of a small business concern that is not a domestic end product (see [Subpart 19.5](#)).

(c) The price of the domestic offer is reasonable if it does not exceed the evaluated price of the low offer after addition of the appropriate evaluation factor in accordance with paragraph (a) or (b) of this section. (See evaluation procedures at [Subpart 25.5](#).)

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## Subpart 25.2—Buy American— Construction Materials

### 25.200 Scope of Subpart.

(a) This subpart implements—

- (1) [41 U.S.C. chapter 83](#), Buy American;
- (2) Executive Order 10582, December 17, 1954; and
- (3) Waiver of the component test of the Buy American statute for acquisition of commercially available off-the-shelf (COTS) items in accordance with [41 U.S.C 1907](#).

(b) It applies to contracts for the construction, alteration, or repair of any public building or public work in the United States.

(c) When using funds appropriated or otherwise provided by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) for construction, see [subpart 25.6](#).

### 25.201 Policy.

Except as provided in [25.202](#), use only domestic construction materials in construction contracts performed in the United States.

### 25.202 Exceptions.

(a) When one of the following exceptions applies, the contracting officer may allow the contractor to acquire foreign construction materials without regard to the restrictions of the Buy American statute:

(1) *Impracticable or inconsistent with public interest.* The head of the agency may determine that application of the restrictions of the Buy American statute to a particular construction material would be impracticable or would be inconsistent with the public interest. The public interest exception applies when an agency has an agreement with a foreign government that provides a blanket exception to the Buy American statute.

(2) *Nonavailability.* The head of the contracting activity may determine that a particular construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at [25.104\(a\)](#) and the procedures at [25.103\(b\)\(1\)](#) also apply if any of those articles are acquired as construction materials.

(3) *Unreasonable cost.* The contracting officer concludes that the cost of domestic construction material is unreasonable in accordance with [25.204](#).

(4) *Information technology that is a commercial item.* The restriction on purchasing foreign construction material does not apply to the acquisition of information technology that is a commercial item, when using Fiscal Year 2004 or subsequent fiscal year funds (Section 535(a) of Division F,

Title V, Consolidated Appropriations Act, 2004, and similar sections in subsequent appropriations acts).

(b) *Determination and findings.* When a determination is made for any of the reasons stated in this section that certain foreign construction materials may be used, the contracting officer must list the excepted materials in the contract. The agency must make the findings justifying the exception available for public inspection.

(c) *Acquisitions under trade agreements.* For construction contracts with an estimated acquisition value of \$7,864,000 or more, see [subpart 25.4](#).

### 25.203 Preaward determinations.

(a) For any acquisition, an offeror may request from the contracting officer a determination concerning the inapplicability of the Buy American statute for specifically identified construction materials. The time for submitting the request is specified in the solicitation in paragraph (b) of either [52.225-10](#) or [52.225-12](#), whichever applies. The information and supporting data that must be included in the request are also specified in the solicitation in paragraphs (c) and (d) of either [52.225-9](#) or [52.225-11](#), whichever applies.

(b) Before award, the contracting officer must evaluate all requests based on the information provided and may supplement this information with other readily available information.

### 25.204 Evaluating offers of foreign construction material.

(a) Offerors proposing to use foreign construction material other than that listed by the Government in the applicable clause at [52.225-9](#), paragraph (b)(2), or [52.225-11](#), paragraph (b)(3), or covered by the WTO GPA or a Free Trade Agreement (paragraph (b)(2) of [52.225-11](#)), must provide the information required by paragraphs (c) and (d) of the respective clauses.

(b) Unless the head of the agency specifies a higher percentage, the contracting officer must add to the offered price 6 percent of the cost of any foreign construction material proposed for exception from the requirements of the Buy American statute based on the unreasonable cost of domestic construction materials. In the case of a tie, the contracting officer must give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(c) Offerors also may submit alternate offers based on use of equivalent domestic construction material to avoid possible rejection of the entire offer if the Government determines that an exception permitting use of a particular foreign construction material does not apply.

(d) If the contracting officer awards a contract to an offeror that proposed foreign construction material not listed in the applicable clause in the solicitation (paragraph (b)(2) of [52.225-9](#), or paragraph (b)(3) of [52.225-11](#)), the contracting

officer must add the excepted materials to the list in the contract clause.

#### **25.205 Postaward determinations.**

(a) If a contractor requests a determination regarding the inapplicability of the Buy American statute after contract award, the contractor must explain why it could not request the determination before contract award or why the need for such determination otherwise was not reasonably foreseeable. If the contracting officer concludes that the contractor should have made the request before contract award, the contracting officer may deny the request.

(b) The contracting officer must base evaluation of any request for a determination regarding the inapplicability of the Buy American statute made after contract award on information required by paragraphs (c) and (d) of the applicable clause at [52.225-9](#) or [52.225-11](#) and/or other readily available information.

(c) If a determination, under [25.202\(a\)](#), is made after contract award that an exception to the Buy American statute applies, the contracting officer must negotiate adequate consideration and modify the contract to allow use of the foreign construction material. When the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is at least the differential established in [25.202\(a\)](#) or in accordance with agency procedures.

#### **25.206 Noncompliance.**

The contracting officer must—

- (a) Review allegations of Buy American statute violations;
- (b) Unless fraud is suspected, notify the contractor of the apparent unauthorized use of foreign construction material and request a reply, to include proposed corrective action; and

(c) If the review reveals that a contractor or subcontractor has used foreign construction material without authorization, take appropriate action, including one or more of the following:

- (1) Process a determination concerning the inapplicability of the Buy American statute in accordance with [25.205](#).

- (2) Consider requiring the removal and replacement of the unauthorized foreign construction material.

- (3) If removal and replacement of foreign construction material incorporated in a building or work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Government, the contracting officer may determine in writing that the foreign construction material need not be removed and replaced. A determination to retain foreign construction material does not constitute a determination that an exception to the Buy American statute applies, and this should be stated in the determination. Further, a determination to retain foreign construction material does not affect the Government's right to suspend or debar a contractor, subcontractor, or supplier for violation of the Buy American statute, or to exercise other contractual rights and remedies, such as reducing the contract price or terminating the contract for default.

- (4) If the noncompliance is sufficiently serious, consider exercising appropriate contractual remedies, such as terminating the contract for default. Also consider preparing and forwarding a report to the agency suspending or debarring official in accordance with [subpart 9.4](#). If the noncompliance appears to be fraudulent, refer the matter to other appropriate agency officials, such as the officer responsible for criminal investigation.



## Subpart 25.4—Trade Agreements

### 25.400 Scope of subpart.

(a) This subpart provides policies and procedures applicable to acquisitions that are covered by—

(1) The World Trade Organization Government Procurement Agreement (WTO GPA), as approved by Congress in the Uruguay Round Agreements Act (Public Law 103-465);

(2) Free Trade Agreements (FTA), consisting of—

(i) NAFTA (the North American Free Trade Agreement, as approved by Congress in the North American Free Trade Agreement Implementation Act of 1993 (Pub. L. 103-182) ([19 U.S.C. 3301](#) note));

(ii) Chile FTA (the United States-Chile Free Trade Agreement, as approved by Congress in the United States-Chile Free Trade Agreement Implementation Act of 1993 (Pub. L. 108-77) ([19 U.S.C. 3805](#) note));

(iii) Singapore FTA (the United States-Singapore Free Trade Agreement, as approved by Congress in the United States-Singapore Free Trade Agreement Implementation Act (Pub. L. 108-78) ([19 U.S.C. 3805](#) note));

(iv) Australia FTA (the United States-Australia Free Trade Agreement, as approved by Congress in the United States-Australia Free Trade Agreement Implementation Act (Pub. L. 108-286) ([19 U.S.C. 3805](#) note));

(v) Morocco FTA (The United States-Morocco Free Trade Agreement, as approved by Congress in the United States-Morocco Free Trade Agreement Implementation Act (Pub. L. 108-302) ([19 U.S.C. 3805](#) note));

(vi) CAFTA-DR (The Dominican Republic-Central America-United States Free Trade Agreement, as approved by Congress in the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Pub. L. 109-53) ([19 U.S.C. 4001](#) note));

(vii) Bahrain FTA (the United States-Bahrain Free Trade Agreement, as approved by Congress in the United States-Bahrain Free Trade Agreement Implementation Act (Pub. L. 109-169) ([19 U.S.C. 3805](#) note));

(viii) Oman FTA (the United States-Oman Free Trade Agreement, as approved by Congress in the United States-Oman Free Trade Agreement Implementation Act (Pub. L. 109-283) ([19 U.S.C. 3805](#) note));

(ix) Peru FTA (the United States-Peru Trade Promotion Agreement, as approved by Congress in the United States-Peru Trade Promotion Agreement Implementation Act (Pub. L. 110-138) ([19 U.S.C. 3805](#) note));

(x) Korea FTA (the United States–Korea Free Trade Agreement Implementation Act (Pub. L. 112-41) ([19 U.S.C. 3805](#)));

(xi) Colombia FTA (the United States–Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112-42) ([19 U.S.C. 3805](#) note)); and

(xii) Panama FTA (the United States–Panama Trade Promotion Agreement Implementation Act (Pub. L. 112-43) ([19 U.S.C. 3805](#) note));

(3) The least developed country designation made by the U.S. Trade Representative, pursuant to the Trade Agreements Act ([19 U.S.C. 2511\(b\)\(4\)](#)), in acquisitions covered by the WTO GPA;

(4) The Caribbean Basin Trade Initiative (CBTI) (determination of the U.S. Trade Representative that end products or construction material granted duty-free entry from countries designated as beneficiaries under the Caribbean Basin Economic Recovery Act ([19 U.S.C. 2701](#), *et seq.*), with the exception of Panama, must be treated as eligible products in acquisitions covered by the WTO GPA);

(5) The Israeli Trade Act (the U.S.-Israel Free Trade Area Agreement, as approved by Congress in the United States-Israel Free Trade Area Implementation Act of 1985 ([19 U.S.C. 2112](#) note)); or

(6) The Agreement on Trade in Civil Aircraft (U.S. Trade Representative waiver of the Buy American statute for signatories of the Agreement on Trade in Civil Aircraft, as implemented in the Trade Agreements Act of 1979 ([19 U.S.C. 2513](#))).

(b) For application of the trade agreements that are unique to individual agencies, see agency regulations.

### 25.401 Exceptions.

(a) This subpart does not apply to—

(1) Acquisitions set aside for small businesses;

(2) Acquisitions of arms, ammunition, or war materials, or purchases indispensable for national security or for national defense purposes;

(3) Acquisitions of end products for resale;

(4) Acquisitions from Federal Prison Industries, Inc., under [subpart 8.6](#), and acquisitions under [subpart 8.7](#), Acquisition from Nonprofit Agencies Employing People Who Are Blind or Severely Disabled; and

(5) Other acquisitions not using full and open competition, if authorized by [subpart 6.2](#) or [6.3](#), when the limitation of competition would preclude use of the procedures of this subpart; or sole source acquisitions justified in accordance with [13.501\(a\)](#).

(b) In the World Trade Organization Government Procurement Agreement (WTO GPA) and each FTA, there is a U.S. schedule that lists services that are excluded from that agreement in acquisitions by the United States. Acquisitions of the following services are excluded from coverage by the U.S. schedule of the WTO GPA or an FTA as indicated in this table:

	THE SERVICE (FEDERAL SERVICE CODES FROM THE FEDERAL PROCUREMENT DATA SYSTEM PRODUCT/ SERVICE CODE MANUAL ARE INDICATED IN PARENTHESES FOR SOME SERVICES.)	WTO GPA AND KOREA FTA	BAHRAIN FTA, CAFTA-DR, CHILE FTA, COLOMBIA FTA, NAFTA, OMAN FTA, PANAMA FTA, AND PERU FTA	SINGAPORE FTA	AUSTRALIA AND MOROCCO FTA
(1)	All services purchased in support of military services overseas.	X	X	X	X
(2)	(i) Automatic data processing (ADP) telecommunications and transmission services (D304), except enhanced ( <i>i.e.</i> , value-added) telecommunications services.	X	X		
	(ii) ADP teleprocessing and timesharing services (D305), telecommunications network management services (D316), automated news services, data services or other information services (D317), and other ADP and telecommunications services (D399).	X	X		
	(iii) Basic telecommunications network services ( <i>i.e.</i> , voice telephone services, packet-switched data transmission services, circuit-switched data transmission services, telex services, telegraph services, facsimile services, and private leased circuit services, but not information services, as defined in <a href="#">47 U.S.C. 153(20)</a> ).	*	*	X	X
(3)	Dredging.	X	X	X	X
(4)	(i) Operation and management contracts of certain Government or privately owned facilities used for Government purposes, including Federally Funded Research and Development Centers.	X		X	
	(ii) Operation of all Department of Defense, Department of Energy, or the National Aeronautics and Space Administration facilities; and all Government-owned research and development facilities or Government-owned environmental laboratories.	**	X	**	X
(5)	Research and development.	X	X	X	X
(6)	Transportation services (including launching services, but not including travel agent services).	X	X	X	X
(7)	Utility services.	X	X	X	X
(8)	Maintenance, repair, modification, rebuilding and installation of equipment related to ships (J019).		X		X
(9)	Nonnuclear ship repair (J998).		X		X

\* Note 1. Acquisitions of the services listed at (2)(iii) of this table are a subset of the excluded services at (2)(i) and (ii), and are therefore not covered under the WTO GPA.

\*\* Note 2. Acquisitions of the services listed at (4)(ii) of this table are a subset of the excluded services at (4)(i), and are therefore not covered under the WTO GPA.

**25.402 General.**

(a)(1) The Trade Agreements Act ([19 U.S.C. 2501](#), *et seq.*) provides the authority for the President to waive the Buy American statute and other discriminatory provisions for eligible products from countries that have signed an international trade agreement with the United States, or that meet certain other criteria, such as being a least developed country. The President has delegated this waiver authority to the U.S. Trade Representative. In acquisitions covered by the WTO GPA, Free Trade Agreements, or the Israeli Trade Act, the USTR has waived the Buy American statute and other discriminatory provisions for eligible products. Offers of eligible products receive equal consideration with domestic offers.

(2) The contracting officer shall determine the origin of services by the country in which the firm providing the services is established. See [subpart 25.5](#) for evaluation procedures for supply contracts covered by trade agreements.

(b) The value of the acquisition is a determining factor in the applicability of trade agreements. Most of these dollar thresholds are subject to revision by the U.S. Trade Representative approximately every 2 years. The various thresholds are summarized as follows:

Trade Agreement	Supply Contract (equal to or exceeding)	Service Contract (equal to or exceeding)	Construction Contract (equal to or exceeding)
WTO GPA	\$204,000	\$204,000	\$7,864,000
FTAs			
Australia FTA	79,507	79,507	7,864,000
Bahrain FTA	204,000	204,000	10,335,931
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	79,507	79,507	7,864,000
Chile FTA	79,507	79,507	7,864,000
Colombia FTA	79,507	79,507	7,864,000
Korea FTA	100,000	100,000	7,864,000
Morocco FTA	204,000	204,000	7,864,000
NAFTA			
—Canada	25,000	79,507	10,335,931
—Mexico	79,507	79,507	10,335,931
Oman FTA	204,000	204,000	10,335,931
Panama	204,000	204,000	7,864,000
Peru FTA	204,000	204,000	7,864,000
Singapore FTA	79,507	79,507	7,864,000
Israeli Trade Act	50,000	—	—

**25.403 World Trade Organization Government Procurement Agreement and Free Trade Agreements.**

(a) Eligible products from WTO GPA and FTA countries are entitled to the nondiscriminatory treatment specified in [25.402\(a\)\(1\)](#). The WTO GPA and FTAs specify procurement procedures designed to ensure fairness (see [25.408](#)).

(b) *Thresholds.* (1) To determine whether the acquisition of products by lease, rental, or lease-purchase contract (including lease-to-ownership, or lease-with-option-to purchase) is covered by the WTO GPA or an FTA, calculate the estimated acquisition value as follows:

(i) If a fixed-term contract of 12 months or less is contemplated, use the total estimated value of the acquisition.

(ii) If a fixed-term contract of more than 12 months is contemplated, use the total estimated value of the acquisition plus the estimated residual value of the leased equipment at the conclusion of the contemplated term of the contract.

(iii) If an indefinite-term contract is contemplated, use the estimated monthly payment multiplied by the total number of months that ordering would be possible under the proposed contract, *i.e.*, the initial ordering period plus any optional ordering periods.

(iv) If there is any doubt as to the contemplated term of the contract, use the estimated monthly payment multiplied by 48.

(2) The estimated value includes the value of all options.

(3) If, in any 12-month period, recurring or multiple awards for the same type of product or products are anticipated, use the total estimated value of these projected awards to determine whether the WTO GPA or an FTA applies. Do not divide any acquisition with the intent of reducing the estimated value of the acquisition below the dollar threshold of the WTO GPA or an FTA.

(c) *Purchase restriction.* (1) Under the Trade Agreements Act ([19 U.S.C. 2512](#)), in acquisitions covered by the WTO GPA, acquire only U.S.-made or designated country end products or U.S. or designated country services, unless offers for such end products or services are either not received or are insufficient to fulfill the requirements. This purchase restriction does not apply below the WTO GPA threshold for supplies and services, even if the acquisition is covered by an FTA.

(2) This restriction does not apply to purchases of supplies by the Department of Defense from a country with which it has entered into a reciprocal agreement, as provided in departmental regulations.

**25.404 Least developed countries.**

For acquisitions covered by the WTO GPA, least developed country end products, construction material, and services must be treated as eligible products.

**25.405 Caribbean Basin Trade Initiative.**

Under the Caribbean Basin Trade Initiative, the United States Trade Representative has determined that, for acquisitions covered by the WTO GPA, Caribbean Basin country end products, construction material, and services must be treated as eligible products. In accordance with Section 201 (a)(3) of the Dominican Republic-Central America-United States Free Trade Implementation Act (Pub. L. 109-53) (19 U.S.C. 4031), when the CAFTA-DR agreement enters into force with respect to a country, that country is no longer designated as a beneficiary country for purposes of the Caribbean Basin Economic Recovery Act, and is therefore no longer included in the definition of “Caribbean Basin country” for purposes of the Caribbean Basin Trade Initiative.

**25.406 Israeli Trade Act.**

Acquisitions of supplies by most agencies are covered by the Israeli Trade Act, if the estimated value of the acquisition is \$50,000 or more but does not exceed the WTO GPA threshold for supplies (see [25.402\(b\)](#)). Agencies other than the Department of Defense, the Department of Energy, the Department of Transportation, the Bureau of Reclamation of the Department of the Interior, the Federal Housing Finance Board, and the Office of Thrift Supervision must evaluate offers of Israeli end products without regard to the restrictions of the Buy American statute. The Israeli Trade Act does not prohibit the purchase of other foreign end products.

**25.407 Agreement on Trade in Civil Aircraft.**

Under the authority of Section 303 of the Trade Agreements Act, the U.S. Trade Representative has waived the Buy

American statute for civil aircraft and related articles that meet the substantial transformation test of the Trade Agreements Act, from countries that are parties to the Agreement on Trade in Civil Aircraft. Those countries are Albania, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Macao China, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Taiwan (Chinese Taipei), and the United Kingdom.

**25.408 Procedures.**

(a) If the WTO GPA or an FTA applies (see [25.401](#)), the contracting officer must—

(1) Comply with the requirements of [5.203](#), Publicizing and response time;

(2) Comply with the requirements of [5.207](#), Preparation and transmittal of synopses;

(3) Not include technical requirements in solicitations solely to preclude the acquisition of eligible products;

(4) Specify in solicitations that offerors must submit offers in the English language and in U.S. dollars (see [52.214-34](#), Submission of Offers in the English Language, and [52.214-35](#), Submission of Offers in U.S. Currency, or paragraph (c)(5) of [52.215-1](#), Instruction to Offerors—Competitive Acquisitions); and

(5) Provide unsuccessful offerors from WTO GPA or FTA countries notice in accordance with [14.409-1](#) or [15.503](#).

(b) See [subpart 25.5](#) for evaluation procedures and examples.

## Subpart 25.5—Evaluating Foreign Offers— Supply Contracts

### 25.501 General.

The contracting officer—

(a) Must apply the evaluation procedures of this subpart to each line item of an offer unless either the offer or the solicitation specifies evaluation on a group basis (see [25.503](#));

(b) May rely on the offeror's certification of end product origin when evaluating a foreign offer;

(c) Must identify and reject offers of end products that are prohibited in accordance with [Subpart 25.7](#); and

(d) Must not use the Buy American statute evaluation factors prescribed in this subpart to provide a preference for one foreign offer over another foreign offer.

### 25.502 Application.

(a) Unless otherwise specified in agency regulations, perform the following steps in the order presented:

(1) Eliminate all offers or offerors that are unacceptable for reasons other than price; *e.g.*, nonresponsive, debarred or suspended, or a prohibited source (see [Subpart 25.7](#)).

(2) Rank the remaining offers by price.

(3) If the solicitation specifies award on the basis of factors in addition to cost or price, apply the evaluation factors as specified in this section and use the evaluated cost or price in determining the offer that represents the best value to the Government.

(b) For acquisitions covered by the WTO GPA (see [Subpart 25.4](#))—

(1) Consider only offers of U.S.-made or designated country end products, unless no offers of such end products were received;

(2) If the agency gives the same consideration given eligible offers to offers of U.S.-made end products that are not domestic end products, award on the low offer. Otherwise, evaluate in accordance with agency procedures; and

(3) If there were no offers of U.S.-made or designated country end products, make a nonavailability determination (see [25.103\(b\)\(2\)](#)) and award on the low offer (see [25.403\(c\)](#)).

(c) For acquisitions not covered by the WTO GPA, but subject to the Buy American statute (an FTA or the Israeli Trade Act also may apply), the following applies:

(1) If the low offer is a domestic offer or an eligible offer under an FTA or the Israeli Trade Act, award on that offer.

(2) If the low offer is a noneligible offer and there were no domestic offers (see [25.103\(b\)\(3\)](#)), award on the low offer.

(3) If the low offer is a noneligible offer and there is an eligible offer that is lower than the lowest domestic offer, award on the low offer. The Buy American statute provides an evaluation preference only for domestic offers.

(4) Otherwise, apply the appropriate evaluation factor provided in [25.105](#) to the low offer.

(i) If the evaluated price of the low offer remains less than the lowest domestic offer, award on the low offer.

(ii) If the price of the lowest domestic offer is less than the evaluated price of the low offer, award on the lowest domestic offer.

(d) *Ties.* (1) If application of an evaluation factor results in a tie between a domestic offer and a foreign offer, award on the domestic offer.

(2) If no evaluation preference was applied (*i.e.*, offers afforded nondiscriminatory treatment under the Buy American statute), resolve ties between domestic and foreign offers by a witnessed drawing of lots by an impartial individual.

(3) Resolve ties between foreign offers from small business concerns (under the Buy American statute, a small business offering a manufactured article that does not meet the definition of “domestic end product” is a foreign offer) or foreign offers from a small business concern and a large business concern in accordance with [14.408-6\(a\)](#).

### 25.503 Group offers.

(a) If the solicitation or an offer specifies that award can be made only on a group of line items or on all line items contained in the solicitation or offer, reject the offer—

(1) If any part of the award would consist of prohibited end products (see [Subpart 25.7](#)); or

(2) If the acquisition is covered by the WTO GPA and any part of the offer consists of items restricted in accordance with [22.403\(c\)](#).

(b) If an offer restricts award to a group of line items or to all line items contained in the offer, determine for each line item whether to apply an evaluation factor (see [25.504-4](#), Example 1).

(1) First, evaluate offers that do not specify an award restriction on a line item basis in accordance with [25.502](#), determining a tentative award pattern by selecting for each line item the offer with the lowest evaluated price.

(2) Evaluate an offer that specifies an award restriction against the offered prices of the tentative award pattern, applying the appropriate evaluation factor on a line item basis.

(3) Compute the total evaluated price for the tentative award pattern and the offer that specified an award restriction.

(4) Unless the total evaluated price of the offer that specified an award restriction is less than the total evaluated price of the tentative award pattern, award based on the tentative award pattern.

(c) If the solicitation specifies that award will be made only on a group of line items or all line items contained in the solicitation, determine the category of end products on the basis of each line item, but determine whether to apply an evaluation factor on the basis of the group of items (see [25.504-4](#), Example 2).

(1) If the proposed price of domestic end products exceeds 50 percent of the total proposed price of the group,

evaluate the entire group as a domestic offer. Evaluate all other groups as foreign offers.

(2) For foreign offers, if the proposed price of domestic end products and eligible products exceeds 50 percent of the total proposed price of the group, evaluate the entire group as an eligible offer.

(3) Apply the evaluation factor to the entire group in accordance with [25.502](#).

**25.504 Evaluation examples.**

The following examples illustrate the application of the evaluation procedures in [25.502](#) and [25.503](#). The examples assume that the contracting officer has eliminated all offers that are unacceptable for reasons other than price or a trade agreement (see [25.502\(a\)\(1\)](#)). The evaluation factor may change as provided in agency regulations.

**25.504-1 Buy American statute.**

(a)(1) *Example 1.*

Offer A \$12,000 Domestic end product, small business  
 Offer B \$11,700 Domestic end product, small business  
 Offer C \$10,000 U.S.-made end product (not domestic), small business

(2) *Analysis:* This acquisition is for end products for use in the United States and is set aside for small business concerns. The Buy American statute applies. Since the acquisition value is less than \$25,000 and the acquisition is set aside, none of the trade agreements apply. Perform the steps in [25.502\(a\)](#). Offer C is evaluated as a foreign end product because it is the product of a small business, but is not a domestic end product (see [25.502\(c\)\(4\)](#)). Since Offer B is a domestic offer, apply the 12 percent factor to Offer C (see [25.105\(b\)\(2\)](#)). The resulting evaluated price of \$11,200 remains lower than Offer B. The cost of Offer B is therefore unreasonable (see [25.105\(c\)](#)). Award on Offer C at \$10,000 (see [25.502\(c\)\(4\)\(i\)](#)).

(b)(1) *Example 2.*

Offer A \$11,000 Domestic end product, small business  
 Offer B \$10,700 Domestic end product, small business  
 Offer C \$10,200 U.S.-made end product (not domestic), small business

(2) *Analysis:* This acquisition is for end products for use in the United States and is set aside for small business concerns. The Buy American statute applies. Perform the steps in [25.502\(a\)](#). Offer C is evaluated as a foreign end product because it is the product of a small business but is not a domestic end product (see [25.502\(c\)\(4\)](#)). After applying the

12 percent factor, the evaluated price of Offer C is \$11,424. Award on Offer B at \$10,700 (see [25.502\(c\)\(4\)\(ii\)](#)).

**25.504-2 WTO GPA/Caribbean Basin Trade Initiative/ FTAs.**

*Example 1.*

Offer A \$304,000 U.S.-made end product (not domestic)  
 Offer B \$303,000 U.S.-made end product (domestic), small business  
 Offer C \$300,000 Eligible product  
 Offer D \$295,000 Noneligible product (not U.S.-made)

*Analysis:* Eliminate Offer D because the acquisition is covered by the WTO GPA and there is an offer of a U.S.-made or an eligible product (see [25.502\(b\)\(1\)](#)). If the agency gives the same consideration given eligible offers to offers of U.S.-made end products that are not domestic offers, it is unnecessary to determine if U.S.-made end products are domestic (large or small business). No further analysis is necessary. Award on the low remaining offer, Offer C (see [25.502\(b\)\(2\)](#)).

**25.504-3 FTA/Israeli Trade Act.**

(a) *Example 1.*

Offer A \$105,000 Domestic end product, small business  
 Offer B \$100,000 Eligible product

*Analysis:* Since the low offer is an eligible offer, award on the low offer (see [25.502\(c\)\(1\)](#)).

(b) *Example 2.*

Offer A \$105,000 Eligible product  
 Offer B \$103,000 Noneligible product

*Analysis:* Since the acquisition is not covered by the WTO GPA, the contracting officer can consider the noneligible offer. Since no domestic offer was received, make a nonavailability determination and award on Offer B (see [25.502\(c\)\(2\)](#)).

(c) *Example 3.*

Offer A \$105,000 Domestic end product, large business  
 Offer B \$103,000 Eligible product  
 Offer C \$100,000 Noneligible product

*Analysis:* Since the acquisition is not covered by the WTO GPA, the contracting officer can consider the noneligible offer. Because the eligible offer (Offer B) is lower than the domestic offer (Offer A), no evaluation factor applies to the low offer (Offer C). Award on the low offer (see [25.502\(c\)\(3\)](#)).

**25.504-4 Group award basis.**

Key:

- DO = Domestic end product
- EL = Eligible product
- NEL = Noneligible product

(a) Example 1.

OFFERS			
ITEM	A	B	C
1	DO = \$55,000	EL = \$56,000	NEL = \$50,000
2	NEL = 13,000	EL = 10,000	EL = 13,000
3	NEL = 11,500	DO = 12,000	DO = 10,000
4	NEL = 24,000	EL = 28,000	NEL = 22,000
5	DO = 18,000	NEL = 10,000	DO = 14,000
	\$121,500	\$116,000	\$109,000

*Problem:* Offeror C specifies all-or-none award. Assume all offerors are large businesses. The acquisition is not covered by the WTO GPA.

*Analysis:* (see [25.503](#))

*STEP 1:* Evaluate Offers A & B before considering Offer C and determine which offer has the lowest evaluated cost for each line item (the tentative award pattern):

*Item 1:* Low offer A is domestic; select A.

*Item 2:* Low offer B is eligible; do not apply factor; select B.

*Item 3:* Low offer A is noneligible and Offer B is a domestic offer. Apply a 6 percent factor to Offer A. The evaluated price of Offer A is higher than Offer B; select B.

*Item 4:* Low offer A is noneligible. Since neither offer is a domestic offer, no evaluation factor applies; select A.

*Item 5:* Low offer B is noneligible; apply a 6 percent factor to Offer B. Offer A is still higher than Offer B; select B.

*STEP 2:* Evaluate Offer C against the tentative award pattern for Offers A and B:

OFFERS			
ITEM	LOW OFFER	TENTATIVE AWARD PATTERN FROM A AND B	C
1	A	DO = \$ 55,000	NEL = \$53,000*
2	B	EL = 10,000	EL = 13,000
3	B	DO = 12,000	DO = 10,000
4	A	NEL = 24,000	NEL = 22,000
5	B	NEL = 10,600*	DO = 14,000
		\$111,600	\$112,000

\*Offer + 6 percent.

On a line item basis, apply a factor to any noneligible offer if the other offer for that line item is domestic.

For Item 1, apply a factor to Offer C because Offer A is domestic and the acquisition was not covered by the WTO GPA. The evaluated price of Offer C, Item 1, becomes \$53,000 (\$50,000 plus 6 percent). Apply a factor to Offer B, Item 5, because it is a noneligible product and Offer C is domestic. The evaluated price of Offer B is \$10,600 (\$10,000 plus 6 percent). Evaluate the remaining items without applying a factor.

*STEP 3:* The tentative unrestricted award pattern from Offers A and B is lower than the evaluated price of Offer C. Award the combination of Offers A and B. Note that if Offer C had not specified all-or-none award, award would be made on Offer C for line items 1, 3, and 4, totaling an award of \$82,000.

(b) Example 2.

OFFERS			
ITEM	A	B	C
1	DO = \$50,000	EL = \$50,500	NEL = \$50,000
2	NEL = 10,300	NEL = 10,000	EL = 10,200
3	EL = 20,400	EL = 21,000	NEL = 20,200
4	DO = 10,500	DO = 10,300	DO = 10,400
	\$91,200	\$91,800	\$90,800

*Problem:* The solicitation specifies award on a group basis. Assume the Buy American statute applies and the acquisition cannot be set aside for small business concerns. All offerors are large businesses.

*Analysis:* (see [25.503\(c\)](#))

*STEP 1:* Determine which of the offers are domestic (see [25.503\(c\)\(1\)](#)):

	DOMESTIC%	DETERMINATION
A	60,500/91,200 = 66.3%	Domestic
B	10,300/91,800 = 11.2%	Foreign
C	10,400/90,800 = 11.5%	Foreign

*STEP 2:* Determine whether foreign offers are eligible or noneligible offers (see [25.503\(c\)\(2\)](#)):

	DOMESTIC + ELIGIBLE%	DETERMINATION
A	N/A	Domestic
B	81,800/91,800 = 89.1%	Eligible
C	20,600/90,800 = 22.7%	Noneligible

*STEP 3:* Determine whether to apply an evaluation factor (see [25.503\(c\)\(3\)](#)). The low offer (Offer C) is a foreign offer. There is no eligible offer lower than the domestic offer. Therefore, apply the factor to the low offer. Addition of the 6 percent factor (use 12 percent if Offer A is a small business)

to Offer C yields an evaluated price of \$96,248 (\$90,800 + 6 percent). Award on Offer A (see [25.502\(c\)\(4\)\(ii\)](#)). Note that, if Offer A were greater than Offer B, an evaluation factor would not be applied and award would be on Offer C (see [25.502\(c\)\(3\)](#)).



## Subpart 25.6—American Recovery and Reinvestment Act—Buy American statute—Construction Materials

### 25.600 Scope of subpart.

This subpart implements section 1605 in Division A of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) with regard to manufactured construction material and the [41 U.S.C. chapter 83](#), Buy American (referred to in this subpart as the Buy American statute) with regard to unmanufactured construction material. It applies to construction projects that use funds appropriated or otherwise provided by the Recovery Act.

### 25.601 Definitions.

As used in this subpart—

“Domestic construction material” means the following:

(1) An unmanufactured construction material mined or produced in the United States. (The Buy American statute applies.)

(2) A manufactured construction material that is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States. (Section 1605 of the Recovery Act applies.)

“Foreign construction material” means a construction material other than a domestic construction material.

“Manufactured construction material” means any construction material that is not unmanufactured construction material.

“Public building or public work” means a building or work, the construction, prosecution, completion, or repair of which is carried on directly or indirectly by authority of, or with funds of, a Federal agency to serve the interest of the general public regardless of whether title thereof is in a Federal agency (see [22.401](#)). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

“Recovery Act designated country” means a World Trade Organization Government Procurement Agreement country, a Free Trade Agreement country, or a least developed country.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

“Unmanufactured construction material” means raw material brought to the construction site for incorporation into the building or work that has not been—

- (1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

### 25.602 Policy.

#### 25.602-1 Section 1605 of the Recovery Act.

Except as provided in [25.603](#)—

(a) None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless the public building or public work is located in the United States and—

(1) All of the iron, steel, and manufactured goods used as construction material in the project are produced or manufactured in the United States.

(i) All manufactured construction material must be manufactured in the United States.

(ii) *Iron or steel components.* (A) Iron or steel components of construction material consisting wholly or predominantly of iron or steel must be produced in the United States. This does not restrict the origin of the elements of the iron or steel, but requires that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives.

(B) The requirement in paragraph (a)(1)(ii)(A) of this section does not apply to iron or steel components or sub-components in construction material that does not consist wholly or predominantly of iron or steel.

(iii) *All other components.* There is no restriction on the origin or place of production or manufacture of components or subcomponents that do not consist of iron or steel.

(iv) *Examples.* (A) If a steel guardrail consists predominantly of steel, even though coated with aluminum, then the steel would be subject to the section 1605 restriction requiring that all stages of production of the steel occur in the United States, in addition to the requirement to manufacture the guardrail in the United States. There would be no restrictions on the other components of the guardrail.

(B) If a wooden window frame is delivered to the site as a single construction material, there is no restriction on any of the components, including the steel lock on the window frame; or

(2) If trade agreements apply, the manufactured construction material shall either comply with the requirements of paragraph (a)(1) of this subsection, or be wholly the product of or be substantially transformed in a Recovery Act designated country;

(b) Manufactured materials purchased directly by the Government and delivered to the site for incorporation into the project shall meet the same domestic source requirements as

specified for manufactured construction material in paragraphs (a)(1) and (a)(2) of this section; and

(c) A project may include several contracts, a single contract, or one or more line items on a contract.

### 25.602-2 Buy American statute

Except as provided in [25.603](#), use only unmanufactured construction material mined or produced in the United States, as required by the Buy American statute or, if trade agreements apply, unmanufactured construction material mined or produced in a designated country may also be used.

### 25.603 Exceptions.

(a)(1) When one of the following exceptions applies, the contracting officer may allow the contractor to incorporate foreign manufactured construction materials without regard to the restrictions of section 1605 of the Recovery Act or foreign unmanufactured construction material without regard to the restrictions of the Buy American statute:

(i) *Nonavailability.* The head of the contracting activity may determine that a particular construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality. The determinations of nonavailability of the articles listed at [25.104\(a\)](#) and the procedures at [25.103\(b\)\(1\)](#) also apply if any of those articles are acquired as construction materials.

(ii) *Unreasonable cost.* The contracting officer concludes that the cost of domestic construction material is unreasonable in accordance with [25.605](#).

(iii) *Inconsistent with public interest.* The head of the agency may determine that application of the restrictions of section 1605 of the Recovery Act to a particular manufactured construction material, or the restrictions of the Buy American statute to a particular unmanufactured construction material would be inconsistent with the public interest.

(2) In addition, the head of the agency may determine that application of the Buy American statute to a particular unmanufactured construction material would be impracticable.

(b) *Determinations.* When a determination is made, for any of the reasons stated in this section, that certain foreign construction materials may be used—

(1) The contracting officer shall list the excepted materials in the contract; and

(2) For determinations with regard to the inapplicability of section 1605 of the Recovery Act, unless the construction material has already been determined to be domestically nonavailable (see list at [25.104](#)), the head of the agency shall provide a notice to the Federal Register within three business days after the determination is made, with a copy to the Administrator for Federal Procurement Policy and to the

Recovery Accountability and Transparency Board. The notice shall include—

(i) The title “Buy American Exception under the American Recovery and Reinvestment Act of 2009”;

(ii) The dollar value and brief description of the project; and

(iii) A detailed justification as to why the restriction is being waived.

(c) *Acquisitions under trade agreements.* (1) For construction contracts with an estimated acquisition value of \$7,864,000 or more, also see subpart [25.4](#). Offers proposing the use of construction material from a designated country shall receive equal consideration with offers proposing the use of domestic construction material.

(2) For purposes of applying section 1605 of the Recovery Act to evaluation of manufactured construction material, designated countries do not include the Caribbean Basin Countries.

### 25.604 Preaward determination concerning the inapplicability of section 1605 of the Recovery Act or the Buy American statute.

(a) For any acquisition, an offeror may request from the contracting officer a determination concerning the inapplicability of section 1605 of the Recovery Act or the Buy American statute for specifically identified construction materials. The time for submitting the request is specified in the solicitation in paragraph (b) of either [52.225-22](#) or [52.225-24](#), whichever applies. The information and supporting data that must be included in the request are also specified in the solicitation in paragraphs (c) and (d) of either [52.225-21](#) or [52.225-23](#), whichever applies.

(b) Before award, the contracting officer must evaluate all requests based on the information provided and may supplement this information with other readily available information.

(c) Determination based on unreasonable cost of domestic construction material.

(1) *Manufactured construction material.* The contracting officer must compare the offered price of the contract using foreign manufactured construction material (*i.e.*, any construction material not manufactured in the United States, or construction material consisting predominantly of iron or steel and the iron or steel is not produced in the United States) to the estimated price if all domestic manufactured construction material were used. If use of domestic manufactured construction material would increase the overall offered price of the contract by more than 25 percent, then the contracting officer shall determine that the cost of the domestic manufactured construction material is unreasonable.

(2) *Unmanufactured construction material.* The contracting officer must compare the cost of each foreign unmanufactured construction material to the cost of domestic

unmanufactured construction material. If the cost of the domestic unmanufactured construction material exceeds the cost of the foreign unmanufactured construction material by more than 6 percent, then the contracting officer shall determine that the cost of the domestic unmanufactured construction material is unreasonable.

### **25.605 Evaluating offers of foreign construction material.**

(a) If the contracting officer has determined that an exception applies because the cost of certain domestic construction material is unreasonable, in accordance with section [25.604](#), then the contracting officer shall apply evaluation factors to the offer incorporating the use of such foreign construction material as follows:

(1) Use an evaluation factor of 25 percent, applied to the total offered price of the contract, if foreign manufactured construction material is incorporated in the offer based on an exception for unreasonable cost of comparable domestic construction material requested by the offeror.

(2) In addition, use an evaluation factor of 6 percent applied to the cost of foreign unmanufactured construction material incorporated in the offer based on an exception for unreasonable cost of comparable domestic unmanufactured construction material requested by the offeror.

(3) Total evaluated price = offered price + (.25 x offered price, if (a)(1) applies) + (.06 x cost of foreign unmanufactured construction material, if (a)(2) applies).

(b) If the solicitation specifies award on the basis of factors in addition to cost or price, apply the evaluation factors as specified in paragraph (a) of this section and use the evaluated price in determining the offer that represents the best value to the Government

(c) Unless paragraph (b) applies, if two or more offers are equal in price, the contracting officer must give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(d) Offerors also may submit alternate offers based on use of equivalent domestic construction material to avoid possible rejection of the entire offer if the Government determines that an exception permitting use of a particular foreign construction material does not apply.

(e) If the contracting officer awards a contract to an offeror that proposed foreign construction material not listed in the applicable clause in the solicitation (paragraph (b)(3) of [52.225-21](#), or paragraph (b)(3) of [52.225-23](#)), the contracting officer must add the excepted materials to the list in the contract clause.

### **25.606 Postaward determinations.**

(a) If a contractor requests a determination regarding the inapplicability of section 1605 of the Recovery Act or the Buy American statute after contract award, the contractor must

explain why it could not request the determination before contract award or why the need for such determination otherwise was not reasonably foreseeable. If the contracting officer concludes that the contractor should have made the request before contract award, the contracting officer may deny the request.

(b) The contracting officer must base evaluation of any request for a determination regarding the inapplicability of section 1605 of the Recovery Act or the Buy American statute made after contract award on information required by paragraphs (c) and (d) of the applicable clause at [52.225-21](#) or [52.225-23](#) and/or other readily available information.

(c) If a determination, under [25.603\(a\)](#), is made after contract award that an exception to section 1605 of the Recovery Act or to the Buy American statute applies, the contracting officer must negotiate adequate consideration and modify the contract to allow use of the foreign construction material. When the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is at least the differential established in [25.605\(a\)](#).

### **25.607 Noncompliance.**

The contracting officer must—

(a) Review allegations of violations of section 1605 of the Recovery Act or Buy American statute;

(b) Unless fraud is suspected, notify the contractor of the apparent unauthorized use of foreign construction material and request a reply, to include proposed corrective action; and

(c) If the review reveals that a contractor or subcontractor has used foreign construction material without authorization, take appropriate action, including one or more of the following:

(1) Process a determination concerning the inapplicability of section 1605 of the Recovery Act or the Buy American statute in accordance with [25.606](#).

(2) Consider requiring the removal and replacement of the unauthorized foreign construction material.

(3) If removal and replacement of foreign construction material incorporated in a building or work would be impracticable, cause undue delay, or otherwise be detrimental to the interests of the Government, the contracting officer may determine in writing that the foreign construction material need not be removed and replaced. A determination to retain foreign construction material does not constitute a determination that an exception to section 1605 of the Recovery Act or the Buy American statute applies, and this should be stated in the determination. Further, a determination to retain foreign construction material does not affect the Government's right to suspend or debar a contractor, subcontractor, or supplier for violation of section 1605 of the Recovery Act or the Buy American statute, or to exercise other contractual rights and remedies, such as reducing the contract price or terminating the contract for default.

(4) If the noncompliance is sufficiently serious, consider exercising appropriate contractual remedies, such as terminating the contract for default. Also consider preparing and forwarding a report to the agency suspending or debarring

official in accordance with subpart 9.4. If the noncompliance appears to be fraudulent, refer the matter to other appropriate agency officials, such as the agency's inspector general or the officer responsible for criminal investigation. |

## Subpart 25.7—Prohibited Sources

### 25.700 Scope of subpart.

This subpart implements—

(a) Economic sanctions administered by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury prohibiting transactions involving certain countries, entities, and individuals;

(b) The Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174) ([50 U.S.C. 1701 note](#));

(c) The Iran Sanctions Act of 1996 (Iran Sanctions Act) (Pub. L. 104-172; [50 U.S.C. 1701 note](#)), including amendments by the Iran Freedom Support Act (Pub. L. 109-293), section 102 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111-195), and Titles II and III of the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112-158); and

(d) Prohibition against contracting with entities that export sensitive technologies to Iran ([22 U.S.C. 8515](#)).

### 25.701 Restrictions administered by the Department of the Treasury on acquisitions of supplies or services from prohibited sources.

(a) Except as authorized by OFAC, agencies and their contractors and subcontractors must not acquire any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea into the United States or its outlying areas. In addition, lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

(c) Refer questions concerning the restrictions in paragraphs (a) or (b) of this section to the—

Department of the Treasury  
Office of Foreign Assets Control  
Washington, DC 20220  
(Telephone (202) 622-2490).

### 25.702 Prohibition on contracting with entities that conduct restricted business operations in Sudan.

#### 25.702-1 Definitions.

As used in this section—

“Appropriate Congressional committees” means—

(1) The Committee on Banking, Housing, and Urban Affairs, The Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

(2) The Committee on Financial Services, the Committee on Foreign Relations, and the Permanent Select Committee on Intelligence of the House of Representatives.

“Business operations” means engaging in commerce in any form, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

“Marginalized populations of Sudan” means—

(1) Adversely affected groups in regions authorized to receive assistance under section 8(c) of the Darfur Peace and Accountability Act (Pub. L. 109-344) ([50 U.S.C. 1701 note](#)); and

(2) Marginalized areas in Northern Sudan described in section 4(9) of such Act.

“Restricted business operations”—

(1) Means, except as provided in paragraph (2) of this definition, 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).

(2) Does not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

(i) Are conducted under contract directly and exclusively with the regional government of southern Sudan;

(ii) 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;

(iii) Consist of providing goods or services to marginalized populations of Sudan;

(iv) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(v) Consist of providing goods or services that are used only to promote health or education; or

(vi) Have been voluntarily suspended.

#### 25.702-2 Certification.

As required by the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174), each offeror must certify that it does not conduct restricted business operations in Sudan.

#### 25.702-3 Remedies.

Upon the determination of a false certification under subsection [25.702-2](#)—

- (a) The contracting officer may terminate the contract;
- (b) The suspending official may suspend the contractor in accordance with the procedures in [Subpart 9.4](#); and
- (c) The debarring official may debar the contractor for a period not to exceed 3 years in accordance with the procedures in [Subpart 9.4](#).

#### 25.702-4 Waiver.

(a) The President may waive the requirement of subsection [25.702-2](#) on a case-by-case basis if the President determines and certifies in writing to the appropriate congressional committees that it is in the national interest to do so.

(b) An agency seeking waiver of the requirement shall submit the request to the Administrator of the Office of Federal Procurement Policy (OFPP), allowing sufficient time for review and approval. Upon receipt of the waiver request, OFPP shall consult with the President's National Security Council, Office of African Affairs, and the Department of State Sudan Office and Sanctions Office to assess foreign policy aspects of making a national interest recommendation.

(c) Agencies may request a waiver on an individual or class basis; however, waivers are not indefinite and can be cancelled if warranted.

(1) A class waiver may be requested only when the class of supplies is not available from any other source and it is in the national interest.

(2) Prior to submitting the waiver request, the request must be reviewed and cleared by the agency head.

(3) All waiver requests must include the following information:

- (i) Agency name, complete mailing address, and point of contact name, telephone number, and email address;
- (ii) Offeror's name, complete mailing address, and point of contact name, telephone number, and email address;
- (iii) Description/nature of product or service;
- (iv) The total cost and length of the contract;
- (v) Justification, with market research demonstrating that no other offeror can provide the product or service and stating why the product or service must be procured from this offeror, as well as why it is in the national interest for the President to waive the prohibition on contracting with this offeror that conducts restricted business operations in Sudan, including consideration of foreign policy aspects identified in consultation(s) pursuant to [25.702-4\(b\)](#);
- (vi) Documentation regarding the offeror's past performance and integrity (see the Past Performance Information Retrieval System including the Federal Awardee Performance Information and Integrity System at [www.ppirs.gov](http://www.ppirs.gov) and any other relevant information);
- (vii) Information regarding the offeror's relationship or connection with other firms that conduct prohibited business operations in Sudan; and

(viii) Any humanitarian efforts engaged in by the offeror, the human rights impact of doing business with the offeror for which the waiver is requested, and the extent of the offeror's business operations in Sudan.

(d) The consultation in [25.702-4\(b\)](#) and the information in [25.702-4\(c\)\(3\)](#) will be considered in determining whether to recommend that the President waive the requirement of subsection [25.702-2](#). In accordance with section 6(c) of the Sudan Accountability and Divestment Act of 2007, OFPP will semi-annually submit a report to Congress, on April 15th and October 15th, on the waivers granted.

#### 25.703 Prohibition on contracting with entities that engage in certain activities or transactions relating to Iran.

##### 25.703-1 Definitions.

As used in this section—

“Person”—

- (1) Means—
  - (i) A natural person;
  - (ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and
  - (iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and
- (2) Does not include a government or governmental entity that is not operating as a business enterprise.

“Sensitive technology”—

- (1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—
  - (i) To restrict the free flow of unbiased information in Iran; or
  - (ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and
- (2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act ([50 U.S.C. 1702\(b\)\(3\)](#)).

##### 25.703-2 Iran Sanctions Act.

(a) *Certification.* (1) *Certification relating to activities described in section 5 of the Iran Sanctions Act.* As required by section 6(b)(1)(A) of the Iran Sanctions Act (50 U.S.C. 1701 note), unless an exception applies in accordance with paragraph (c) of this subsection, or a waiver is granted in accordance with [25.703-4](#), each offeror must certify that the offeror, and any person owned or controlled by the offeror, does not engage in any activity for which sanctions may be

## Subpart 25.10—Additional Foreign Acquisition Regulations

### 25.1001 Waiver of right to examination of records.

(a) *Policy.* The clause at [52.215-2](#), Audit and Records—Negotiation, prescribed at [15.209\(b\)](#), and paragraph (d) of the clause at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, prescribed at [12.301\(b\)\(4\)](#), implement [10 U.S.C. 2313](#) and [41 U.S.C. 4706](#). The basic clauses authorize examination of records by the Comptroller General.

(1) Insert the appropriate basic clause, whenever possible, in negotiated contracts with foreign contractors.

(2) The contracting officer may use [52.215-2](#) with its Alternate III or [52.212-5](#) with its Alternate I after—

(i) Exhausting all reasonable efforts to include the basic clause;

(ii) Considering factors such as alternate sources of supply, additional cost, and time of delivery; and

(iii) The head of the agency has executed a determination and findings in accordance with paragraph (b) of this section, with the concurrence of the Comptroller General. However, concurrence of the Comptroller General is not required if the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records available for examination.

(b) *Determination and findings.* The determination and findings must—

(1) Identify the contract and its purpose, and identify if the contract is with a foreign contractor or with a foreign government or an agency of a foreign government;

(2) Describe the efforts to include the basic clause;

(3) State the reasons for the contractor's refusal to include the basic clause;

(4) Describe the price and availability of the supplies or services from the United States and other sources; and

(5) Determine that it will best serve the interest of the United States to use the appropriate alternate clause in paragraph (a)(2) of this section.

### 25.1002 Use of foreign currency.

(a) Unless an international agreement or the WTO GPA (see [25.408\(a\)\(4\)](#)) requires a specific currency, contracting officers must determine whether solicitations for contracts to be entered into and performed outside the United States will require submission of offers in U.S. currency or a specified foreign currency. In unusual circumstances, the contracting officer may permit submission of offers in other than a specified currency.

(b) To ensure a fair evaluation of offers, solicitations generally should require all offers to be priced in the same currency. However, if the solicitation permits submission of offers in other than a specified currency, the contracting officer must convert the offered prices to U.S. currency for evaluation purposes. The contracting officer must use the current market exchange rate from a commonly used source in effect as follows:

(1) For acquisitions conducted using sealed bidding procedures, on the date of bid opening.

(2) For acquisitions conducted using negotiation procedures—

(i) On the date specified for receipt of offers, if award is based on initial offers; otherwise

(ii) On the date specified for receipt of final proposal revisions.

(c) If a contract is priced in foreign currency, the agency must ensure that adequate funds are available to cover currency fluctuations to avoid a violation of the Anti-Deficiency Act ([31 U.S.C. 1341](#), [1342](#), [1511-1519](#)).

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## Subpart 25.11—Solicitation Provisions and Contract Clauses

### 25.1101 Acquisition of supplies.

The following provisions and clauses apply to the acquisition of supplies and the acquisition of services involving the furnishing of supplies.

(a)(1) Insert the clause at [52.225-1](#), Buy American—Supplies, in solicitations and contracts with a value exceeding the micro-purchase threshold but not exceeding \$25,000; and in solicitations and contracts with a value exceeding \$25,000, if none of the clauses prescribed in paragraphs (b) and (c) of this section apply, except if—

(i) The solicitation is restricted to domestic end products in accordance with [subpart 6.3](#);

(ii) The acquisition is for supplies for use within the United States and an exception to the Buy American statute applies (*e.g.*, nonavailability, public interest, or information technology that is a commercial item); or

(iii) The acquisition is for supplies for use outside the United States.

(2) Insert the provision at [52.225-2](#), Buy American Certificate, in solicitations containing the clause at [52.225-1](#).

(b) (1) (i) Insert the clause at [52.225-3](#), Buy American—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts if—

(A) The acquisition is for supplies, or for services involving the furnishing of supplies, for use within the United States, and the acquisition value is \$25,000 or more, but is less than \$204,000;

(B) The acquisition is not for information technology that is a commercial item, using fiscal year 2004 or subsequent fiscal year funds; and

(C) No exception in [25.401](#) applies. For acquisitions of agencies not subject to the Israeli Trade Act (see [25.406](#)), see agency regulations.

(ii) If the acquisition value is \$25,000 or more but is less than \$50,000, use the clause with its Alternate I.

(iii) If the acquisition value is \$50,000 or more but is less than \$79,507, use the clause with its Alternate II.

(iv) If the acquisition value is \$79,507 or more but is less than \$100,000, use the clause with its Alternate III.

(2)(i) Insert the provision at [52.225-4](#), Buy American—Free Trade Agreements—Israeli Trade Act Certificate, in solicitations containing the clause at [52.225-3](#).

(ii) If the acquisition value is \$25,000 or more but is less than \$50,000, use the provision with its Alternate I.

(iii) If the acquisition value is \$50,000 or more but is less than \$79,507, use the provision with its Alternate II.

(iv) If the acquisition value is \$79,507 or more, but is less than \$100,000, use the provision with its Alternate III.

(c)(1) Insert the clause at [52.225-5](#), Trade Agreements, in solicitations and contracts valued at \$204,000 or more, if the

acquisition is covered by the WTO GPA (see [subpart 25.4](#)) and the agency has determined that the restrictions of the Buy American statute are not applicable to U.S.-made end products. If the agency has not made such a determination, the contracting officer must follow agency procedures.

(2) Insert the provision at [52.225-6](#), Trade Agreements Certificate, in solicitations containing the clause at [52.225-5](#).

(d) Insert the provision at [52.225-7](#), Waiver of Buy American statute for Civil Aircraft and Related Articles, in solicitations for civil aircraft and related articles (see [25.407](#)), if the acquisition value is less than \$204,000.

(e) Insert the clause at [52.225-8](#), Duty-Free Entry, in solicitations and contracts for supplies that may be imported into the United States and for which duty-free entry may be obtained in accordance with [25.903\(a\)](#), if the value of the acquisition—

(1) Exceeds the simplified acquisition threshold; or

(2) Does not exceed the simplified acquisition threshold, but the savings from waiving the duty is anticipated to be more than the administrative cost of waiving the duty. When used for acquisitions that do not exceed the simplified acquisition threshold, the contracting officer may modify paragraphs (c)(1) and (j)(2) of the clause to reduce the dollar figure.

(f) Insert the provision at [52.225-18](#), Place of Manufacture, in solicitations that are predominantly for the acquisition of manufactured end products, as defined in the provision at [52.225-18](#) (*i.e.*, the estimated value of the manufactured end products exceeds the estimated value of other items to be acquired as a result of the solicitation).

### 25.1102 Acquisition of construction.

When using funds other than those appropriated under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), follow the prescriptions in paragraphs (a) through (d) of this section. Otherwise, follow the prescription in paragraph (e).

(a) Insert the clause at [52.225-9](#), Buy American—Construction Materials, in solicitations and contracts for construction that is performed in the United States valued at less than \$7,864,000.

(1) List in paragraph (b)(2) of the clause all foreign construction material excepted from the requirements of the Buy American statute.

(2) If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (b)(3)(i) of the clause.

(b)(1) Insert the provision at [52.225-10](#), Notice of Buy American Requirement—Construction Materials, in solicitations containing the clause at [52.225-9](#).

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American stat-

ute before receipt of offers, use the provision with its Alternate I.

(c) Insert the clause at [52.225-11](#), Buy American—Construction Materials under Trade Agreements, in solicitations and contracts for construction that is performed in the United States valued at \$7,864,000 or more.

(1) List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American statute, other than designated country construction material.

(2) If the head of the agency determines that a higher percentage is appropriate, substitute the higher evaluation percentage in paragraph (b)(4)(i) of the clause.

(3) For acquisitions valued at \$7,864,000 or more, but less than \$10,335,931, use the clause with its Alternate I. List in paragraph (b)(3) of the clause all foreign construction material excepted from the requirements of the Buy American statute, unless the excepted foreign construction material is from a designated country other than Bahrain, Mexico, and Oman.

(d)(1) Insert the provision at [52.225-12](#), Notice of Buy American Requirement—Construction Materials under Trade Agreements, in solicitations containing the clause at [52.225-11](#).

(2) If insufficient time is available to process a determination regarding the inapplicability of the Buy American statute before receipt of offers, use the provision with its Alternate I.

(3) For acquisitions valued at \$7,864,000 or more, but less than \$10,335,931, use the clause with its Alternate II.

(e)(1) When using funds appropriated under the Recovery Act for construction, use provisions and clauses [52.225-21](#), [52.225-22](#), [52.225-23](#), or [52.225-24](#) (with appropriate Alternates) in lieu of the provisions and clauses [52.225-9](#), [52.225-10](#), [52.225-11](#), or [52.225-12](#) (with appropriate Alternates), respectively, that would be applicable as prescribed in paragraphs (a) through (d) of this section if Recovery Act funds were not used.

(2) If these Recovery Act provisions and clauses are only applicable to a project consisting of certain line items in the contract, identify in the schedule the line items to which the provisions and clauses apply.

(3) When using clause [52.225-23](#), list foreign construction material in paragraph (b)(3) of the clause as follows:

(i) *Basic clause.* List all foreign construction materials excepted from the Buy American statute or section 1605 of the Recovery Act, other than manufactured construction material from a Recovery Act designated country or unmanufactured construction material from a designated country.

(ii) *Alternate I.* List in paragraph (b)(3) of the clause all foreign construction material excepted from the Buy American statute or section 1605 of the Recovery Act, other than—

(A) Manufactured construction material from a Recovery Act designated country other than Bahrain, Mexico, or Oman; or

(B) Unmanufactured construction material from a designated country other than Bahrain, Mexico, or Oman.

**25.1103 Other provisions and clauses.**

(a) *Restrictions on certain foreign purchases.* Insert the clause at [52.225-13](#), Restrictions on Certain Foreign Purchases, in solicitations and contracts, unless an exception applies.

(b) *Translations.* Insert the clause at [52.225-14](#), Inconsistency Between English Version and Translation of Contract, in solicitations and contracts if anticipating translation into another language.

(c) *Foreign currency offers.* Insert the provision at [52.225-17](#), Evaluation of Foreign Currency Offers, in solicitations that permit the use of other than a specified currency. Insert in the provision the source of the rate to be used in the evaluation of offers.

(d) The contracting officer shall include in each solicitation for the acquisition of products or services (other than commercial items procured under [Part 12](#)) the provision at [52.225-20](#), Prohibition on Conducting Restricted Business Operations in Sudan—Certification.

(e) The contracting officer shall include in all solicitations the provision at [52.225-25](#), Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-Representation and Certifications.

\* \* \* \* \*

**Subpart 26.4—Food Donations to Nonprofit Organizations**

**26.400 Scope of subpart.**

This section implements the Federal Food Donation Act of 2008 ([42 U.S.C 1792](#)).

**26.401 Definitions.**

As used in this subpart—

“Apparently wholesome food” means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions, in accordance with (b)(2) of the Bill Emerson Good Samaritan Food Donation Act ([42 U.S.C. 1791\(b\)](#)).

“Excess food” means food that—

- (1) Is not required to meet the needs of the executive agencies; and
- (2) Would otherwise be discarded.

“Food-insecure” means inconsistent access to sufficient, safe, and nutritious food.

“Nonprofit organization” means any organization that is—

- (1) Described in section 501(c) of the Internal Revenue Code of 1986; and
- (2) Exempt from tax under section 501(a) of that Code.

**26.402 Policy.**

The Government encourages executive agencies and their contractors, to the maximum extent practicable and safe, to donate excess apparently wholesome food to nonprofit organizations that provide assistance to food-insecure people in the United States.

**26.403 Procedures.**

(a) In accordance with the Federal Food Donation Act of 2008 an executive agency shall comply with the following:

(1) *Encourage donations.* In the applicable contracts stated at section [26.404](#), encourage contractors, to the maximum extent practicable and safe, to donate apparently wholesome excess food to nonprofit organizations that provide assistance to food-insecure people in the United States.

(2) *Costs.* (i) In any case in which a contractor enters into a contract with an executive agency under which apparently wholesome food is donated to food-insecure people in the United States, the head of the executive agency shall not assume responsibility for the costs and logistics of collecting, transporting, maintaining the safety of, or distributing excess, apparently wholesome food to food-insecure people in the United States under this Act.

(ii) The Government will not reimburse any costs incurred by the contractor against this contract or any other contract for the donation of Federal excess foods. Any costs incurred for Federal excess food donations are not considered allowable public relations costs in accordance with [31.205-1\(f\)\(8\)](#).

(3) *Liability.* An executive agency (including an executive agency that enters into a contract with a contractor) and any contractor making donations pursuant to this Act shall be exempt from civil and criminal liability to the extent provided under the Bill Emerson Good Samaritan Food Donation Act ([42 U.S.C. 1791](#)).

**26.404 Contract clause.**

Insert the clause at [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations, in solicitations and contracts greater than \$25,000 for the provision, service, or sale of food in the United States.

\* \* \* \* \*

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nonprofit status or may file a size protest in accordance with FAR [19.302](#).

(b) *Exceptions.* (1) Before using any of the exceptions under [27.303](#)(e)(1) in a contract with a small business concern or a nonprofit organization and before using the exception of [27.303](#)(e)(1)(ii) for any contractor, the agency shall follow the applicable procedures at 37 CFR 401.

(2) A small business concern or nonprofit organization is entitled to an administrative review of the use of the exceptions at [27.303](#)(e)(1)(i) through (e)(1)(iv) in accordance with agency procedures and 37 CFR part 401.

(c) *Greater rights determinations.* Whenever the contract contains the clause at [52.227-13](#), Patent Rights—Ownership by the Government, or a patent rights clause modified pursuant to [27.303](#)(e)(2), the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request greater rights to an identified invention within the period specified in the clause. The contracting officer may grant requests for greater rights if the contracting officer determines that the interests of the United States and the general public will be better served. In making these determinations, the contracting officer shall consider at least the following objectives (see 37 CFR 401.3(b) and 401.15):

(1) Promoting the utilization of inventions arising from federally supported research and development.

(2) Ensuring that inventions are used in a manner to promote full and open competition and free enterprise without unduly encumbering future research and discovery.

(3) Promoting public availability of inventions made in the United States by United States industry and labor.

(4) Ensuring that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions.

(d) *Retention of rights by inventor.* If the contractor elects not to retain title to a subject invention, the agency may consider and, after consultation with the contractor, grant requests for retention of rights by the inventor. Retention of rights by the inventor will be subject to the conditions in paragraphs (d) (except paragraph (d)(1)(i)), (e)(4), (f), (g), and (h) of the clause at [52.227-11](#), Patent Rights—Ownership by the Contractor.

(e) *Government assignment to contractor of rights in Government employees' inventions.* When a Government employee is a co-inventor of an invention made under a contract with a small business concern or nonprofit organization, the agency employing the co-inventor may license or assign whatever rights it may acquire in the subject invention from its employee to the contractor, subject at least to the conditions of [35 U.S.C. 202-204](#).

(f) *Revocation or modification of contractor's minimum rights.* Before revoking or modifying the contractor's license in accordance with [27.302](#)(i)(2), the contracting officer shall

furnish the contractor a written notice of intention to revoke or modify the license. The agency shall allow the contractor at least 30 days (or another time as may be authorized for good cause by the contracting officer) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and agency licensing regulations, any decisions concerning the revocation or modification.

(g) *Exercise of march-in rights.* When exercising march-in rights, agencies shall follow the procedures set forth in 37 CFR 401.6.

(h) *Licenses and assignments under contracts with nonprofit organizations.* If the contractor is a nonprofit organization, paragraph (i) of the clause at [52.227-11](#) provides that certain contractor actions require agency approval.

### **27.304-2 Contracts placed by or for other Government agencies.**

The following procedures apply unless an interagency agreement provides otherwise:

(a) When a Government agency requests another Government agency to award a contract on its behalf, the request should explain any special circumstances surrounding the contract and specify the patent rights clause to be used. The clause should be selected and modified, if necessary, in accordance with the policies and procedures of this subpart. If, however, the request states that a clause of the requesting agency is required (*e.g.*, because of statutory requirements, a deviation, or exceptional circumstances), the awarding agency shall use that clause rather than those of this subpart.

(1) If the request states that an agency clause is required and the work to be performed under the contract is not severable and is funded wholly or in part by the requesting agency, then include the requesting agency clause and no other patent rights clause in the contract.

(2) If the request states that an agency clause is required, and the work to be performed under the contract is severable, then the contracting officer shall assure that the requesting agency clause applies only to that severable portion of the work and that the work for the awarding agency is subject to the appropriate patent rights clause.

(3) If the request states that a requesting agency clause is not required in any resulting contract, the awarding agency shall use the appropriate patent rights clause, if any.

(b) Any action requiring an agency determination, report, or deviation involved in the use of the requesting agency's clause is the responsibility of the requesting agency unless the agencies agree otherwise. However, the awarding agency may not alter the requesting agency's clause without prior approval of the requesting agency.

(c) The requesting agency may require, and provide instructions regarding, the forwarding or handling of any

invention disclosures or other reporting requirements of the specified clauses. Normally, the requesting agency is responsible for the administration of any subject inventions. This responsibility shall be established in advance of awarding any contracts.

#### 27.304-3 Subcontracts.

(a) The policies and procedures in this subpart apply to all subcontracts at any tier.

(b) Whenever a prime contractor or a subcontractor considers including a particular clause in a subcontract to be inappropriate or a subcontractor refuses to accept the clause, the contracting officer, in consultation with counsel, shall resolve the matter.

(c) It is Government policy that contractors shall not use their ability to award subcontracts as economic leverage to acquire rights for themselves in inventions resulting from subcontracts.

#### 27.304-4 Appeals.

(a) The designated agency official shall provide the contractor with a written statement of the basis, including any relevant facts, for taking any of the following actions:

(1) A refusal to grant an extension to the invention disclosure period under paragraph (c)(4) of the clause at [52.227-11](#);

(2) A demand for a conveyance of title to the Government under [27.302\(d\)\(1\)\(i\)](#) and (ii);

(3) A refusal to grant a waiver under [27.302\(g\)](#), Preference for United States industry; or

(4) A refusal to approve an assignment under [27.304-1\(h\)](#).

(b) Each agency may establish and publish procedures under which any of these actions may be appealed. These appeal procedures should include administrative due process procedures and standards for fact-finding. The resolution of any appeal shall consider both the factual and legal basis for the action and its consistency with the policy and objectives of [35 U.S.C. 200-206](#) and [210](#).

(c) To the extent that any of the actions described in paragraph (a) of this section are subject to appeal under the Contract Disputes statute, the procedures under that statute will satisfy the requirements of paragraph (b).

#### 27.305 Administration of patent rights clauses.

##### 27.305-1 Goals.

(a) Contracts having a patent rights clause should be so administered that—

(1) Inventions are identified, disclosed, and reported as required by the contract, and elections are made;

(2) The rights of the Government in subject inventions are established;

(3) When patent protection is appropriate, patent applications are timely filed and prosecuted by contractors or by the Government;

(4) The rights of the Government in filed patent applications are documented by formal instruments such as licenses or assignments; and

(5) Expeditious commercial utilization of subject inventions is achieved.

(b) If a subject invention is made under a contract funded by more than one agency, at the request of the contractor or on their own initiative, the agencies shall designate one agency as responsible for administration of the rights of the Government in the invention.

##### 27.305-2 Administration by the Government.

(a) Agencies should establish and maintain appropriate follow-up procedures to protect the Government's interest and to check that subject inventions are identified and disclosed, and when appropriate, patent applications are filed, and that the Government's rights therein are established and protected. Follow-up activities for contracts that include a clause referenced in [27.304-2](#) should be coordinated with the appropriate agency.

(b)(1) The contracting officer administering the contract (or other representative specifically designated in the contract for this purpose) is responsible for receiving invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information submitted by the contractor pursuant to a patent rights clause.

(i) For other than confirmatory instruments, if the contractor fails to furnish documents or information as called for by the clause within the time required, the contracting officer shall promptly request the contractor to supply the required documents or information. If the failure persists, the contracting officer shall take appropriate action to secure compliance.

(ii) If the contractor does not furnish confirmatory instruments within 6 months after filing each patent application, or within 6 months after submitting the invention disclosure if the application has been previously filed, the contracting officer shall request the contractor to supply the required documents.

(2) The contracting officer shall promptly furnish all invention disclosures, reports, confirmatory instruments, notices, requests, and other documents and information relating to patent rights clauses to legal counsel.

(c) Contracting activities should establish appropriate procedures to detect and correct failures by the contractor to comply with its obligations under the patent rights clauses, such as failures to disclose and report subject inventions, both during and after contract performance. Government effort to review and correct contractor compliance with its patent rights obligations should be directed primarily toward con-

(b) If the reproduction rights to the data are to be obtained in any contract of the type described in paragraph (b)(1) (i) or (ii) of this section, the rights shall be specifically set forth in the contract. No clause contained in this subpart is required to be included in contracts substantially for on-line data base services in the same form as they are normally available to the general public.

#### **27.406 Acquisition of data.**

##### **27.406-1 General.**

(a) It is the Government's practice to determine, to the extent feasible, its data requirements in time for inclusion in solicitations. The data requirements may be subject to revision during contract negotiations. Since the preparation, reformatting, maintenance and updating, cataloging, and storage of data represents an expense to both the Government and the contractor, efforts should be made to keep the contract data requirements to a minimum, consistent with the purposes of the contract.

(b) The contracting officer shall specify in the contract all known data requirements, including the time and place for delivery and any limitations and restrictions to be imposed on the contractor in the handling of the data. Further, and to the extent feasible, in major system acquisitions, the contracting officer shall set out data requirements as separate contract line items. In establishing the contract data requirements and in specifying data items to be delivered by a contractor, agencies may, consistent with paragraph (a) of this subsection, develop their own contract schedule provisions. Agency procedures may, among other things, provide for listing, specifying, identifying source, assuring delivery, and handling any data required to be delivered, first produced, or specifically used in the performance of the contract.

(c) Data delivery requirements should normally not require that a contractor provide the Government, as a condition of the procurement, unlimited rights in data that qualify as limited rights data or restricted computer software. Rather, form, fit, and function data may be furnished with unlimited rights instead of the qualifying data, or the qualifying data may be furnished with limited rights or restricted rights if needed (see [27.404-2\(c\)](#) and (d)). If greater rights are needed, they should be clearly set forth in the solicitation and the contractor fairly compensated for the greater rights.

##### **27.406-2 Additional data requirements.**

(a) In some contracting situations, such as experimental, developmental, research, or demonstration contracts, it may not be feasible to ascertain all the data requirements at contract award. The clause at [52.227-16](#), Additional Data Requirements, may be used to enable the subsequent ordering by the contracting officer of additional data first produced or specifically used in the performance of these contracts as the

actual requirements become known. The clause shall normally be used in solicitations and contracts involving experimental, developmental, research or demonstration work (other than basic or applied research to be performed under a contract solely by a university or college when the contract amount will be \$500,000 or less) unless all the requirements for data are believed to be known at the time of contracting and specified in the contract. If the contract is for basic or applied research to be performed by a university or college, and the contracting officer believes the contract effort will in the future exceed \$500,000, even though the initial award does not, the contracting officer may include the clause in the initial award.

(b) Data may be ordered under the clause at [52.227-16](#) at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under the contract. The contractor is to be compensated for converting the data into the prescribed form, for reproduction, and for delivery. In order to minimize storage costs for the retention of data, the contracting officer may relieve the contractor of the retention requirements for specified data items at any time during the retention period required by the clause. The contracting officer may permit the contractor to identify and specify in the contract data not to be ordered for delivery under the clause if the data is not necessary to meet the Government's requirements for data. Also, the contracting officer may alter the clause by deleting the term "or specifically used" in paragraph (a) of the clause if delivery of the data is not necessary to meet the Government's requirements for data. Any data ordered under this clause will be subject to the clause at [52.227-14](#), Rights in Data—General, (or other equivalent clause setting forth the respective rights of the Government and the contractor) in the contract. Data authorized to be withheld under such clause will not be required to be delivered under the clause at [52.227-16](#), except as provided in Alternate II or Alternate III, if included (see [27.404-2\(c\)](#) and (d)).

(c) Absent an established program for dissemination of computer software, agencies should not order additional computer software under the clause at [52.227-16](#), for the sole purpose of disseminating or marketing the software to the public. In ordering software for internal purposes, the contracting officer shall consider, consistent with the Government's needs, not ordering particular source codes, algorithms, processes, formulas, or flow charts of the software if the contractor shows that this aids its efforts to disseminate or market the software.

##### **27.406-3 Major system acquisition.**

(a) The clause at [52.227-21](#), Technical Data Declaration, Revision, and Withholding of Payment—Major Systems, implements [41 U.S.C. 2302\(e\)](#). When using the clause at [52.227-21](#), the section of the contract specifying data delivery requirements (see [27.406-1\(b\)](#)) shall expressly identify those

line items of technical data to which the clause applies. Upon delivery of the technical data, the contracting officer shall review the technical data and the contractor's declaration relating to it to assure that the data are complete, accurate, and comply with contract requirements. If the data are not complete, accurate, or compliant, the contracting officer should request the contractor to correct the deficiencies, and may withhold payment. Final payment shall not be made under the contract until it has been determined that the delivery requirements of those line items of data to which the clause applies have been satisfactorily met.

(b) In a contract for, or in support of, a major system awarded by a civilian agency other than NASA or the U.S. Coast Guard, the following applies:

(1) The contracting officer shall require the delivery of any technical data relating to the major system or supplies for the major system, that are to be developed exclusively with Federal funds if the delivery of the technical data is needed to ensure the competitive acquisition of supplies or services that will be required in substantial quantities in the future. The clause at [52.227-22](#), Major System—Minimum Rights, is used in addition to the clause at [52.227-14](#), Rights in Data—General, and other required clauses, to ensure that the Government acquires at least those rights required by Pub. L. 98-577 in technical data developed exclusively with Federal funds.

(2) Technical data, relating to a major system or supplies for a major system, procured or to be procured by the Government and also relating to the design, development, or manufacture of products or processes offered or to be offered for sale to the public (except for such data as may be necessary for the Government to operate or maintain the product, or use the process if obtained by the Government as an element of performance under the contract), shall not be required to be provided to the Government from persons who have developed such products or processes as a condition for the procurement of such products or processes by the Government.

#### **27.407 Rights to technical data in successful proposals.**

The clause at [52.227-23](#), Rights to Proposal Data (Technical), allows the Government to acquire unlimited rights to technical data in successful proposals. Pursuant to the clause, the prospective contractor is afforded the opportunity to specifically identify pages containing technical data to be excluded from the grant of unlimited rights. This exclusion is not dispositive of the protective status of the data, but any excluded technical data, as well as any commercial and financial information contained in the proposal, will remain subject to the policies in [Subpart 15.2](#) or [15.6](#) (or agency supplements) relating to proposal information (*e.g.*, will be used for evaluation purposes only). If there is a need to have access to any of the excluded technical data during contract performance, consideration should be given to acquiring the data

with limited rights, if they so qualify, in accordance with [27.404-2\(c\)](#).

#### **27.408 Cosponsored research and development activities.**

(a) In contracts involving cosponsored research and development that require the contractor to make substantial contributions of funds or resources (*e.g.*, by cost-sharing or by repayment of nonrecurring costs), and the contractor's and the Government's respective contributions to any item, component, process, or computer software, developed or produced under the contract are not readily segregable, the contracting officer may limit the acquisition of, or acquire less than unlimited rights to, any data developed and delivered under the contract. Agencies may regulate the use of this authority in their supplements. Lesser rights shall, at a minimum, assure use of the data for agreed-to Governmental purposes (including procurement rights as appropriate), and address any disclosure limitations or restrictions to be imposed on the data. Also, consideration may be given to requiring the contractor to directly license others if needed to carry out the objectives of the contract. Since the purpose of the cosponsored research and development, the legitimate proprietary interests of the contractor, the needs of the Government, and the respective contributions of both parties may vary, no specific clauses are prescribed, but a clause providing less than unlimited rights in the Government for data developed and delivered under the contract (such as license rights) may be tailored to the circumstances consistent with the foregoing and the policy set forth in [27.402](#). As a guide, a clause may be appropriate when the contractor contributes money or resources, or agrees to make repayment of nonrecurring costs, of a value of approximately 50 percent of the total cost of the contract (*i.e.*, Government, contractor, and/or third party paid costs), and the respective contributions are not readily segregable for any work element to be performed under the contract. A clause may be used for all or for only specifically identified tasks or work elements under the contract. In the latter instance, its use will be in addition to whatever other data rights clause is prescribed under this subpart, with the contract specifically identifying which clause is to apply to which tasks or work elements. Further, this type of clause may not be appropriate where the purpose of the contract is to produce data for dissemination to the public, or to develop or demonstrate technologies that will be available, in any event, to the public for its direct use.

(b) Where the contractor's contributions are readily segregable (by performance requirements and the funding for the contract) and so identified in the contract, any resulting data may be treated under this clause as limited rights data or restricted computer software in accordance with [27.404-2\(c\)](#) or (d), as applicable; or if this treatment is inconsistent with the purpose of the contract, rights to the data may, if so negotiated and stated in the contract, be treated in a manner consistent with paragraph (a) of this section.



(9) A bid bond does not list the United States as obligee, but correctly identifies the offeror, the solicitation number, and the name and location of the project involved, so long as it is acceptable in all other respects.

### 28.102 Performance and payment bonds and alternative payment protections for construction contracts.

#### 28.102-1 General.

(a) [40 U.S.C. chapter 31](#), subchapter III, Bonds (formerly known as the Miller Act), requires performance and payment bonds for any construction contract exceeding \$150,000, except that this requirement may be waived—

(1) By the contracting officer for as much of the work as is to be performed in a foreign country upon finding that it is impracticable for the contractor to furnish such bond; or

(2) As otherwise authorized by the Bonds statute or other law.

(b)(1) Pursuant to [40 U.S.C. 3132](#), for construction contracts greater than \$30,000, but not greater than \$150,000, the contracting officer shall select two or more of the following payment protections, giving particular consideration to inclusion of an irrevocable letter of credit as one of the selected alternatives:

(i) A payment bond.

(ii) An irrevocable letter of credit (ILC).

(iii) *A tripartite escrow agreement.* The prime contractor establishes an escrow account in a federally insured financial institution and enters into a tripartite escrow agreement with the financial institution, as escrow agent, and all of the suppliers of labor and material. The escrow agreement shall establish the terms of payment under the contract and of resolution of disputes among the parties. The Government makes payments to the contractor's escrow account, and the escrow agent distributes the payments in accordance with the agreement, or triggers the disputes resolution procedures if required.

(iv) *Certificates of deposit.* The contractor deposits certificates of deposit from a federally insured financial institution with the contracting officer, in an acceptable form, executable by the contracting officer.

(v) A deposit of the types of security listed in [28.204-1](#) and [28.204-2](#).

(2) The contractor shall submit to the Government one of the payment protections selected by the contracting officer.

(c) The contractor shall furnish all bonds or alternative payment protection, including any necessary reinsurance agreements, before receiving a notice to proceed with the work or being allowed to start work.

#### 28.102-2 Amount required.

(a) *Definition.* As used in this subsection—

“Original contract price” means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) *Contracts exceeding \$150,000—* (1) *Performance bonds.* Unless the contracting officer determines that a lesser amount is adequate for the protection of the Government, the penal amount of performance bonds must equal—

(i) 100 percent of the original contract price; and

(ii) If the contract price increases, an additional amount equal to 100 percent of the increase.

(2) *Payment bonds.* (i) Unless the contracting officer makes a written determination supported by specific findings that a payment bond in this amount is impractical, the amount of the payment bond must equal—

(A) 100 percent of the original contract price; and

(B) If the contract price increases, an additional amount equal to 100 percent of the increase.

(ii) The amount of the payment bond must be no less than the amount of the performance bond.

(c) *Contracts exceeding \$30,000 but not exceeding \$150,000.* Unless the contracting officer determines that a lesser amount is adequate for the protection of the Government, the penal amount of the payment bond or the amount of alternative payment protection must equal—

(1) 100 percent of the original contract price; and

(2) If the contract price increases, an additional amount equal to 100 percent of the increase.

(d) *Securing additional payment protection.* If the contract price increases, the Government must secure any needed additional protection by directing the contractor to—

(1) Increase the penal sum of the existing bond;

(2) Obtain an additional bond; or

(3) Furnish additional alternative payment protection.

(e) *Reducing amounts.* The contracting officer may reduce the amount of security to support a bond, subject to the conditions of [28.203-5\(c\)](#) or [28.204\(b\)](#).

#### 28.102-3 Contract clauses.

(a) Insert a clause substantially the same as the clause at [52.228-15](#), Performance and Payment Bonds—Construction, in solicitations and contracts for construction that contain a requirement for performance and payment bonds if the resultant contract is expected to exceed \$150,000. The contracting officer may revise paragraphs (b)(1) and/or (b)(2) of the clause to establish a lower percentage in accordance with [28.102-2\(b\)](#). If the provision at [52.228-1](#) is not included in the solicitation, the contracting officer must set a period of time for return of executed bonds.

(b) Insert the clause at [52.228-13](#), Alternative Payment Protections, in solicitations and contracts for construction,

when the estimated or actual value exceeds \$30,000 but does not exceed \$150,000. Complete the clause by specifying the payment protections selected (see [28.102-1\(b\)\(1\)](#)) and the deadline for submission. The contracting officer may revise paragraph (b) of the clause to establish a lower percentage in accordance with [28.102-2\(c\)](#).

### **28.103 Performance and payment bonds for other than construction contracts.**

#### **28.103-1 General.**

(a) Generally, agencies shall not require performance and payment bonds for other than construction contracts. However, performance and payment bonds may be used as permitted in [28.103-2](#) and [28.103-3](#).

(b) The contractor shall furnish all bonds before receiving a notice to proceed with the work.

(c) No bond shall be required after the contract has been awarded if it was not specifically required in the contract, except as may be determined necessary for a contract modification.

#### **28.103-2 Performance bonds.**

(a) Performance bonds may be required for contracts exceeding the simplified acquisition threshold when necessary to protect the Government's interest. The following situations may warrant a performance bond:

(1) Government property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

(2) A contractor sells assets to or merges with another concern, and the Government, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

(3) Substantial progress payments are made before delivery of end items starts.

(4) Contracts are for dismantling, demolition, or removal of improvements.

(b) The Government may require additional performance bond protection when a contract price is increased.

(c) The contracting officer must determine the contractor's responsibility (see [Subpart 9.1](#)) even though a bond has been or can be obtained.

#### **28.103-3 Payment bonds.**

(a) A payment bond is required only when a performance bond is required, and if the use of payment bond is in the Government's interest.

(b) When a contract price is increased, the Government may require additional bond protection in an amount adequate to protect suppliers of labor and material.

#### **28.103-4 Contract clause.**

The contracting officer shall insert a clause substantially the same as the clause at [52.228-16](#), Performance and Payment Bonds—Other than Construction, in solicitations and contracts that contain a requirement for both payment and performance bonds. The contracting officer shall determine the amount of each bond for insertion in the clause. The amount shall be adequate to protect the interest of the Government. The contracting officer shall also set a period of time (normally 10 days) for return of executed bonds. Alternate I shall be used when only performance bonds are required.

#### **28.104 Annual performance bonds.**

(a) Annual performance bonds only apply to nonconstruction contracts. They shall provide a gross penal sum applicable to the total amount of all covered contracts.

(b) When the penal sums obligated by contracts are approximately equal to or exceed the penal sum of the annual performance bond, an additional bond will be required to cover additional contracts.

#### **28.105 Other types of bonds.**

The head of the contracting activity may approve using other types of bonds in connection with acquiring particular supplies or services. These types include advance payment bonds and patent infringement bonds.

#### **28.105-1 Advance payment bonds.**

Advance payment bonds may be required only when the contract contains an advance payment provision and a performance bond is not furnished. The contracting officer shall determine the amount of the advance payment bond necessary to protect the Government.

#### **28.105-2 Patent infringement bonds.**

(a) Contracts providing for patent indemnity may require these bonds only if—

(1) A performance bond is not furnished; and

(2) The financial responsibility of the contractor is unknown or doubtful.

(b) The contracting officer shall determine the penal sum.

#### **28.106 Administration.**

##### **28.106-1 Bonds and bond-related forms.**

The following Standard Forms (SF's) and Optional Forms (OF's) shown in [53.301](#) and [53.302](#), shall be used, except in foreign countries, when a bid bond, performance or payment bond, or an individual surety is required. The bond forms shall be used as indicated in the instruction portion of each form:

(a) [SF 24](#), Bid Bond (see [28.101](#)).

(b) [SF 25](#), Performance Bond (see [28.102-1](#) and [28.106-3\(b\)](#)).

- (c) [SF 25A](#), Payment Bond (see [28.102-1](#) and [28.106-3\(b\)](#)).
- (d) [SF 25B](#), Continuation Sheet (for SF's [24](#), [25](#), and [25A](#)).
- (e) [SF 28](#), Affidavit of Individual Surety (see [28.203](#)).
- (f) [SF 34](#), Annual Bid Bond (see [28.001](#)).
- (g) [SF 35](#), Annual Performance Bond (see [28.104](#)).
- (h) [SF 273](#), Reinsurance Agreement for a Bonds Statute Performance Bond (see [28.202\(a\)\(4\)](#)).
- (i) [SF 274](#), Reinsurance Agreement for a Bonds Statute Payment Bond (see [28.202\(a\)\(4\)](#)).
- (j) [SF 275](#), Reinsurance Agreement in Favor of the United States (see [28.202\(a\)\(4\)](#)).
- (k) [SF 1414](#), Consent of Surety (see [28.106-5](#)).
- (l) [SF 1415](#), Consent of Surety and Increase of Penalty (see [28.106-3](#)).
- (m) [SF 1416](#), Payment Bond for Other Than Construction Contracts (see [28.103-3](#) and [28.106-3\(b\)](#)).
- (n) [SF 1418](#), Performance Bond for Other Than Construction Contracts (see [28.103-2](#) and [28.106-3\(b\)](#)).
- (o) [OF 90](#), Release of Lien on Real Property (see [28.203-5](#)).
- (p) [OF 91](#), Release of Personal Property from Escrow (see [28.203-5](#)).

#### 28.106-2 Substitution of surety bonds.

- (a) A new surety bond covering all or part of the obligations on a bond previously approved may be substituted for the original bond if approved by the head of the contracting activity, or as otherwise specified in agency regulation.
- (b) When a new surety bond is approved, the contracting officer shall notify the principal and surety of the original bond of the effective date of the new bond.

#### 28.106-3 Additional bond and security.

- (a) When additional bond coverage is required and is secured in whole or in part by the original surety or sureties, agencies shall use [Standard Form 1415](#), Consent of Surety and Increase of Penalty. [Standard Form 1415](#) is authorized for local reproduction, and a copy of the form is furnished for this purpose in [Part 53](#) of the looseleaf edition of the FAR.
- (b) When additional bond coverage is required and is secured in whole or in part by a new surety or by one of the alternatives described in [28.204](#) in lieu of corporate or individual surety, agencies shall use [Standard Form 25](#), Performance Bond; [Standard Form 1418](#), Performance Bond for Other Than Construction Contracts; [Standard Form 25A](#), Payment Bond; or [Standard Form 1416](#), Payment Bond for Other Than Construction Contracts.

#### 28.106-4 Contract clause.

- (a) The contracting officer shall insert the clause at [52.228-2](#), Additional Bond Security, in solicitations and contracts when bonds are required.

(b) In accordance with Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355 ([10 U.S.C. 2302 note](#)), the contracting officer shall insert the clause at [52.228-12](#), Prospective Subcontractor Requests for Bonds, in solicitations and contracts with respect to which a payment bond will be furnished pursuant to [40 U.S.C chapter 31](#), subchapter III, Bonds (see [28.102-1](#)), except for contracts for the acquisition of commercial items as defined in [Subpart 2.1](#).

#### 28.106-5 Consent of surety.

- (a) When any contract is modified, the contracting officer shall obtain the consent of surety if—
  - (1) An additional bond is obtained from other than the original surety;
  - (2) No additional bond is required and—
    - (i) The modification is for new work beyond the scope of the original contract; or
    - (ii) The modification does not change the contract scope but changes the contract price (upward or downward) by more than 25 percent or \$50,000; or
  - (3) Consent of surety is required for a novation agreement (see [Subpart 42.12](#)).

(b) When a contract for which performance or payment is secured by any of the types of security listed in [28.204](#) is modified as described in paragraph (a) of this subsection, no consent of surety is required.

(c) Agencies shall use [Standard Form 1414](#), Consent of Surety, for all types of contracts.

#### 28.106-6 Furnishing information.

- (a) The surety on the bond, upon its written request, may be furnished information on the progress of the work, payments, and the estimated percentage of completion, concerning the contract for which the bond was furnished.
- (b) When a payment bond has been provided, the contracting officer shall, upon request, furnish the name and address of the surety or sureties to any subcontractor or supplier who has furnished or been requested to furnish labor or material for the contract. In addition, general information concerning the work progress, payments, and the estimated percentage of completion may be furnished to persons who have provided labor or materials and have not been paid.
- (c) When a payment bond has been provided for a contract, the head of the agency or designee shall furnish a certified copy of the bond and the contract for which it was given to any person who makes a request therefor and who furnishes an affidavit that the requestor has supplied labor or materials for such work and payment therefor has not been made or that the requestor is being sued on such bond. The person who makes the request shall be required to pay such costs of preparation as determined by the head of the agency or designee to be reasonable and appropriate (see [40 U.S.C. 3133](#)).

(d) Section 806(a)(2) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355 ([10 U.S.C. 2302 note](#)), requires that the Federal Government provide information to subcontractors on payment bonds under contracts for other than commercial items as defined in [Subpart 2.1](#). Upon the written or oral request of a subcontractor/supplier, or prospective subcontractor/supplier, under a contract with respect to which a payment bond has been furnished pursuant to the Bonds statute, the contracting officer shall promptly provide to the requester, either orally or in writing, as appropriate, any of the following:

- (1) Name and address of the surety or sureties on the payment bond.
- (2) Penal amount of the payment bond.
- (3) Copy of the payment bond. The contracting officer may impose reasonable fees to cover the cost of copying and providing a copy of the payment bond.

**28.106-7 Withholding contract payments.**

(a) During contract performance, agencies shall not withhold payments due contractors or assignees because subcontractors or suppliers have not been paid.

(b) If, after completion of the contract work, the Government receives written notice from the surety regarding the contractor's failure to meet its obligation to its subcontractors or suppliers, the contracting officer shall withhold final payment. However, the surety must agree to hold the Government harmless from any liability resulting from withholding the final payment. The contracting officer will authorize final payment upon agreement between the contractor and surety or upon a judicial determination of the rights of the parties.

(c) For any withholding incident to the labor standards provisions of the contract, see [Part 22](#).

**28.106-8 Payment to subcontractors or suppliers.**

The contracting officer will only authorize payment to subcontractors or suppliers from an ILC (or any other cash equivalent security) upon a judicial determination of the rights of the parties, a signed notarized statement by the contractor that the payment is due and owed, or a signed agreement between the parties as to amount due and owed.

## Subpart 28.2—Sureties and Other Security for Bonds

### 28.200 Scope of subpart.

This subpart prescribes procedures for the use of sureties and other security to protect the Government from financial losses.

### 28.201 Requirements for security.

(a) Agencies shall obtain adequate security for bonds (including coinsurance and reinsurance agreements) required or used with a contract for supplies or services (including construction). Acceptable forms of security include—

- (1) Corporate or individual sureties; or
- (2) Any of the types of security authorized in lieu of sureties by [28.204](#).

(b) Solicitations shall not preclude offerors from using the types of surety or other security permitted by this subpart, unless prohibited by law or regulation.

### 28.202 Acceptability of corporate sureties.

(a)(1) Corporate sureties offered for bonds furnished with contracts performed in the United States or its outlying areas must appear on the list contained in the Department of Treasury Circular 570, “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies.”

(2) The penal amount of the bond should not exceed the surety’s underwriting limit stated in the Department of the Treasury circular. If the penal amount exceeds the underwriting limit, the bond will be acceptable only if—

- (i) The amount which exceeds the specified limit is coinsured or reinsured; and
- (ii) The amount of coinsurance or reinsurance does not exceed the underwriting limit of each coinsurer or reinsurer.

(3) Coinsurance or reinsurance agreements shall conform to the Department of the Treasury regulations in 31 CFR 223.10 and 223.11. When reinsurance is contemplated, the contracting office generally shall require reinsurance agreements to be executed and submitted with the bonds before making a final determination on the bonds.

(4) When specified in the solicitation, the contracting officer may accept a bond from the direct writing company in satisfaction of the total bond requirement of the contract. This is permissible until necessary reinsurance agreements are executed, even though the total bond requirement may exceed the insurer’s underwriting limitation. The contractor shall execute and submit necessary reinsurance agreements to the contracting officer within the time specified on the bid form, which may not exceed 45 calendar days after the execution of the bond. The contractor shall use [Standard Form 273](#), Reinsurance Agreement for a Bonds Statute Performance Bond,

and [Standard Form 274](#), Reinsurance Agreement for a Bonds Statute Payment Bond, when reinsurance is furnished with the required performance or payment bonds. [Standard Form 275](#), Reinsurance Agreement in Favor of the United States, is used when reinsurance is furnished with bonds for other purposes.

(b) For contracts performed in a foreign country, sureties not appearing on Treasury Department Circular 570 are acceptable if the contracting officer determines that it is impracticable for the contractor to use Treasury listed sureties.

(c) The Department of the Treasury issues supplements to Circular 570, notifying all Federal agencies of (1) new approved corporate surety companies and (2) the termination of the authority of any specific corporate surety to qualify as a surety on Federal bonds. Upon receipt of notification of termination of a company’s authority to qualify as a surety on Federal bonds, the contracting officer shall review the outstanding contracts and take action necessary to protect the Government, including, where appropriate, securing new bonds with acceptable sureties in lieu of outstanding bonds with the named company.

(d) The Department of the Treasury Circular 570 may be obtained from the—

U.S. Department of the Treasury  
Financial Management Service  
Surety Bond Branch  
3700 East West Highway, Room 6F01  
Hyattsville, MD 20782.  
Or via the internet at <http://www.fms.treas.gov/c570/>.

### 28.203 Acceptability of individual sureties.

(a) An individual surety is acceptable for all types of bonds except position schedule bonds. The contracting officer shall determine the acceptability of individuals proposed as sureties, and shall ensure that the surety’s pledged assets are sufficient to cover the bond obligation. (See [28.203-7](#) for information on excluded individual sureties.)

(b) An individual surety must execute the bond, and the unencumbered value of the assets (exclusive of all outstanding pledges for other bond obligations) pledged by the individual surety, must equal or exceed the penal amount of each bond. The individual surety shall execute the [Standard Form 28](#) and provide a security interest in accordance with [28.203-1](#). One individual surety is adequate support for a bond, provided the unencumbered value of the assets pledged by that individual surety equal or exceed the amount of the bond. An offeror may submit up to three individual sureties for each bond, in which case the pledged assets, when combined, must equal or exceed the penal amount of the bond. Each individual surety must accept both joint and several liability to the extent of the penal amount of the bond.

(c) If the contracting officer determines that no individual surety in support of a bid guarantee is acceptable, the offeror utilizing the individual surety shall be rejected as nonrespon-

sible, except as provided in [28.101-4](#). A finding of nonresponsibility based on unacceptability of an individual surety, need not be referred to the Small Business Administration for a competency review. (See [19.602-1\(a\)\(2\)\(i\)](#) and 61 Comp. Gen. 456 (1982).)

(d) A contractor submitting an unacceptable individual surety in satisfaction of a performance or payment bond requirement may be permitted a reasonable time, as determined by the contracting officer, to substitute an acceptable surety for a surety previously determined to be unacceptable.

(e) When evaluating individual sureties, contracting officers may obtain assistance from the office identified in [28.202\(d\)](#).

(f) Contracting officers shall obtain the opinion of legal counsel as to the adequacy of the documents pledging the assets prior to accepting the bid guarantee and payment and performance bonds.

(g) Evidence of possible criminal or fraudulent activities by an individual surety shall be referred to the appropriate agency official in accordance with agency procedures.

#### **28.203-1 Security interests by an individual surety.**

(a) An individual surety may be accepted only if a security interest in assets acceptable under [28.203-2](#) is provided to the Government by the individual surety. The security interest shall be furnished with the bond.

(b) The value at which the contracting officer accepts the assets pledged must be equal to or greater than the aggregate penal amounts of the bonds required by the solicitation and may be provided by one or a combination of the following methods:

(1) An escrow account with a federally insured financial institution in the name of the contracting agency. (See [28.203-2\(b\)\(2\)](#) with respect to Government securities in book entry form.) Acceptable securities for deposit in escrow are discussed in [28.203-2](#). While the offeror is responsible for establishing the escrow account, the terms and conditions must be acceptable to the contracting officer. At a minimum, the escrow account shall provide for the following:

(i) The account must provide the contracting officer the sole and unrestricted right to draw upon all or any part of the funds deposited in the account. A written demand for withdrawal shall be sent to the financial institution, after obtaining the concurrence of legal counsel, by the contracting officer with a copy to the offeror/contractor and to the surety. Within the time period specified in the demand, the financial institution would pay the Government the amount demanded up to the amount on deposit. If any dispute should arise between the Government and the offeror/contractor, the surety, or the subcontractors or suppliers with respect to the offer or contract, the financial institution would be required, unless precluded by order of a court of competent jurisdiction, to disburse monies to the Government as directed by the contracting officer.

(ii) The financial institution would be authorized to release to the individual surety all or part of the balance of the escrow account, including any accrued interest, upon receipt of written authorization from the contracting officer.

(iii) The Government would not be responsible for any costs attributable to the establishment, maintenance, administration, or any other aspect of the account.

(iv) The financial institution would not be liable or responsible for the interpretation of any provisions or terms and conditions of the solicitation or contract.

(v) The financial institution would provide periodic account statements to the contracting officer.

(vi) The terms of the escrow account could not be amended without the consent of the contracting officer.

(2) A lien on real property, subject to the restrictions in [28.203-2](#) and [28.203-3](#).

#### **28.203-2 Acceptability of assets.**

(a) The Government will accept only cash, readily marketable assets, or irrevocable letters of credit from a federally insured financial institution from individual sureties to satisfy the underlying bond obligations.

(b) Acceptable assets include—

(1) Cash, or certificates of deposit, or other cash equivalents with a federally insured financial institution;

(2) United States Government securities at market value. (An escrow account is not required if an individual surety offers Government securities held in book entry form at a depository institution. In lieu thereof, the individual shall provide evidence that the depository institution has—

(i) Placed a notation against the individual's book entry account indicating that the security has been pledged in favor of the respective agency;

(ii) Agreed to notify the agency prior to maturity of the security; and

(iii) Agreed to hold the proceeds of the security subject to the pledge in favor of the agency until a substitution of securities is made or the security interest is formally released by the agency.);

(3) Stocks and bonds actively traded on a national U.S. security exchange with certificates issued in the name of the individual surety. National security exchanges are—(i) the New York Stock Exchange; (ii) the American Stock Exchange; (iii) the Boston Stock Exchange; (iv) the Cincinnati Stock Exchange; (v) the Midwest Stock Exchange; (vi) the Philadelphia Stock Exchange; (vii) the Pacific Stock Exchange; and (viii) the Spokane Stock Exchange. These assets will be accepted at 90 percent of their 52-week low, as reflected at the time of submission of the bond. Stock options and stocks on the over-the-counter (OTC) market or NASDAQ Exchanges will not be accepted. Assistance in evaluating the acceptability of securities may be obtained from the—

Securities and Exchange Commission  
Division of Enforcement  
450 Fifth Street NW  
Washington, DC 20549.

(4) Real property owned in fee simple by the surety without any form of concurrent ownership, except as provided in paragraph (c)(3)(iii) of this subsection, and located in the United States or its outlying areas. These assets will be accepted at 100 percent of the most current tax assessment value (exclusive of encumbrances) or 75 percent of the properties' unencumbered market value provided a current appraisal is furnished (see [28.203-3](#)).

(5) Irrevocable letters of credit (ILC) issued by a federally insured financial institution in the name of the contracting agency and which identify the agency and solicitation or contract number for which the ILC is provided.

(c) Unacceptable assets include but are not limited to—

(1) Notes or accounts receivable;

(2) Foreign securities;

(3) Real property as follows:

(i) Real property located outside the United States and its outlying areas.

(ii) Real property which is a principal residence of the surety.

(iii) Real property owned concurrently regardless of the form of co-tenancy (including joint tenancy, tenancy by the entirety, and tenancy in common) except where all co-tenants agree to act jointly.

(iv) Life estates, leasehold estates, or future interests in real property.

(4) Personal property other than that listed in paragraph (b) of this subsection (e.g., jewelry, furs, antiques);

(5) Stocks and bonds of the individual surety in a controlled, affiliated, or closely held concern of the offeror/contractor;

(6) Corporate assets (e.g., plant and equipment);

(7) Speculative assets (e.g., mineral rights);

(8) Letters of credit, except as provided in [28.203-2\(b\)\(5\)](#).

### 28.203-3 Acceptance of real property.

(a) Whenever a bond with a security interest in real property is submitted, the individual surety shall provide—

(1) A mortgagee title insurance policy, in an insurance amount equal to the amount of the lien, or other evidence of title that is consistent with the requirements of Section 2 of the United States Department of Justice Title Standards at [http://www.justice.gov/enrd/ENRD\\_Assets/Title\\_Standards\\_2001.pdf](http://www.justice.gov/enrd/ENRD_Assets/Title_Standards_2001.pdf). This title evidence must show fee simple title vested in the surety along with any concurrent owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government under paragraph (d) of this subsection. Agency contracting offic-

ers should request the assistance of their designated agency legal counsel in determining if the title evidence is consistent with the Department of Justice standards;

(2) Evidence of the amount due under any encumbrance shown in the evidence of title;

(3) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice as promulgated by the—

Appraisal Foundation  
1029 Vermont Avenue, NW  
Washington, DC 20005.

(b) Failure to provide evidence that the lien has been properly recorded will render the offeror nonresponsible.

(c) The individual surety is liable for the payment of all administrative costs of the Government, including legal fees, associated with the liquidation of pledged real estate.

(d) The following format, or any document substantially the same, shall be signed by all owners of the property and used by the surety and recorded in the local recorder's office when a surety pledges real estate on [Standard Form 28](#), Affidavit of Individual Surety.

#### LIEN ON REAL ESTATE

I/we agree that this instrument constitutes a lien in the amount of \$ \_\_\_\_\_ on the property described in this lien. The rights of the United States Government shall take precedence over any subsequent lien or encumbrance until the lien is formally released by a duly authorized representative of the United States. I/we hereby grant the United States the power of sale of subject property, including the right to satisfy its reasonable administrative costs, including legal fees associated with any sale of subject property, in the event of contractor default if I/we otherwise fail to satisfy the underlying ( ) bid guarantee, ( ) performance bond, ( ) or payment bond obligations as an individual surety on solicitation/contract number \_\_\_\_\_. The lien is upon the real estate now owned by me/us described as follows:

(legal description, street address and other identifying description)

IN WITNESS WHEREOF, I/we have hereunto affixed my/our hand(s) and seal(s) this \_\_\_ Day of \_\_\_\_\_ 20 \_\_.

WITNESS:

\_\_\_\_\_ (Seal)

\_\_\_\_\_ (Seal)

I, \_\_\_\_\_, a Notary Public in and for the (City) \_\_\_\_\_, (State) \_\_\_\_\_, do hereby certify that

\_\_\_\_\_, a party or parties to a certain Agreement bearing the date \_\_\_\_ day of \_\_\_\_\_ 20 \_\_, and hereunto annexed, personally appeared before me, the said \_\_\_\_\_ being personally well known to me as the person(s) who executed said lien, and acknowledged the same to be his/her heir act and deed.

GIVEN under my hand and seal this \_\_\_\_ day of \_\_\_\_ 20 \_\_.

\_\_\_\_\_  
Notary Public, State

MY COMMISSION EXPIRES:

#### 28.203-4 Substitution of assets.

An individual surety may request the Government to accept a substitute asset for that currently pledged by submitting a written request to the responsible contracting officer. The contracting officer may agree to the substitution of assets upon determining, after consultation with legal counsel, that the substitute assets to be pledged are adequate to protect the outstanding bond or guarantee obligations. If acceptable, the substitute assets shall be pledged as provided for in [Subpart 28.2](#).

#### 28.203-5 Release of lien.

(a) After consultation with legal counsel, the contracting officer shall release the security interest on the individual surety's assets using the [Optional Form 90](#), Release of Lien on Real Property, or [Optional Form 91](#), Release of Personal Property from Escrow, or a similar release as soon as possible consistent with the conditions in paragraphs (a)(1) and (2) of this subsection. A surety's assets pledged in support of a payment bond may be released to a subcontractor or supplier upon Government receipt of a Federal district court judgment, or a sworn statement by the subcontractor or supplier that the claim is correct along with a notarized authorization of the release by the surety stating that it approves of such release.

(1) *Contracts subject to the Bonds statute.* The security interest shall be maintained for the later of—

(i) 1 year following final payment;

(ii) Until completion of any warranty period (applicable only to performance bonds); or

(iii) Pending resolution of all claims filed against the payment bond during the 1-year period following final payment.

(2) *Contracts subject to alternative payment protection (28.102-1(b)(1)).* The security interest shall be maintained for the full contract performance period plus one year.

(3) *Other contracts not subject to the Bonds statute.* The security interest shall be maintained for 90 days following final payment or until completion of any warranty period (applicable only to performance bonds), whichever is later.

(b) Upon written request, the contracting officer may release the security interest on the individual surety's assets in

support of a bid guarantee based upon evidence that the offer supported by the individual surety will not result in contract award.

(c) Upon written request by the individual surety, the contracting officer may release a portion of the security interest on the individual surety's assets based upon substantial performance of the contractor's obligations under its performance bond. Release of the security interest in support of a payment bond must comply with the paragraphs (a)(1) through (3) of this subsection. In making this determination, the contracting officer will give consideration as to whether the unreleased portion of the lien is sufficient to cover the remaining contract obligations, including payments to subcontractors and other potential liabilities. The individual surety shall, as a condition of the partial release, furnish an affidavit agreeing that the release of such assets does not relieve the individual surety of its obligations under the bond(s).

#### 28.203-6 Contract clause.

Insert the clause at [52.228-11](#) in solicitations and contracts which require the submission of bid guarantees, performance, or payment bonds.

#### 28.203-7 Exclusion of individual sureties.

(a) An individual may be excluded from acting as a surety on bonds submitted by offerors on procurement by the executive branch of the Federal Government, by the acquiring agency's head or designee utilizing the procedures in [Subpart 9.4](#). The exclusion shall be for the purpose of protecting the Government.

(b) An individual may be excluded for any of the following causes:

(1) Failure to fulfill the obligations under any bond.

(2) Failure to disclose all bond obligations.

(3) Misrepresentation of the value of available assets or outstanding liabilities.

(4) Any false or misleading statement, signature or representation on a bond or affidavit of individual suretyship.

(5) Any other cause affecting responsibility as a surety of such serious and compelling nature as may be determined to warrant exclusion.

(c) An individual surety excluded pursuant to this subsection shall be included in the System for Award Management Exclusions. (See [9.404](#).)

(d) Contracting officers shall not accept the bonds of individual sureties whose names appear in the System for Award Management Exclusions (see [9.404](#)) unless the acquiring agency's head or a designee states in writing the compelling reasons justifying acceptance.

(e) An exclusion of an individual surety under this subsection will also preclude such party from acting as a contractor in accordance with [Subpart 9.4](#).



**28.204 Alternatives in lieu of corporate or individual sureties.**

(a) Any person required to furnish a bond to the Government may furnish any of the types of security listed in [28.204-1](#) through [28.204-3](#) instead of a corporate or individual surety for the bond. When any of those types of security are deposited, a statement shall be incorporated in the bond form pledging the security in lieu of execution of the bond form by corporate or individual sureties. The contractor shall execute the bond forms as the principal. Agencies shall establish safeguards to protect against loss of the security and shall return the security or its equivalent to the contractor when the bond obligation has ceased.

(b) Upon written request by any contractor securing a performance or payment bond by any of the types of security listed in [28.204-1](#) through [28.204-3](#), the contracting officer may release a portion of the security only when the conditions allowing the partial release of lien in [28.203-5\(c\)](#) are met. The contractor shall, as a condition of the partial release, furnish an affidavit agreeing that the release of such security does not relieve the contractor of its obligations under the bond(s).

(c) The contractor may satisfy a requirement for bond security by furnishing a combination of the types of security listed in [28.204-1](#) through [28.204-3](#) or a combination of bonds supported by these types of security and additional surety bonds under [28.202](#) or [28.203](#). During the period for which a bond supported by security is required, the contractor may substitute one type of security listed in [28.204-1](#) through [28.204-3](#) for another, or may substitute, in whole or combination, additional surety bonds under [28.202](#) or [28.203](#).

**28.204-1 United States bonds or notes.**

Any person required to furnish a bond to the Government has the option, instead of furnishing a surety or sureties on the bond, of depositing certain United States bonds or notes in an amount equal at their par value to the penal sum of the bond (the Act of February 24, 1919 ([31 U.S.C. 9303](#)) and Treasury Department Circular No. 154 dated July 1, 1978 (31 CFR Part 225)). In addition, a duly executed power of attorney and agreement authorizing the collection or sale of such United States bonds or notes in the event of default of the principal on the bond shall accompany the deposited bonds or notes. The contracting officer may—

(a) Turn securities over to the finance or other authorized agency official; or

(b) Deposit them with the Treasurer of the United States, a Federal Reserve Bank (or branch with requisite facilities), or other depository designated for that purpose by the Secretary of the Treasury, under procedures prescribed by the agency concerned and Treasury Department Circular No. 154 (exception: The contracting officer shall deposit all bonds and notes received in the District of Columbia with the Treasurer of the United States).

**28.204-2 Certified or cashier's checks, bank drafts, money orders, or currency.**

Any person required to furnish a bond has an option to furnish a certified or cashier's check, bank draft, Post Office money order, or currency, in an amount equal to the penal sum of the bond, instead of furnishing surety or sureties on the bonds. Those furnishing checks, drafts, or money orders shall draw them to the order of the appropriate Federal agency.

**28.204-3 Irrevocable letter of credit (ILC).**

(a) Any person required to furnish a bond has the option to furnish a bond secured by an ILC in an amount equal to the penal sum required to be secured (see [28.204](#)). A separate ILC is required for each bond.

(b) The ILC shall be irrevocable, require presentation of no document other than a written demand and the ILC (and letter of confirmation, if any), expire only as provided in paragraph (f) of this subsection, and be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (g) of this subsection.

(c) To draw on the ILC, the contracting officer shall use the sight draft set forth in the clause at [52.228-14](#), and present it with the ILC (including letter of confirmation, if any) to the issuing financial institution or the confirming financial institution (if any).

(d) If the contractor does not furnish an acceptable replacement ILC, or other acceptable substitute, at least 30 days before an ILC's scheduled expiration, the contracting officer shall immediately draw on the ILC.

(e) If, after the period of performance of a contract where ILCs are used to support payment bonds, there are outstanding claims against the payment bond, the contracting officer shall draw on the ILC prior to the expiration date of the ILC to cover these claims.

(f) The period for which financial security is required shall be as follows:

(1) If used as a bid guarantee, the ILC should expire no earlier than 60 days after the close of the bid acceptance period.

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the contracting officer provides the financial institution with a written state-

ment waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to the Bonds statute, the later of—

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to the Bonds statute, the later of—

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(g) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(1) The offeror/contractor shall provide the contracting officer a credit rating from a recognized commercial rating service as specified in Office of Federal Procurement Policy Pamphlet No. 7 (see [28.204-3\(h\)](#)) that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC.

(2) If the contracting officer learns that a financial institution's rating has dropped below the required level, the contracting officer shall give the contractor 30 days to substitute an acceptable ILC or shall draw on the ILC using the sight draft in paragraph (g) of the clause at [52.228-14](#).

(h)(1) Additional information on credit rating services and investment grade ratings is contained within Office of Federal Procurement Policy Pamphlet No. 7, Use of Irrevocable Letters of Credit. This pamphlet may be obtained by calling the Office of Management and Budget's publications office at (202) 395-7332.

(2) A copy of the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, is available from:

ICC Publishing, Inc.  
156 Fifth Avenue  
New York NY 10010

Telephone: (212) 206-1150  
Telefax: (212) 633-6025  
E-mail: [iccpub@interport.net](mailto:iccpub@interport.net).

**28.204-4 Contract clause.**

Insert the clause at [52.228-14](#), Irrevocable Letter of Credit, in solicitations and contracts for services, supplies, or construction, when a bid guarantee, or performance bonds, or performance and payment bonds are required.

**30.000 Scope of part.**

This part describes policies and procedures for applying the Cost Accounting Standards Board (CASB) rules and regulations (48 CFR Chapter 99 (FAR [Appendix](#))) to negotiated contracts and subcontracts. This part does not apply to sealed bid contracts or to any contract with a small business concern (see 48 CFR 9903.201-1(b) (FAR Appendix) for these and other exemptions).

**30.001 Definitions.**

As used in this part—

“Affected CAS-covered contract or subcontract” means a contract or subcontract subject to Cost Accounting Standards (CAS) rules and regulations for which a contractor or subcontractor—

(1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

(2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

“Cognizant Federal agency official (CFAO)” means the contracting officer assigned by the cognizant Federal agency to administer the CAS.

“Desirable change” means a compliant change to a contractor’s established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

“Fixed-price contracts and subcontracts” means—

(1) Fixed-price contracts and subcontracts described at [16.202](#), [16.203](#) (except when price adjustments are based on actual costs of labor or material, described at [16.203-1\(a\)\(2\)](#)), and [16.207](#);

(2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred ([Subpart 16.4](#));

(3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred ([Subpart 16.5](#)); and

(4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts ([Subpart 16.6](#)).

“Flexibly-priced contracts and subcontracts” means—

(1) Fixed-price contracts and subcontracts described at [16.203-1\(a\)\(2\)](#), [16.204](#), [16.205](#), and [16.206](#);

(2) Cost-reimbursement contracts and subcontracts ([Subpart 16.3](#));

(3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred ([Subpart 16.4](#));

(4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred ([Subpart 16.5](#)); and

(5) The materials portion of time-and-materials contracts and subcontracts ([Subpart 16.6](#)).

“Noncompliance” means a failure in estimating, accumulating, or reporting costs to—

(1) Comply with applicable CAS; or

(2) Consistently follow disclosed or established cost accounting practices.

“Required change” means—

(1) A change in cost accounting practice that a contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently becomes applicable to an existing CAS-covered contract or subcontract due to the receipt of another CAS-covered contract or subcontract; or

(2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the contractor to remain in compliance.

“Unilateral change” means a change in cost accounting practice from one compliant practice to another compliant practice that a contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

**Subpart 30.1—General****30.101 Cost Accounting Standards.**

(a) [41 U.S.C. chapter 15](#), Cost Accounting Standards, requires certain contractors and subcontractors to comply with Cost Accounting Standards (CAS) and to disclose in writing and follow consistently their cost accounting practices.

(b) Contracts that refer to this [Part 30](#) for the purpose of applying the policies, procedures, standards and regulations promulgated by the CASB pursuant to [41 U.S.C. chapter 15](#), shall be deemed to refer to the CAS, and any other regulations promulgated by the CASB (see 48 CFR Chapter 99), all of which are hereby incorporated in this [Part 30](#).

(c) The [Appendix](#) to the FAR loose-leaf edition contains—

(1) Cost Accounting Standards and Cost Accounting Standards Board Rules and Regulations Recodified by the Cost Accounting Standards Board at 48 CFR Chapter 99; and

(2) The following preambles:

(i) Part I—Preambles to the Cost Accounting Standards Published by the Cost Accounting Standards Board.

(ii) Part II—Preambles to the Related Rules and Regulations Published by the Cost Accounting Standards Board.

(iii) Part III—Preambles Published under the FAR System.

(d) The preambles are not regulatory but are intended to explain why the Standards and related Rules and Regulations were written, and to provide rationale for positions taken relative to issues raised in the public comments. The preambles are printed in chronological order to provide an administrative history.

**30.102 Cost Accounting Standards Board Publication.**

Copies of the CASB Standards and Regulations are printed in Title 48 of the *Code of Federal Regulations*, Chapter 99, and may be obtained by writing the—

Superintendent of Documents  
US Government Printing Office  
Washington, DC 20402

or by calling the Washington, DC, ordering desk at (202) 512-1800.

(5) Costs of promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to call favorable attention to the contractor and its activities.

(6) Costs of souvenirs, models, imprinted clothing, buttons, and other mementos provided to customers or the public.

(7) Costs of memberships in civic and community organizations.

(8) Costs associated with the donation of excess food to nonprofit organizations in accordance with the Federal Food Donation Act of 2008 ([42 U.S.C. 1792](#), see [subpart 26.4](#)).

#### **31.205-2 [Reserved]**

#### **31.205-3 Bad debts.**

Bad debts, including actual or estimated losses arising from uncollectible accounts receivable due from customers and other claims, and any directly associated costs such as collection costs, and legal costs are unallowable.

#### **31.205-4 Bonding costs.**

(a) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the contractor. They arise also in instances where the contractor requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(b) Costs of bonding required pursuant to the terms of the contract are allowable.

(c) Costs of bonding required by the contractor in the general conduct of its business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

#### **31.205-5 [Reserved]**

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**31.205-6 Compensation for personal services.**

(a) *General.* Compensation for personal services is allowable subject to the following general criteria and additional requirements contained in other parts of this cost principle:

(1) Compensation for personal services must be for work performed by the employee in the current year and must not represent a retroactive adjustment of prior years' salaries or wages (but see paragraphs (g), (h), (j), (k), (m), and (o) of this subsection).

(2) The total compensation for individual employees or job classes of employees must be reasonable for the work performed; however, specific restrictions on individual compensation elements apply when prescribed.

(3) The compensation must be based upon and conform to the terms and conditions of the contractor's established compensation plan or practice followed so consistently as to imply, in effect, an agreement to make the payment.

(4) No presumption of allowability will exist where the contractor introduces major revisions of existing compensation plans or new plans and the contractor has not provided the cognizant ACO, either before implementation or within a reasonable period after it, an opportunity to review the allowability of the changes.

(5) Costs that are unallowable under other paragraphs of this [subpart 31.2](#) are not allowable under this subsection [31.205-6](#) solely on the basis that they constitute compensation for personal services.

(6)(i) Compensation costs for certain individuals give rise to the need for special consideration. Such individuals include:

(A) Owners of closely held corporations, members of limited liability companies, partners, sole proprietors, or members of their immediate families; and

(B) Persons who are contractually committed to acquire a substantial financial interest in the contractor's enterprise.

(ii) For these individuals, compensation must—

(A) Be reasonable for the personal services rendered; and

(B) Not be a distribution of profits (which is not an allowable contract cost).

(iii) For owners of closely held companies, compensation in excess of the costs that are deductible as compensation under the Internal Revenue Code ([26 U.S.C.](#)) and regulations under it is unallowable.

(b) *Reasonableness*—(1) *Compensation pursuant to labor-management agreements.* If costs of compensation established under "arm's length" labor-management agreements negotiated under the terms of the Federal Labor Relations Act or similar state statutes are otherwise allowable, the costs are reasonable unless, as applied to work in performing Government contracts, the costs are unwarranted by the character and circumstances of the work or discriminatory against

the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (*e.g.*, work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government contract involving significantly different circumstances and conditions of employment (*e.g.*, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if it results in employee compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances.

(2) *Compensation not covered by labor-management agreements.* Compensation for each employee or job class of employees must be reasonable for the work performed. Compensation is reasonable if the aggregate of each measurable and allowable element sums to a reasonable total. In determining the reasonableness of total compensation, consider only allowable individual elements of compensation. In addition to the provisions of [31.201-3](#), in testing the reasonableness of compensation for particular employees or job classes of employees, consider factors determined to be relevant by the contracting officer. Factors that may be relevant include, but are not limited to, conformity with compensation practices of other firms—

(i) Of the same size;

(ii) In the same industry;

(iii) In the same geographic area; and

(iv) Engaged in similar non-Government work under comparable circumstances.

(c) [Reserved]

(d) *Form of payment.* (1) Compensation for personal services includes compensation paid or to be paid in the future to employees in the form of—

(i) Cash;

(ii) Corporate securities, such as stocks, bonds, and other financial instruments (see paragraph (d)(2) of this subsection regarding valuation); or

(iii) Other assets, products, or services.

(2) When compensation is paid with securities of the contractor or of an affiliate, the following additional restrictions apply:

(i) Valuation placed on the securities is the fair market value on the first date the number of shares awarded is known, determined upon the most objective basis available.

(ii) Accruals for the cost of securities before issuing the securities to the employees are subject to adjustment according to the possibilities that the employees will not receive the securities and that their interest in the accruals will be forfeited.

(e) *Income tax differential pay.* (1) Differential allowances for additional income taxes resulting from foreign assignments are allowable.

(2) Differential allowances for additional income taxes resulting from domestic assignments are unallowable. (However, payments for increased employee income or Federal Insurance Contributions Act taxes incident to allowable reimbursed relocation costs are allowable under [31.205-35\(a\)\(10\)](#).)

(f) *Bonuses and incentive compensation.* (1) Bonuses and incentive compensation are allowable provided the—

(i) Awards are paid or accrued under an agreement entered into in good faith between the contractor and the employees before the services are rendered or pursuant to an established plan or policy followed by the contractor so consistently as to imply, in effect, an agreement to make such payment; and

(ii) Basis for the award is supported.

(2) When the bonus and incentive compensation payments are deferred, the costs are subject to the requirements of paragraphs (f)(1) and (k) of this subsection.

(g) *Severance pay.* (1) Severance pay is a payment in addition to regular salaries and wages by contractors to workers whose employment is being involuntarily terminated. Payments for early retirement incentive plans are covered in paragraph (j)(6) of this subsection.

(2) Severance pay is allowable only to the extent that, in each case, it is required by—

(i) Law;

(ii) Employer-employee agreement;

(iii) Established policy that constitutes, in effect, an implied agreement on the contractor's part; or

(iv) Circumstances of the particular employment.

(3) Payments made in the event of employment with a replacement contractor where continuity of employment with credit for prior length of service is preserved under substantially equal conditions of employment, or continued employment by the contractor at another facility, subsidiary, affiliate, or parent company of the contractor are not severance pay and are unallowable.

(4) Actual normal turnover severance payments shall be allocated to all work performed in the contractor's plant. However, if the contractor uses the accrual method to account for normal turnover severance payments, that method will be acceptable if the amount of the accrual is—

(i) Reasonable in light of payments actually made for normal severances over a representative past period; and

(ii) Allocated to all work performed in the contractor's plant.

(5) Abnormal or mass severance pay is of such a conjectural nature that accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, the Government will consider allowability on a case-by-case basis.

(6) Under [10 U.S.C. 2324\(e\)\(1\)\(M\)](#) and [41 U.S.C. 4304\(a\)\(13\)](#), the costs of severance payments to foreign nationals employed under a service contract performed outside the United States are unallowable to the extent that such payments exceed amounts typically paid to employees providing similar services in the same industry in the United States. Further, under [10 U.S.C. 2324\(e\)\(1\)\(N\)](#) and [41 U.S.C. 4304\(a\)\(14\)](#), all such costs of severance payments that are otherwise allowable are unallowable if the termination of employment of the foreign national is the result of the closing of, or the curtailment of activities at, a United States facility in that country at the request of the government of that country; this does not apply if the closing of a facility or curtailment of activities is made pursuant to a status-of-forces or other country-to-country agreement entered into with the government of that country before November 29, 1989. [10 U.S.C. 2324\(e\)\(3\)](#) and [41 U.S.C. 4304\(b\)](#) permit the head of the agency to waive these cost allowability limitations under certain circumstances (see [37.113](#) and the solicitation provision at [52.237-8](#)).

(h) *Backpay.* Backpay is a retroactive adjustment of prior years' salaries or wages. Backpay is unallowable except as follows:

(1) Payments to employees resulting from underpaid work actually performed are allowable, if required by a negotiated settlement, order, or court decree.

(2) Payments to union employees for the difference in their past and current wage rates for working without a contract or labor agreement during labor management negotiation are allowable.

(3) Payments to nonunion employees based upon results of union agreement negotiation are allowable only if—

(i) A formal agreement or understanding exists between management and the employees concerning these payments; or

(ii) An established policy or practice exists and is followed by the contractor so consistently as to imply, in effect, an agreement to make such payments.

(i) Compensation based on changes in the prices of corporate securities or corporate security ownership, such as stock options, stock appreciation rights, phantom stock plans, and junior stock conversions.

(1) Any compensation which is calculated, or valued, based on changes in the price of corporate securities is unallowable.

(2) Any compensation represented by dividend payments or which is calculated based on dividend payments is unallowable.

(3) If a contractor pays an employee in lieu of the employee receiving or exercising a right, option, or benefit which would have been unallowable under this paragraph (i), such payments are also unallowable.



from work) is compensation for personal services and is unallowable as stated in [31.205-6\(m\)\(2\)](#).

### 31.205-47 Costs related to legal and other proceedings.

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

“Costs” include, but are not limited to, administrative and clerical expenses; the costs of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; costs of employees, officers, and directors; and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding which bears a direct relationship to the proceeding.

“Fraud”, means—

(1) Acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents;

(2) Acts which constitute a cause for debarment or suspension under [9.406-2\(a\)](#) and [9.407-2\(a\)](#); and

(3) Acts which violate the False Claims Act, [31 U.S.C., sections 3729-3731](#), or [41 U.S.C. chapter 87](#), Kickbacks.

“Penalty,” does not include restitution, reimbursement, or compensatory damages.

“Proceeding,” includes an investigation.

(b) In accordance with [41 U.S.C. 4310](#) and [10 U.S.C. 2324\(k\)](#), costs incurred in connection with any proceeding brought by a Federal, State, local, or foreign government, or by a contractor or subcontractor employee submitting a whistleblower complaint of reprisal in accordance with [41 U.S.C. 4712](#) or [10 U.S.C. 2409](#), for violation of, or a failure to comply with, law or regulation by the contractor (including its agents or employees), or costs incurred in connection with any proceeding brought by a third party in the name of the United States under the False Claims Act, [31 U.S.C. 3730](#), are unallowable if the result is—

(1) In a criminal proceeding, a conviction;

(2) In a civil or administrative proceeding, either a finding of contractor liability where the proceeding involves an allegation of fraud or similar misconduct; or imposition of a monetary penalty, or an order issued by the agency head to the contractor or subcontractor to take corrective action under [41 U.S.C. 4712](#) or [10 U.S.C. 2409](#), where the proceeding does not involve an allegation of fraud or similar misconduct;

(3) A final decision by an appropriate official of an executive agency to—

(i) Debar or suspend the contractor;

(ii) Rescind or void a contract; or

(iii) Terminate a contract for default by reason of a violation or failure to comply with a law or regulation.

(4) Disposition of the matter by consent or compromise if the proceeding could have led to any of the outcomes listed in paragraphs (b)(1) through (3) of this subsection (but see paragraphs (c) and (d) of this subsection); or

(5) Not covered by paragraphs (b)(1) through (4) of this subsection, but where the underlying alleged contractor misconduct was the same as that which led to a different proceeding whose costs are unallowable by reason of paragraphs (b)(1) through (4) of this subsection.

(c)(1) To the extent they are not otherwise unallowable, costs incurred in connection with any proceeding under paragraph (b) of this subsection commenced by the United States that is resolved by consent or compromise pursuant to an agreement entered into between the contractor and the United States, and which are unallowable solely because of paragraph (b) of this subsection, may be allowed to the extent specifically provided in such agreement

(2) In the event of a settlement of any proceeding brought by a third party under the False Claims Act in which the United States did not intervene, reasonable costs incurred by the contractor in connection with such a proceeding, that are not otherwise unallowable by regulation or by separate agreement with the United States, may be allowed if the contracting officer, in consultation with his or her legal advisor, determines that there was very little likelihood that the third party would have been successful on the merits.

(d) To the extent that they are not otherwise unallowable, costs incurred in connection with any proceeding under paragraph (b) of this subsection commenced by a State, local, or foreign government may be allowable when the contracting officer (or other official specified in agency procedures) determines, that the costs were incurred either:

(1) As a direct result of a specific term or condition of a Federal contract; or

(2) As a result of compliance with specific written direction of the cognizant contracting officer.

(e) Costs incurred in connection with proceedings described in paragraph (b) of this subsection, but which are not made unallowable by that paragraph, may be allowable to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and

(3) The percentage of costs allowed does not exceed the percentage determined to be appropriate considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. Agreements reached under paragraph (c) of this subsection shall be subject to this limitation. If, however, an agreement described in paragraph (c)(1) of this subsection explicitly states the amount of otherwise allowable incurred legal fees and limits the allowable recovery to 80 percent or

less of the stated legal fees, no additional limitation need be applied. The amount of reimbursement allowed for legal costs in connection with any proceeding described in paragraph (c)(2) of this subsection shall be determined by the cognizant contracting officer, but shall not exceed 80 percent of otherwise allowable legal costs incurred.

(f) Costs not covered elsewhere in this subsection are unallowable if incurred in connection with:

(1) Defense against Federal Government claims or appeals or the prosecution of claims or appeals against the Federal Government (see [2.101](#)).

(2) Organization, reorganization, (including mergers and acquisitions) or resisting mergers and acquisitions (see also [31.205-27](#)).

(3) Defense of antitrust suits.

(4) Defense of suits brought by employees or ex-employees of the contractor under section 2 of the Major Fraud Act of 1988 where the contractor was found liable or settled.

(5) Costs of legal, accounting, and consultant services and directly associated costs incurred in connection with the defense or prosecution of lawsuits or appeals between contractors arising from either—

(i) An agreement or contract concerning a teaming arrangement, a joint venture, or similar arrangement of shared interest; or

(ii) Dual sourcing, coproduction, or similar programs, are unallowable, except when—

(A) Incurred as a result of compliance with specific terms and conditions of the contract or written instructions from the contracting officer, or

(B) When agreed to in writing by the contracting officer.

(6) Patent infringement litigation, unless otherwise provided for in the contract.

(7) Representation of, or assistance to, individuals, groups, or legal entities which the contractor is not legally bound to provide, arising from an action where the participant was convicted of violation of a law or regulation or was found liable in a civil or administrative proceeding.

(8) Protests of Federal Government solicitations or contract awards, or the defense against protests of such solicitations or contract awards, unless the costs of defending against a protest are incurred pursuant to a written request from the cognizant contracting officer.

(g) Costs which may be unallowable under [31.205-47](#), including directly associated costs, shall be segregated and accounted for by the contractor separately. During the pendency of any proceeding covered by paragraph (b) and

paragraphs (f)(4) and (f)(7) of this subsection, the contracting officer shall generally withhold payment of such costs. However, if in the best interests of the Government, the contracting officer may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement by the contractor to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

#### **31.205-48 Research and development costs.**

“Research and development,” as used in this subsection, means the type of technical effort described in [31.205-18](#) but sponsored by a grant or required in the performance of a contract. When costs are incurred in excess of either the price of a contract or amount of a grant for research and development effort, the excess is unallowable under any other Government contract.

#### **31.205-49 Goodwill.**

Goodwill, an unidentifiable intangible asset, originates under the purchase method of accounting for a business combination when the price paid by the acquiring company exceeds the sum of the identifiable individual assets acquired less liabilities assumed, based upon their fair values. The excess is commonly referred to as goodwill. Goodwill may arise from the acquisition of a company as a whole or a portion thereof. Any costs for amortization, expensing, write-off, or write-down of goodwill (however represented) are unallowable.

#### **31.205-50 [Reserved]**

#### **31.205-51 Costs of alcoholic beverages.**

Costs of alcoholic beverages are unallowable.

#### **31.205-52 Asset valuations resulting from business combinations.**

(a) For tangible capital assets, when the purchase method of accounting for a business combination is used, whether or not the contract or subcontract is subject to CAS, the allowable depreciation and cost of money shall be based on the capitalized asset values measured and assigned in accordance with 48 CFR 9904.404-50(d), if allocable, reasonable, and not otherwise unallowable.

(b) For intangible capital assets, when the purchase method of accounting for a business combination is used, allowable amortization and cost of money shall be limited to the total of the amounts that would have been allowed had the combination not taken place.

### Subpart 31.6—Contracts with State, Local, and Federally Recognized Indian Tribal Governments

#### 31.601 Purpose.

This subpart provides the principles for determining allowable cost of contracts and subcontracts with State, local, and federally recognized Indian tribal governments.

#### 31.602 General.

Office of Management and Budget (OMB) Circular No. A-87, Cost Principles for State and Local Governments, Revised, sets forth the principles for determining the allowable costs of contracts and subcontracts with State, local, and federally recognized Indian tribal governments. These principles are for cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in financing a particular contract.

#### 31.603 Requirements.

(a) Contracts that refer to this [Subpart 31.6](#) for determining allowable costs under contracts with State, local and Indian tribal governments shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-87 which is in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost. However, under [10 U.S.C. 2324\(e\)](#) and [41 U.S.C. 4304\(a\)](#), the following costs are unallowable:

(1) Costs of entertainment, including amusement, diversion, and social activities, and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities).

(2) Costs incurred to influence (directly or indirectly) legislative action on any matter pending before Congress, a State legislature, or a legislative body of a political subdivision of a State.

(3) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of any false certification) brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(4) Payments of fines and penalties resulting from violations of, or failure to comply with, Federal, state, local, or foreign laws and regulations, except when incurred as a result

of compliance with specific terms and conditions of the contract or specific written instructions from the contracting officer authorizing in advance such payments in accordance with applicable regulations in the FAR or an executive agency supplement to the FAR.

(5) Costs of any membership in any social, dining, or country club or organization.

(6) Costs of alcoholic beverages.

(7) Contributions or donations, regardless of the recipient.

(8) Costs of advertising designed to promote the contractor or its products.

(9) Costs of promotional items and memorabilia, including models, gifts, and souvenirs.

(10) Costs for travel by commercial aircraft which exceed the amount of the standard commercial fare.

(11) Costs incurred in making any payment (commonly known as a “golden parachute payment”) which is—

(i) In an amount in excess of the normal severance pay paid by the contractor to an employee upon termination of employment; and

(ii) Is paid to the employee contingent upon, and following, a change in management control over, or ownership of, the contractor or a substantial portion of the contractor’s assets.

(12) Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor’s own defects in materials or workmanship.

(13) Costs of severance pay paid by the contractor to foreign nationals employed by the contractor under a service contract performed outside the United States, to the extent that the amount of the severance pay paid in any case exceeds the amount paid in the industry involved under the customary or prevailing practice for firms in that industry providing similar services in the United States, as determined by regulations in the FAR or in an executive agency supplement to the FAR.

(14) Costs of severance pay paid by the contractor to a foreign national employed by the contractor under a service contract performed in a foreign country if the termination of the employment of the foreign national is the result of the closing of, or curtailment of activities at, a United States facility in that country at the request of the government of that country.

(15) Costs incurred by a contractor in connection with any criminal, civil, or administrative proceedings commenced by the United States or a State, to the extent provided in [10 U.S.C. 2324\(k\)](#) or [41 U.S.C. 4310](#).

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**Subpart 31.7—Contracts with Nonprofit Organizations**

**31.701 Purpose.**

This subpart provides the principles for determining the cost applicable to work performed by nonprofit organizations under contracts with the Government. A nonprofit organization, for purpose of identification, is defined as a business entity organized and operated exclusively for charitable, scientific, or educational purposes, of which no part of the net earnings inure to the benefit of any private shareholder or individual, of which no substantial part of the activities is carrying on propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office, and which are exempt from Federal income taxation under section 501 of the Internal Revenue Code.

**31.702 General.**

Office of Management and Budget (OMB) Circular No. A-122, Cost Principles for Nonprofit Organizations, sets forth principles for determining the costs applicable to work performed by nonprofit organizations under contracts (also applies to grants and other agreements) with the Government.

**31.703 Requirements.**

(a) Contracts which refer to this [Subpart 31.7](#) for determining allowable costs shall be deemed to refer to, and shall have the allowability of costs determined by the contracting officer in accordance with, the revision of OMB Circular A-122 in effect on the date of the contract.

(b) Agencies are not expected to place additional restrictions on individual items of cost. However, under [10 U.S.C. 2324\(e\)](#) and [41 U.S.C. 4304](#), the costs cited in [31.603\(b\)](#) are unallowable.

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**32.000 Scope of part.**

This part prescribes policies and procedures for contract financing and other payment matters. This part addresses—

- (a) Payment methods, including partial payments and progress payments based on percentage or stage of completion;
- (b) Loan guarantees, advance payments, and progress payments based on costs;
- (c) Administration of debts to the Government arising out of contracts;
- (d) Contract funding, including the use of contract clauses limiting costs or funds;
- (e) Assignment of claims to aid in private financing;
- (f) Selected payment clauses;
- (g) Financing of purchases of commercial items;
- (h) Performance-based payments; and
- (i) Electronic funds transfer payments.

**32.001 Definitions.**

As used in this part—

“Commercial interim payment” means any payment that is not a commercial advance payment or a delivery payment. These payments are contract financing payments for prompt payment purposes (*i.e.*, not subject to the interest penalty provisions of the Prompt Payment Act in accordance with [Subpart 32.9](#)). A commercial interim payment is given to the contractor after some work has been done, whereas a commercial advance payment is given to the contractor when no work has been done.

“Contract action” means an action resulting in a contract, as defined in [Subpart 2.1](#), including actions for additional supplies or services outside the existing contract scope, but not including actions that are within the scope and under the terms of the existing contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

“Contract financing payment” means an authorized Government disbursement of monies to a contractor prior to acceptance of supplies or services by the Government.

- (1) Contract financing payments include—
  - (i) Advance payments;
  - (ii) Performance-based payments;
  - (iii) Commercial advance and interim payments;
  - (iv) Progress payments based on cost under the clause at [52.232-16](#), Progress Payments;
  - (v) Progress payments based on a percentage or stage of completion (see [32.102\(e\)](#)), except those made under the clause at [52.232-5](#), Payments Under Fixed-Price Construction Contracts, or the clause at [52.232-10](#), Payments Under Fixed-Price Architect-Engineer Contracts; and
  - (vi) Interim payments under a cost reimbursement contract, except for a cost reimbursement contract for services when Alternate I of the clause at [52.232-25](#), Prompt Payment, is used.

- (2) Contract financing payments do not include—

- (i) Invoice payments;
- (ii) Payments for partial deliveries; or
- (iii) Lease and rental payments.

“Customary contract financing” means that financing deemed by an agency to be available for routine use by contracting officers. Most customary contract financing arrangements should be usable by contracting officers without specific reviews or approvals by higher management.

“Delivery payment” means a payment for accepted supplies or services, including payments for accepted partial deliveries. Commercial financing payments are liquidated by deduction from these payments. Delivery payments are invoice payments for prompt payment purposes.

“Designated billing office” means the office or person (governmental or nongovernmental) designated in the contract where the contractor first submits invoices and contract financing requests. The contract might designate different offices to receive invoices and contract financing requests. The designated billing office might be—

- (1) The Government disbursing office;
- (2) The contract administration office;
- (3) The office accepting the supplies delivered or services performed by the contractor;
- (4) The contract audit office; or
- (5) A nongovernmental agent.

“Designated payment office” means the office designated in the contract to make invoice payments or contract financing payments. Normally, this will be the Government disbursing office.

“Due date” means the date on which payment should be made.

“Invoice payment” means a Government disbursement of monies to a contractor under a contract or other authorization for supplies or services accepted by the Government.

- (1) Invoice payments include—
  - (i) Payments for partial deliveries that have been accepted by the Government;
  - (ii) Final cost or fee payments where amounts owed have been settled between the Government and the contractor;
  - (iii) For purposes of [Subpart 32.9](#) only, all payments made under the clause at [52.232-5](#), Payments Under Fixed-Price Construction Contracts, and the clause at [52.232-10](#), Payments Under Fixed-Price Architect-Engineer Contracts; and
  - (iv) Interim payments under a cost-reimbursement contract for services when Alternate I of the clause at [52.232-5](#), Prompt Payment, is used.

- (2) Invoice payments do not include contract financing payments.

“Liquidate” means to decrease a payment for an accepted supply item or service under a contract for the purpose of recouping financing payments previously paid to the contractor.

“Unusual contract financing” means any financing not deemed customary contract financing by the agency. Unusual contract financing is financing that is legal and proper under applicable laws, but that the agency has not authorized contracting officers to use without specific reviews or approvals by higher management.

### 32.002 Applicability of subparts.

(a) The following sections and subparts of this part are applicable to all purchases subject to [Part 32](#):

- (1) Sections [32.000](#) through [32.009](#).
- (2) [Subpart 32.3](#), Loan Guarantees for Defense Production.
- (3) [Subpart 32.6](#), Contract Debts.
- (4) [Subpart 32.7](#), Contract Funding.
- (5) [Subpart 32.8](#), Assignment of Claims.
- (6) [Subpart 32.9](#), Prompt Payment.
- (7) [Subpart 32.11](#), Electronic Funds Transfer.

(b) [Subpart 32.2](#), Commercial Item Purchase Financing, is applicable only to purchases of commercial items under authority of [Part 12](#).

(c) The following subparts of this part are applicable to all purchases made under any authority other than [Part 12](#):

- (1) [Subpart 32.1](#), Non-Commercial Item Purchase Financing.
- (2) [Subpart 32.4](#), Advance Payments For Non-Commercial Items.
- (3) [Subpart 32.5](#), Progress Payments Based on Costs.
- (4) [Subpart 32.10](#), Performance-Based Payments.

### 32.003 Simplified acquisition procedures financing.

Unless agency regulations otherwise permit, contract financing shall not be provided for purchases made under the authority of [Part 13](#).

### 32.004 Contract performance in foreign countries.

The enforceability of contract provisions for security of Government financing in a foreign jurisdiction is dependent upon local law and procedure. Prior to providing contract financing where foreign jurisdictions may become involved, the contracting officer shall ensure the Government's security is enforceable. This may require the provision of additional or different security than that normally provided for in the standard contract clauses.

### 32.005 Consideration for contract financing.

(a) *Requirement.* When a contract financing clause is included at the inception of a contract, there shall be no separate consideration for the contract financing clause. The value of the contract financing to the contractor is expected to be reflected in either (1) a bid or negotiated price that will be lower than such price would have been in the absence of the

contract financing, or (2) contract terms and conditions, other than price, that are more beneficial to the Government than they would have been in the absence of the contract financing. Adequate new consideration is required for changes to, or the addition of, contract financing after award.

(b) *Amount of new consideration.* The contractor may provide new consideration by monetary or nonmonetary means, provided the value is adequate. The fair and reasonable consideration should approximate the amount by which the price would have been less had the contract financing terms been contained in the initial contract. In the absence of definite information on this point, the contracting officer should apply the following criteria in evaluating whether the proposed new consideration is adequate:

(1) The value to the contractor of the anticipated amount and duration of the contract financing at the imputed financial costs of the equivalent working capital.

(2) The estimated profit rate to be earned through contract performance.

(c) *Interest.* Except as provided in [Subpart 32.4](#), Advance Payments for Non-Commercial Items, the contract shall not provide for any other type of specific charges, such as interest, for contract financing.

### 32.006 Reduction or suspension of contract payments upon finding of fraud.

#### 32.006-1 General.

(a) Under [10 U.S.C. 2307\(i\)\(8\)](#), the statutory authority implemented by this section is available to the Department of Defense and the National Aeronautics and Space Administration; this statutory authority is not available to the United States Coast Guard. Under [41 U.S.C. 4506](#), this statutory authority is available to all agencies subject to Division C of subtitle I of title 41.

(b) [10 U.S.C. 2307\(i\)\(2\)](#) and [41 U.S.C. 4506](#) provide for a reduction or suspension of further payments to a contractor when the agency head determines there is substantial evidence that the contractor's request for advance, partial, or progress payments is based on fraud. This authority does not apply to commercial interim payments under [Subpart 32.2](#), or performance-based payments under [Subpart 32.10](#).

(c) The agency head may not delegate his or her responsibilities under these statutes below Level IV of the Executive Schedule.

(d) Authority to reduce or suspend payments under these statutes is in addition to other Government rights, remedies, and procedures.

(e) In accordance with these statutes, agency head determinations and decisions under this section may be made for an individual contract or any group of contracts affected by the fraud.



**32.006-2 Definition.**

“Remedy coordination official,” as used in this section, means the person or entity in the agency who coordinates within that agency the administration of criminal, civil, administrative, and contractual remedies resulting from investigations of fraud or corruption related to procurement activities. (See [10 U.S.C. 2307\(i\)\(10\)](#) and [41 U.S.C. 4506\(a\)](#).)

**32.006-3 Responsibilities.**

(a) Agencies shall establish appropriate procedures to implement the policies and procedures of this section.

(b) Government personnel shall report suspected fraud related to advance, partial, or progress payments in accordance with agency regulations.

**32.006-4 Procedures.**

(a) In any case in which an agency’s remedy coordination official finds substantial evidence that a contractor’s request for advance, partial, or progress payments under a contract awarded by that agency is based on fraud, the remedy coordination official shall recommend that the agency head reduce or suspend further payments to the contractor. The remedy coordination official shall submit to the agency head a written report setting forth the remedy coordination official’s findings that support each recommendation.

(b) Upon receiving a recommendation from the remedy coordination official under paragraph (a) of this subsection, the agency head shall determine whether substantial evidence exists that the request for payment under a contract is based on fraud.

(c) If the agency head determines that substantial evidence exists, the agency head may reduce or suspend further payments to the contractor under the affected contract(s). Such reduction or suspension shall be reasonably commensurate with the anticipated loss to the Government resulting from the fraud.

(d) In determining whether to reduce or suspend further payment(s), as a minimum, the agency head shall consider—

(1) A recommendation from investigating officers that disclosure of the allegations of fraud to the contractor may compromise an ongoing investigation;

(2) The anticipated loss to the Government as a result of the fraud;

(3) The contractor’s overall financial condition and ability to continue performance if payments are reduced or suspended;

(4) The contractor’s essentiality to the national defense, or to the execution of the agency’s official business; and

(5) Assessment of all documentation concerning the alleged fraud, including documentation submitted by the contractor in its response to the notice required by paragraph (e) of this subsection.

(e) Before making a decision to reduce or suspend further payments, the agency head shall, in accordance with agency procedures—

(1) Notify the contractor in writing of the action proposed by the remedy coordination official and the reasons therefor (such notice must be sufficiently specific to permit the contractor to collect and present evidence addressing the aforesaid reasons); and

(2) Provide the contractor an opportunity to submit information within a reasonable time, in response to the action proposed by the remedy coordination official.

(f) When more than one agency has contracts affected by the fraud, the agencies shall consider designating one agency as the lead agency for making the determination and decision.

(g) The agency shall retain in its files the written justification for each—

(1) Decision of the agency head whether to reduce or suspend further payments; and

(2) Recommendation received by an agency head in connection with such decision.

(h) Not later than 180 calendar days after the date of the reduction or suspension action, the remedy coordination official shall—

(1) Review the agency head’s determination on which the reduction or suspension decision is based; and

(2) Transmit a recommendation to the agency head as to whether the reduction or suspension should continue.

**32.006-5 Reporting.**

(a) In accordance with [41 U.S.C. 4506\(h\)](#), the head of an agency, other than the Department of Defense, shall prepare a report for each fiscal year in which a recommendation has been received pursuant to [32.006-4\(a\)](#). Reports within the Department of Defense shall be prepared in accordance with [10 U.S.C. 2307\(i\)\(7\)](#).

(b) In accordance with [41 U.S.C. 4506\(h\)](#) and [10 U.S.C. 2307\(i\)\(7\)](#), each report shall contain—

(1) Each recommendation made by the remedy coordination official;

(2) The actions taken on the recommendation(s), with reasons for such actions; and

(3) An assessment of the effects of each action on the Government.

**32.007 Contract financing payments.**

(a)(1) Unless otherwise prescribed in agency policies and procedures or otherwise specified in paragraph (b) of this section, the due date for making contract financing payments by the designated payment office is the 30th day after the designated billing office receives a proper contract financing request.

(2) If an audit or other review of a specific financing request is required to ensure compliance with the terms and

conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(3) Agency heads may prescribe shorter periods for payment based on contract pricing or administrative considerations. For example, a shorter period may be justified by an agency if the nature and extent of contract financing arrangements are integrated with agency contract pricing policies.

(4) Agency heads must not prescribe a period shorter than 7 days or longer than 30 days.

(b) For advance payments, loans, or other arrangements that do not involve recurrent submission of contract financing requests, the designated payment office will make payment in accordance with the applicable contract financing terms or as directed by the contracting officer.

(c) A proper contract financing request must comply with the terms and conditions specified by the contract. The contractor must correct any defects in requests submitted in the manner specified in the contract or as directed by the contracting officer.

(d) The designated billing office and designated payment office must annotate each contract financing request with the date their respective offices received the request.

(e) The Government will not pay an interest penalty to the contractor as a result of delayed contract financing payments.

### 32.008 Notification of overpayment.

If the contractor notifies the contracting officer of a duplicate payment or that the Government has otherwise overpaid, the contracting officer shall follow the procedures at [32.604](#).

### 32.009 Providing accelerated payments to small business subcontractors.

#### 32.009-1 General.

Pursuant to the policy provided by OMB Memorandum M-12-16, Providing Prompt Payment to Small Business Subcontractors (and as extended by OMB Memorandum M-13-15, Extension of Policy to Provide Accelerated Payment to Small Business Subcontractors), agencies shall take measures to ensure that prime contractors pay small business subcontractors on an accelerated timetable to the maximum extent practicable, and upon receipt of accelerated payments from the Government. This acceleration does not provide any new rights under the Prompt Payment Act and does not affect the application of the Prompt Payment Act late payment interest provisions.

#### 32.009-2 Contract clause.

Insert clause [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors, in all solicitations and contracts.

## Subpart 32.1—Non-Commercial Item Purchase Financing

### 32.100 Scope of subpart.

This subpart provides policies and procedures applicable to contract financing and payment for any purchases other than purchases of commercial items in accordance with [Part 12](#).

### 32.101 Authority.

The basic authority for the contract financing described in this part is contained in [41 U.S.C. chapter 45](#), Contract Financing, [10 U.S.C. 2307](#), and Title III of the Defense Production Act of 1950 ([50 U.S.C. App. 2091](#)).

### 32.102 Description of contract financing methods.

(a) Advance payments are advances of money by the Government to a prime contractor before, in anticipation of, and for the purpose of complete performance under one or more contracts. They are expected to be liquidated from payments due to the contractor incident to performance of the contracts. Since they are not measured by performance, they differ from partial, progress, or other payments based on the performance or partial performance of a contract. Advance payments may be made to prime contractors for the purpose of making advances to subcontractors.

(b) Progress payments based on costs are made on the basis of costs incurred by the contractor as work progresses under the contract. This form of contract financing does not include—

- (1) Payments based on the percentage or stage of completion accomplished;
- (2) Payments for partial deliveries accepted by the Government;
- (3) Partial payments for a contract termination proposal; or
- (4) Performance-based payments.

(c) Loan guarantees are made by Federal Reserve banks, on behalf of designated guaranteeing agencies, to enable contractors to obtain financing from private sources under contracts for the acquisition of supplies or services for the national defense.

(d) Payments for accepted supplies and services that are only a part of the contract requirements (*i.e.*, partial deliveries) are authorized under [41 U.S.C. chapter 45](#) and [10 U.S.C. 2307](#). In accordance with 5 CFR 1315.4(k), agencies must pay for partial delivery of supplies or partial performance of services unless specifically prohibited by the contract. Although payments for partial deliveries generally are treated as a method of payment and not as a method of con-

tract financing, using partial delivery payments can assist contractors to participate in contracts without, or with minimal, contract financing. When appropriate, contract statements of work and pricing arrangements must permit acceptance and payment for discrete portions of the work, as soon as accepted (see [32.906\(c\)](#)).

(e)(1) Progress payments based on a percentage or stage of completion are authorized by the statutes cited in [32.101](#).

(2) This type of progress payment may be used as a payment method under agency procedures. Agency procedures must ensure that payments are commensurate with work accomplished, which meets the quality standards established under the contract. Furthermore, progress payments may not exceed 80 percent of the eligible costs of work accomplished on undefinitized contract actions.

(f) Performance-based payments are contract financing payments made on the basis of—

- (1) Performance measured by objective, quantifiable methods;
- (2) Accomplishment of defined events; or
- (3) Other quantifiable measures of results.

### 32.103 Progress payments under construction contracts.

When satisfactory progress has not been achieved by a contractor during any period for which a progress payment is to be made, a percentage of the progress payment may be retained. Retainage should not be used as a substitute for good contract management, and the contracting officer should not withhold funds without cause. Determinations to retain and the specific amount to be withheld shall be made by the contracting officers on a case-by-case basis. Such decisions will be based on the contracting officer's assessment of past performance and the likelihood that such performance will continue. The amount of retainage withheld shall not exceed 10 percent of the approved estimated amount in accordance with the terms of the contract and may be adjusted as the contract approaches completion to recognize better than expected performance, the ability to rely on alternative safeguards, and other factors. Upon completion of all contract requirements, retained amounts shall be paid promptly.

### 32.104 Providing contract financing.

(a) Prudent contract financing can be a useful working tool in Government acquisition by expediting the performance of essential contracts. Contracting officers must consider the criteria in this part in determining whether to include contract financing in solicitations and contracts. Resolve reasonable doubts by including contract financing in the solicitation. The contracting officer must—

(1) Provide Government financing only to the extent actually needed for prompt and efficient performance, consid-

ering the availability of private financing and the probable impact on working capital of the predelivery expenditures and production lead-times associated with the contract, or groups of contracts or orders (*e.g.*, issued under indefinite-delivery contracts, basic ordering agreements, or their equivalent);

(2) Administer contract financing so as to aid, not impede, the acquisition;

(3) Avoid any undue risk of monetary loss to the Government through the financing;

(4) Include the form of contract financing deemed to be in the Government's best interest in the solicitation (see [32.106](#) and [32.113](#)); and

(5) Monitor the contractor's use of the contract financing provided and the contractor's financial status.

(b) If the contractor is a small business concern, the contracting officer must give special attention to meeting the contractor's contract financing need. However, a contractor's receipt of a certificate of competency from the Small Business Administration has no bearing on the contractor's need for or entitlement to contract financing.

(c) Subject to specific agency regulations and paragraph (d) of this section, the contracting officer—

(1) May provide customary contract financing in accordance with [32.113](#); and

(2) Must not provide unusual contract financing except as authorized in [32.114](#).

(d) Unless otherwise authorized by agency procedures, the contracting officer may provide contract financing in the form of performance-based payments (see [Subpart 32.10](#)) or customary progress payments (see [Subpart 32.5](#)) if the following conditions are met:

(1) The contractor—

(i) Will not be able to bill for the first delivery of products for a substantial time after work must begin (normally 4 months or more for small business concerns, and 6 months or more for others), and will make expenditures for contract performance during the predelivery period that have a significant impact on the contractor's working capital; or

(ii) Demonstrates actual financial need or the unavailability of private financing.

(2) If the contractor is not a small business concern—

(i) For an individual contract, the contract price is \$2.5 million or more; or

(ii) For an indefinite-delivery contract, a basic ordering agreement or a similar ordering instrument, the contracting officer expects the aggregate value of orders or contracts that individually exceed the simplified acquisition threshold to have a total value of \$2.5 million or more. The contracting officer must limit financing to those orders or contracts that exceed the simplified acquisition threshold.

(3) If the contractor is a small business concern—

(i) For an individual contract, the contract price exceeds the simplified acquisition threshold; or

(ii) For an indefinite-delivery contract, a basic ordering agreement or a similar ordering instrument, the contracting officer expects the aggregate value of orders or contracts to exceed the simplified acquisition threshold.

### 32.105 Uses of contract financing.

(a) Contract financing methods covered in this part are intended to be self-liquidating through contract performance. Consequently, agencies shall only use the methods for financing of contractor working capital, not for the expansion of contractor-owned facilities or the acquisition of fixed assets. However, under loan guarantees, exceptions may be made for—

(1) Facilities expansion of a minor or incidental nature, if a relatively small part of the guaranteed loan is used for the expansion and the contractor's repayment would not be delayed or impaired; or

(2) Other instances of facilities expansion for which contract financing is appropriate under agency procedures.

(b) The limitations in this section do not apply to contracts under which facilities are being acquired for Government ownership.

### 32.106 Order of preference.

The contracting officer must consider the following order of preference when a contractor requests contract financing, unless an exception would be in the Government's best interest in a specific case:

(a) Private financing without Government guarantee. It is not intended, however, that the contracting officer require the contractor to obtain private financing—

(1) At unreasonable terms; or

(2) From other agencies.

(b) Customary contract financing other than loan guarantees and certain advance payments (see [32.113](#)).

(c) Loan guarantees.

(d) Unusual contract financing (see [32.114](#)).

(e) Advance payments (see exceptions in [32.402\(b\)](#)).

### 32.107 Need for contract financing not a deterrent.

(a) If the contractor or offeror meets the standards prescribed for responsible prospective contractors at [9.104](#), the contracting officer shall not treat the contractor's need for contract financing as a handicap for a contract award; *e.g.*, as a responsibility factor or evaluation criterion.

(b) The contractor should not be disqualified from contract financing solely because the contractor failed to indicate a need for contract financing before the contract was awarded.

### 32.108 Financial consultation.

Each contracting office should have available and use the services of contract financing personnel competent to evalu-

ate credit and financial problems. In resolving any questions concerning—

(a) The financial capability of an offeror or contractor to perform a contract, or

(b) What form of contract financing is appropriate in a given case, the contracting officer should consult the appropriate contract financing office.

### 32.109 Termination financing.

To encourage contractors to invest their own funds in performance despite the susceptibility of the contract to termination for the convenience of the Government, the contract financing procedures under this part may be applied to the financing of terminations either in connection with or independently of financing for contract performance (see [49.112-1](#)).

### 32.110 Payment of subcontractors under cost-reimbursement prime contracts.

If the contractor makes financing payments to a subcontractor under a cost-reimbursement prime contract, the contracting officer should accept the financing payments as reimbursable costs of the prime contract only under the following conditions:

(a) The payments are made under the criteria in [Subpart 32.5](#) for customary progress payments based on costs, [32.202-1](#) for commercial item purchase financing, or [32.1003](#) for performance-based payments, as applicable.

(b) If customary progress payments are made, the payments do not exceed the progress payment rate in [32.501-1](#), unless unusual progress payments to the subcontractor have been approved in accordance with [32.501-2](#).

(c) If customary progress payments are made, the subcontractor complies with the liquidation principles of [32.503-8](#), [32.503-9](#), and [32.503-10](#).

(d) If performance-based payments are made, the subcontractor complies with the liquidation principles of [32.1004\(d\)](#).

(e) The subcontract contains financing payments terms as prescribed in this part.

### 32.111 Contract clauses for non-commercial purchases.

(a) The contracting officer shall insert the following clauses, appropriately modified with respect to payment due dates, in accordance with agency regulations—

(1) The clause at [52.232-1](#), Payments, in solicitations and contracts when a fixed-price supply contract, a fixed-price service contract, or a contract for nonregulated communication services is contemplated;

(2) The clause at [52.232-2](#), Payment under Fixed-Price Research and Development Contracts, in solicitations and contracts when a fixed-price research and development contract is contemplated;

(3) The clause at [52.232-3](#), Payments under Personal Services Contracts, in solicitations and contracts for personal services;

(4) The clause at [52.232-4](#), Payments under Transportation Contracts and Transportation-Related Services Contracts, in solicitations and contracts for transportation or transportation-related services;

(5) The clause at [52.232-5](#), Payments under Fixed-Price Construction Contracts, in solicitations and contracts for construction when a fixed-price contract is contemplated;

(6) The clause at [52.232-6](#), Payments under Communication Service Contracts with Common Carriers, in solicitations and contracts for regulated communication services by common carriers; and

(7) The clause at [52.232-7](#), Payments under Time-and-Materials and Labor-Hour Contracts, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated. If the contracting officer determines that it is necessary to withhold payment to protect the Government's interests, paragraph (a)(7) of the clause permits the contracting officer to unilaterally issue a modification requiring the contractor to withhold 5 percent of amounts due, up to a maximum of \$50,000 under the contract. The contracting officer shall ensure that the modification specifies the percentage and total amount of the withhold payment. Normally, there should be no need to withhold payment for a contractor with a record of timely submittal of the release discharging the Government from all liabilities, obligations, and claims, as required by paragraph (g) of the clause.

(b) The contracting officer shall insert the following clauses, appropriately modified with respect to payment due dates in accordance with agency regulations:

(1) The clause at [52.232-8](#), Discounts for Prompt Payment, in solicitations and contracts when a fixed-price supply contract or fixed-price service contract is contemplated.

(2) A clause, substantially the same as the clause at [52.232-9](#), Limitation on Withholding of Payments, in solicitations and contracts when a supply contract, research and development contract, service contract, time-and-materials contract, or labor-hour contract is contemplated that includes two or more terms authorizing the temporary withholding of amounts otherwise payable to the contractor for supplies delivered or services performed.

(c) The contracting officer shall insert the following clauses, appropriately modified with respect to payments due dates in accordance with agency regulations:

(1) The clause at [52.232-10](#), Payments under Fixed-Price Architect-Engineer Contracts, in fixed-price architect-engineer contracts.

(2) The clause at [52.232-11](#), Extras, in solicitations and contracts when a fixed-price supply contract, fixed-price service contract, or a transportation contract is contemplated.

### **32.112 Nonpayment of subcontractors under contracts for noncommercial items.**

#### **32.112-1 Subcontractor assertions of nonpayment.**

(a) In accordance with Section 806(a)(4) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355 ([10 U.S.C. 2302 note](#)), upon the assertion by a subcontractor or supplier of a Federal contractor that the subcontractor or supplier has not been paid in accordance with the payment terms of the subcontract, purchase order, or other agreement with the prime contractor, the contracting officer may determine—

(1) For a construction contract, whether the contractor has made—

(i) Progress payments to the subcontractor or supplier in compliance with Chapter 39 of Title 31, United States Code (Prompt Payment Act); or

(ii) Final payment to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor;

(2) For a contract other than construction, whether the contractor has made progress payments, final payments, or other payments to the subcontractor or supplier in compliance with the terms of the subcontract, purchase order, or other agreement with the prime contractor; or

(3) For any contract, whether the contractor's certification of payment of a subcontractor or supplier accompanying its payment request to the Government is accurate.

(b) If, in making the determination in paragraphs (a)(1) and (2) of this subsection, the contracting officer finds the prime contractor is not in compliance, the contracting officer may—

(1) Encourage the contractor to make timely payment to the subcontractor or supplier; or

(2) If authorized by the applicable payment clauses, reduce or suspend progress payments to the contractor.

(c) If the contracting officer determines that a certification referred to in paragraph (a)(3) of this subsection is inaccurate in any material respect, the contracting officer shall initiate administrative or other remedial action.

#### **32.112-2 Subcontractor requests for information.**

(a) In accordance with Section 806(a)(1) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355 ([10 U.S.C. 2302 note](#)), upon the request of a subcontractor or supplier under a Federal contract for a non-commercial item, the contracting officer shall promptly advise the subcontractor or supplier as to—

(1) Whether the prime contractor has submitted requests for progress payments or other payments to the Federal Government under the contract; and

(2) Whether final payment under the contract has been made by the Federal Government to the prime contractor.

(b) In accordance with [5 U.S.C. 552\(b\)\(1\)](#), this subsection does not apply to matters that are—

(1) Specifically authorized under criteria established by an Executive order to be kept classified in the interest of national defense or foreign policy; and

(2) Properly classified pursuant to such Executive order.

### **32.113 Customary contract financing.**

The solicitation must specify the customary contract financing offerors may propose. The following are customary contract financing when provided in accordance with this part and agency regulations:

(a) Financing of shipbuilding, or ship conversion, alteration, or repair, when agency regulations provide for progress payments based on a percentage or stage of completion.

(b) Financing of construction or architect-engineer services purchased under the authority of [Part 36](#).

(c) Financing of contracts for supplies or services awarded under the sealed bid method of procurement in accordance with [Part 14](#) through progress payments based on costs in accordance with [Subpart 32.5](#).

(d) Financing of contracts for supplies or services awarded under the competitive negotiation method of procurement in accordance with [Part 15](#), through either progress payments

based on costs in accordance with [Subpart 32.5](#), or performance-based payments in accordance with [Subpart 32.10](#) (but not both).

(e) Financing of contracts for supplies or services awarded under a sole-source acquisition as defined in [2.101](#) and using the procedures of [Part 15](#), through either progress payments based on costs in accordance with [Subpart 32.5](#), or performance-based payments in accordance with [Subpart 32.10](#) (but not both).

(f) Financing of contracts for supplies or services through advance payments in accordance with [Subpart 32.4](#).

(g) Financing of contracts for supplies or services through guaranteed loans in accordance with [Subpart 32.3](#).

(h) Financing of contracts for supplies or services through any appropriate combination of advance payments, guaranteed loans, and either performance-based payments or progress payments (but not both) in accordance with their respective subparts.

### **32.114 Unusual contract financing.**

Any contract financing arrangement that deviates from this part is unusual contract financing. Unusual contract financing shall be authorized only after approval by the head of the agency or as provided for in agency regulations.

## Subpart 32.2—Commercial Item Purchase Financing

### 32.200 Scope of subpart.

This subpart provides policies and procedures for commercial financing arrangements under commercial purchases pursuant to [Part 12](#).

### 32.201 Statutory authority.

[10 U.S.C. 2307\(f\)](#) and [41 U.S.C. 4505](#) provide that payment for commercial items may be made under such terms and conditions as the head of the agency determines are appropriate or customary in the commercial marketplace and are in the best interest of the United States.

### 32.202 General.

#### 32.202-1 Policy.

(a) *Use of financing in contracts.* It is the responsibility of the contractor to provide all resources needed for performance of the contract. Thus, for purchases of commercial items, financing of the contract is normally the contractor's responsibility. However, in some markets the provision of financing by the buyer is a commercial practice. In these circumstances, the contracting officer may include appropriate financing terms in contracts for commercial purchases when doing so will be in the best interest of the Government.

(b) *Authorization.* Commercial interim payments and commercial advance payments may be made under the following circumstances—

- (1) The contract item financed is a commercial supply or service;
- (2) The contract price exceeds the simplified acquisition threshold;
- (3) The contracting officer determines that it is appropriate or customary in the commercial marketplace to make financing payments for the item;
- (4) Authorizing this form of contract financing is in the best interest of the Government (see paragraph (e) of this subsection);
- (5) Adequate security is obtained (see [32.202-4](#));
- (6) Prior to any performance of work under the contract, the aggregate of commercial advance payments shall not exceed 15 percent of the contract price;
- (7) The contract is awarded on the basis of competitive procedures or, if only one offer is solicited, adequate consideration is obtained (based on the time value of the additional financing to be provided) if the financing is expected to be substantially more advantageous to the offeror than the offeror's normal method of customer financing; and
- (8) The contracting officer obtains concurrence from the payment office concerning liquidation provisions when required by [32.206\(e\)](#).

(c) *Difference from non-commercial financing.* Government financing of commercial purchases under this subpart is expected to be different from that used for non-commercial purchases under [Subpart 32.1](#) and its related subparts. While the contracting officer may adapt techniques and procedures from the non-commercial subparts for use in implementing commercial contract financing arrangements, the contracting officer must have a full understanding of effects of the differing contract environments and of what is needed to protect the interests of the Government in commercial contract financing.

(d) *Unusual contract financing.* Any contract financing arrangement not in accord with the requirements of agency regulations or this part is unusual contract financing and requires advance approval in accordance with agency procedures. If not otherwise specified, such unusual contract financing shall be approved by the head of the contracting activity.

(e) *Best interest of the Government.* The statutes cited in [32.201](#) do not allow contract financing by the Government unless it is in the best interest of the United States. Agencies may establish standards to determine whether contract financing is in the best interest of the Government. These standards may be for certain types of procurements, certain types of items, or certain dollar levels of procurements.

#### 32.202-2 Types of payments for commercial item purchases.

These definitions incorporate the requirements of the statutory commercial financing authority and the implementation of the Prompt Payment Act.

“Commercial advance payment,” as used in this subsection, means a payment made before any performance of work under the contract. The aggregate of these payments shall not exceed 15 percent of the contract price. These payments are contract financing payments for prompt payment purposes (*i.e.*, not subject to the interest penalty provisions of the Prompt Payment Act in accordance with [Subpart 32.9](#)). These payments are not subject to [Subpart 32.4](#), Advance Payments for Non-Commercial Items.

“Commercial interim payment” (see [32.001](#)).

“Delivery payment” (see [32.001](#)).

#### 32.202-3 Conducting market research about financing terms.

Contract financing may be a subject included in the market research conducted in accordance with [Part 10](#). If market research for contract financing is conducted, the contracting officer should consider—

- (a) The extent to which other buyers provide contract financing for purchases in that market;
- (b) The overall level of financing normally provided;
- (c) The amount or percentages of any payments equivalent to commercial advance payments (see [32.202-2](#));

(d) The basis for any payments equivalent to commercial interim payments (see [32.001](#)), as well as the frequency, and amounts or percentages; and

(e) Methods of liquidation of contract financing payments and any special or unusual payment terms applicable to delivery payments (see [32.001](#)).

#### **32.202-4 Security for Government financing.**

(a) *Policy.* (1) [10 U.S.C. 2307\(f\)](#) and [41 U.S.C. 4505](#) require the Government to obtain adequate security for Government financing. The contracting officer shall specify in the solicitation the type of security the Government will accept. If the Government is willing to accept more than one form of security, the offeror shall be required to specify the form of security it will provide. If acceptable to the contracting officer, the resulting contract shall specify the security (see [32.206\(b\)\(1\)\(iv\)](#)).

(2) Subject to agency regulations, the contracting officer may determine the offeror's financial condition to be adequate security, provided the offeror agrees to provide additional security should that financial condition become inadequate as security (see paragraph (c) of the clause at [52.232-29](#), Terms for Financing of Purchases of Commercial Items). Assessment of the contractor's financial condition shall consider both net worth and liquidity. If the contracting officer finds the offeror's financial condition is not adequate security, the contracting officer shall require other adequate security. Paragraphs (b), (c), and (d) of this subsection list other (but not all) forms of security that the contracting officer may find acceptable.

(3) The value of the security must be at least equal to the maximum unliquidated amount of contract financing payments to be made to the contractor. The value of security may be adjusted periodically during contract performance, as long as it is always equal to or greater than the amount of unliquidated financing.

(b) *Paramount lien.* (1) The statutes cited in [32.201](#) provide that if the Government's security is in the form of a lien, such lien is paramount to all other liens and is effective immediately upon the first payment, without filing, notice, or other action by the United States.

(2) When the Government's security is in the form of a lien, the contract shall specify what the lien is upon, *e.g.*, the work in process, the contractor's plant, or the contractor's inventory. Contracting officers may be flexible in the choice of assets. The contract must also give the Government a right to verify the existence and value of the assets.

(3) Provision of Government financing shall be conditioned upon a contractor certification that the assets subject to the lien are free from any prior encumbrances. Prior liens may result from such things as capital equipment loans, installment purchases, working capital loans, various lines of credit, and revolving credit arrangements.

(c) *Other assets as security.* Contracting officers may consider the guidance at [28.203-2](#), [28.203-3](#), and [28.204](#) in determining which types of assets may be acceptable as security. For the purpose of applying the guidance in [Part 28](#) to this subsection, the term "surety" and/or "individual surety" should be interpreted to mean "offeror" and/or "contractor."

(d) *Other forms of security.* Other acceptable forms of security include—

(1) An irrevocable letter of credit from a federally insured financial institution;

(2) A bond from a surety, acceptable in accordance with [Part 28](#) (note that the bond must guarantee repayment of the unliquidated contract financing);

(3) A guarantee of repayment from a person or corporation of demonstrated liquid net worth, connected by significant ownership to the contractor; or

(4) Title to identified contractor assets of adequate worth.

(e) *Management of risk and security.* In establishing contract financing terms, the contracting officer must be aware of certain risks. For example, very high amounts of financing early in the contract (front-end loading) may unduly increase the risk to the Government. The security and the amounts and timing of financing payments must be analyzed as a whole to determine whether the arrangement will be in the best interest of the Government.

#### **32.203 Determining contract financing terms.**

When the criteria in [32.202-1\(b\)](#) are met, the contracting officer may either specify the financing terms in the solicitation (see [32.204](#)) or permit each offeror to propose its own customary financing terms (see [32.205](#)). When the contracting officer has sufficient information on financing terms that are customary in the commercial marketplace for the item, those terms may be specified in the solicitation.

#### **32.204 Procedures for contracting officer-specified commercial contract financing.**

The financing terms shall be included in the solicitation. Contract financing shall not be a factor in the evaluation of resulting proposals, and proposals of alternative financing terms shall not be accepted (but see [14.208](#) and [15.206](#) concerning amendments of solicitations). However, an offer stating that the contracting officer-specified contract financing terms will not be used by the offeror does not alter the evaluation of the offer, nor does it render the offer nonresponsive or otherwise unacceptable. In the event of award to an offeror who declined the proposed contract financing, the contract financing provisions shall not be included in the resulting contract. Contract financing shall not be a basis for adjusting offerors' proposed prices, because the effect of contract financing is reflected in each offeror's proposed prices.



### Subpart 32.4—Advance Payments for Non-Commercial Items

#### 32.400 Scope of subpart.

This subpart provides policies and procedures for advance payments on prime contracts and subcontracts. It does not include policies and procedures for advance payments for the types of transactions listed in [32.404](#). This subpart does not apply to commercial advance payments, which are subject to [Subpart 32.2](#).

#### 32.401 Statutory authority.

The agency may authorize advance payments in negotiated and sealed bid contracts if the action is appropriate under—

- (a) [41 U.S.C. chapter 45](#);
- (b) [10 U.S.C. 2307](#); or
- (c) Pub. L. 85-804 ([50 U.S.C. 1431-1435](#)) and Executive Order 10789, November 14, 1958 (3 CFR 1958 Supp. pp. 72-74) (see [Subpart 50.1](#) for other applications of this statute).

#### 32.402 General.

(a) A limitation on authority to grant advance payments under Pub. L. 85-804 ([50 U.S.C. 1431-1435](#)) is described at [50.102-3\(b\)\(4\)](#).

(b) Advance payments may be provided on any type of contract; however, the agency shall authorize advance payments sparingly. Except for the contracts described in [32.403\(a\)](#) and (b), advance payment is the least preferred method of contract financing (see [32.106](#)) and generally they should not be authorized if other types of financing are reasonably available to the contractor in adequate amounts. Loans and credit at excessive interest rates or other exorbitant charges, or loans from other Government agencies, are not considered reasonably available financing.

(c) If statutory requirements and standards for advance payment determinations are met, the contracting officer shall generally recommend that the agency authorize advance payments.

- (1) The statutory requirements are that—
  - (i) The contractor gives adequate security;
  - (ii) The advance payments will not exceed the unpaid contract price (see [32.410\(b\)](#), paragraph (a)(2)); and
  - (iii) The agency head or designee determines, based on written findings, that the advance payment—
    - (A) Is in the public interest (under [32.401\(a\)](#) or (b)); or
    - (B) Facilitates the national defense (under [32.401\(c\)](#)).

(2) The standards for advance payment determinations are that—

- (i) The advance payments will not exceed the contractor's interim cash needs based on—

(A) Analysis of the cash flow required for contract performance;

(B) Consideration of the reimbursement or other payment cycle; and

(C) To the extent possible, employment of the contractor's own working capital;

(ii) The advance payments are necessary to supplement other funds or credit available to a contractor;

(iii) The recipient is otherwise qualified as a responsible contractor;

(iv) The Government will benefit from performance prospects or there are other practical advantages; and

(v) The case fits one or more of the categories described in [32.403](#).

(d) If necessary, the agency may authorize advance payments in addition to progress or partial payments on the same contract (see [32.501-1\(c\)](#)).

(e) Each agency that provides advance payments shall—

(1) Place the responsibility for making findings and determinations, and for approval of contract terms concerning advance payments (see [32.410](#)), at an organizational level high enough to ensure uniform application of this subpart (see the limitation at [50.102-1\(b\)](#) which also applies to advance payments authorized under Pub. L. 85-804 ([50 U.S.C. 1431-1435](#))); and

(2) Establish procedures for coordination, before advance payment authorization, with the activity that provides contract financing support.

(f) If the contract provides for advance payments under Pub. L. 85-804, the contracting officer shall ensure conformance with the requirements of [50.103-7](#).

#### 32.403 Applicability.

Advance payments may be considered useful and appropriate for the following:

(a) Contracts for experimental, research, or development work with nonprofit educational or research institutions.

(b) Contracts solely for the management and operation of Government-owned plants.

(c) Contracts for acquisition, at cost, of property for Government ownership.

(d) Contracts of such a highly classified nature that the agency considers it undesirable for national security to permit assignment of claims under the contract.

(e) Contracts entered into with financially weak contractors whose technical ability is considered essential to the agency. In these cases, the agency shall closely monitor the contractor's performance and financial controls to reduce the Government's financial risk.

(f) Contracts for which a loan by a private financial institution is not practicable, whether or not a loan guarantee under this part is issued; for example, if—

(1) Financing institutions will not assume a reasonable portion of the risk under a guaranteed loan;

(2) Loans with reasonable interest rates or finance charges are not available to the contractor; or

(3) Contracts involve operations so remote from a financial institution that the institution could not be expected to suitably administer a guaranteed loan.

(g) Contracts with small business concerns, under which circumstances that make advance payments appropriate often occur (but see [32.104\(b\)](#)).

(h) Contracts under which exceptional circumstances make advance payments the most advantageous contract financing method for both the Government and the contractor.

### 32.404 Exclusions.

(a) This subpart does not apply to advance payments authorized by law for—

(1) Rent;

(2) Tuition;

(3) Insurance premiums;

(4) Expenses of investigations in foreign countries;

(5) Extension or connection of public utilities for Government buildings or installations;

(6) Subscriptions to publications;

(7) Purchases of supplies or services in foreign countries, if—

(i) The purchase price does not exceed \$15,000 (or equivalent amount of the applicable foreign currency); and

(ii) The advance payment is required by the laws or government regulations of the foreign country concerned;

(8) Enforcement of the customs or narcotics laws; or

(9) Other types of transactions excluded by agency procedures under statutory authority.

(b) Agencies may issue their own instructions to deal with advance payment items in paragraph (a) of this section authorized under statutes relevant to their agencies.

### 32.405 Applying Pub. L. 85-804 to advance payments under sealed bid contracts.

(a) Actions that designated agencies may take to facilitate the national defense without regard to other provisions of law relating to contracts, as explained in [50.101-1\(a\)](#), also include making advance payments. These advance payments may be made at or after award of sealed bid contracts, as well as negotiated contracts.

(b) Bidders may request advance payments before or after award, even if the invitation for bids does not contain an advance payment provision. However, the contracting officer shall reject any bid requiring that advance payments be provided as a basis for acceptance.

(c) When advance payments are requested, the agency may—

(1) Enter into the contract and provide for advance payments conforming to this [Part 32](#);

(2) Enter into the contract without providing for advance payments if the contractor does not actually need advance payments; or

(3) Deny award of the contract if the request for advance payments has been disapproved under [32.409-2](#) and funds adequate for performance are not otherwise available to the offeror.

### 32.406 Letters of credit.

(a) The Department of the Treasury (Treasury) prescribes regulations and instructions covering the use of letters of credit for advance payments under contracts. See Treasury Department Circular 1075 (31 CFR Part 205), and the implementing instructions in the Treasury Financial Manual, available in offices providing financial advice and assistance.

(b) If agencies provide advance payments to contractors, use of the following methods is required unless the agency has obtained a waiver from the Treasury Department:

(1) By letter of credit if the contracting agency expects to have a continuing relationship with the contractor for a year or more, with advances totaling at least \$120,000 a year.

(2) By direct Treasury check if the circumstances do not meet the criteria in paragraph (b)(1) of this section.

(c) If the agency has entered into multiple contracts (or a combination of contract(s) and assistance agreement(s)) involving eligibility of a contractor for more than one letter of credit, the agency shall follow arrangements made under Treasury procedures for—

(1) Consolidating funding to the same contractor under one letter of credit or

(2) Replacing multiple letters of credit with a single letter of credit.

(d) The letter of credit enables the contractor to withdraw Government funds in amounts needed to cover its own disbursements of cash for contract performance. Whenever feasible, the agency shall, under the direction and approval of the Department of the Treasury, use a letter of credit method that requires the contractor not to withdraw the Government funds until the contractor's checks have been—

(1) Forwarded to the payees (delay of drawdown technique), or

(2) Presented to the contractor's bank for payment (checks paid technique) (see 31 CFR 205.3 and 205.4(d)).

(e) The Treasury regulations provide for terminating the advance financing arrangement if the contractor is unwilling or unable to minimize the elapsed time between receipt of the advance and disbursement of the funds. In such cases, if reversion to normal payment methods is not feasible, the Treasury

together with the other findings, will clearly support the determination below.]

(2) Advance payments (in an amount not to exceed \$ \_\_\_\_\_ at any time outstanding) (in an aggregate amount not exceeding \$ \_\_\_\_\_, less the aggregate amounts repaid, or withdrawn by the Government) are required by the Contractor to perform under the contract. The amount does not exceed the unpaid contract price or the estimated interim cash needs arising during the reimbursement cycle.

(3) The advance payments are necessary for prompt, efficient contract performance that will benefit the Government.

(4) The proposed advance payment clause provides for security for the protection of the Government. The clause requires that all payments will be deposited in a special account at the Contractor’s financial institution and that the Government will have a paramount lien on (i) the credit balance in the special account, (ii) any supplies contracted for, and (iii) any material or other property acquired for performance of the contract. [Insert the following, if applicable: (The Contractor’s financial management system provides for effective control over and accountability for all Federal funds under governing regulations of the Treasury Department.) (An advance payment bond is required.)] This security is considered adequate.

(5) Advance payments are the only adequate means of financing available to the Contractor, and the amount designated in (2) of this section is based, to the extent possible, on the use of the Contractor’s own working capital in performing the contract. [Insert paragraph (6), (7), or (8), as applicable.]

(6) The Contractor is a nonprofit (educational) (and) (research) institution, and the contract is for (experimental) (.) (research and development) work.

(7) The contract is solely for the management and operation of a Government-owned plant.

(8) The following unusual facts and circumstances favor making advance payments to the Contractor without interest: [List the pertinent facts and circumstances.]

DETERMINATION

(b) Based on the findings in paragraph (a) of this section, the undersigned determined that the making of the proposed advance payments, (with interest at the rate of \_\_\_\_\_ [Insert the interest rate computed in accordance with 32.407] percent on the daily unliquidated balance of the advance payments,) (without interest, except as provided by the proposed advance payment clause,) (is in the public interest) (will facilitate the national defense).

AUTHORIZATION

(c) The advance payments, of which (the amount at any time outstanding) (the aggregate amount, less the aggregate amounts repaid, or withdrawn by the Government), shall not exceed \$ \_\_\_\_\_, are hereby authorized under (41 U.S.C. chapter 45, Contract Financing)(10 U.S.C. 2307) (the Extraordinary Contracting Authority of Government Agencies in Connection with National Defense Functions (50 U.S.C. 1431-1435) and

Executive Order No. 10789 of November 14, 1958 (3 CFR 1958 Supp. pp. 72-74)) [or, if other, cite appropriate authority] on (terms substantially as contained in the proposed advance payment clause, a copy (an outline) of which is annexed to this authorization) (the following terms:) [Insert the appropriate terms.] (All prior authorizations for advance payments under Contract No. \_\_\_\_\_ are superseded.)

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Name Typed]

\_\_\_\_\_  
[Title of Authorized Official]

[Each Findings, Determination, and Authorization shall be individually prepared to fit the particular circumstances at hand. Paragraphs (a)(1), (2), (3) and (4) and paragraphs (b) and (c) shall be used in each case. If the contract is (a) for experimental, developmental or research work and with a non-profit educational or research institution, or (b) only for management and operation of a Government-owned plant, paragraph (a)(5) should not be included. If the advance payment is to be made without interest to the contractor, include paragraph (a)(6), (7), or (8). If any advance payments have previously been authorized for the contract, include the final sentence of paragraph (c). The alternate parenthetical wording or other modifications may be used as appropriate. The paragraphs actually used shall be renumbered sequentially.]

**32.411 Agreement for special account at a financial institution.**

The contracting officer must use substantially the following form of agreement for a special account for advance payments:

AGREEMENT FOR SPECIAL ACCOUNT

This agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the United States of America (the Government), represented by the Contracting Officer executing this agreement, \_\_\_\_\_ [Insert the name of the Contractor], a \_\_\_\_\_ [Insert the name of the State of incorporation] corporation (the Contractor), and \_\_\_\_\_, a financial institution operating under the laws of \_\_\_\_\_, located at \_\_\_\_\_ (the financial institution).

RECITALS

(a) Under date of \_\_\_\_\_, 20\_\_\_\_, the Government and the Contractor entered into Contract No. \_\_\_\_\_, or a related supplemental agreement, providing for advance payments to the Contractor. A copy of the advance payment terms was furnished to the financial institution.

(b) The contract or supplemental agreement requires that amounts advanced to the Contractor be deposited separate from the Contractor’s general or other funds, in a Special Account at a member bank of the Federal Reserve System, any “insured” bank within the meaning of the Act creating the Federal Deposit Insurance Corporation (12 U.S.C. 1811), or a credit union insured by the National Credit Union Administration. The par-

ties agree to deposit the amounts with the financial institution, which meets the requirement.

(c) This Special Account is designated “\_\_\_\_\_ [Insert the Contractor’s name], \_\_\_\_\_ [Insert the name of the Government agency] Special Account.”

#### COVENANTS

In consideration of the foregoing, and for other good and valuable considerations, the parties agree to the following conditions:

(a) The Government shall have a lien on the credit balance in the account to secure the repayment of all advance payments made to the Contractor. The lien is paramount to any lien or claim of the financial institution regarding the account.

(b) The financial institution is bound by the terms of the contract relating to the deposit and withdrawal of funds in the Special Account, but is not responsible for the application of funds withdrawn from the account. The financial institution shall act on written directions from the Contracting Officer, the administering office, or a duly authorized representative of either. The financial institution is not liable to any party to this agreement for any action that complies with the written directions. Any written directions received by the financial institution through the Contracting Officer on \_\_\_\_\_ [Insert the name of the agency] stationery and purporting to be signed by, or by the direction of \_\_\_\_\_ or duly authorized representative, shall be, as far as the rights, duties, and liabilities of the financial institution are concerned, considered as being properly issued and filed with the financial institution by the \_\_\_\_\_ [Insert the name of the agency].

(c) The Government, or its authorized representatives, shall have access to the books and records maintained by the financial institution regarding the Special Account at all reasonable times and for all reasonable purposes, including (but not limited to), the inspection or copying of the books and records and any and all pertinent memoranda, checks, correspondence, or documents. The financial institution shall preserve the books and records for a period of 6 years after the closing of this Special Account.

(d) In the event of the service of any writ of attachment, levy of execution, or commencement of garnishment proceedings regarding the Special Account, the financial institution will

promptly notify \_\_\_\_\_ [Insert the name of the administering office].

(e) While this Special Account exists, the financial institution shall inform the Government each month of the financial institution’s published prime interest rate and changes to the rate during the month. The financial institution shall give this information to the Contracting Officer on the last business day of the month. [This covenant will not be included in the Special Account Agreements covering interest-free advance payments.]

Each of the parties to this agreement has executed the agreement on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_

[Signatures and Official Titles]

#### 32.412 Contract clause.

(a) The contracting officer shall insert the clause at [52.232-12](#), Advance Payments, in solicitations and contracts under which the Government will provide advance payments, except as provided in [32.412\(b\)](#).

(b) If the agency desires to waive the countersignature requirement because of the contractor’s financial strength, good performance record, and favorable experience concerning cost disallowances, the contracting officer shall use the clause with its Alternate I.

(c) If a cost-reimbursement contract is contemplated, the contracting officer shall use the clause with its Alternate II.

(d) If the agency considers a more rapid liquidation appropriate, the contracting officer shall use the clause with its Alternate III.

(e) If the agency provides advance payments under the contract at no interest to the prime contractor, the contracting officer shall use the clause with its Alternate IV.

(f) If the requirement for a special account is eliminated in accordance with [32.409-3\(e\)](#) or (g), the contracting officer shall insert in the solicitation or contract the clause set forth in Alternate V of [52.232-12](#), Advance Payments, instead of the basic clause.

## Subpart 32.5—Progress Payments Based on Costs

### 32.500 Scope of subpart.

This subpart prescribes policies, procedures, forms, solicitation provisions, and contract clauses for providing contract financing through progress payments based on costs. This subpart does not apply to—

(a) Payments under cost-reimbursement contracts, but see [32.110](#) for progress payments made to subcontractors under cost-reimbursement prime contracts; or

(b) Contracts for construction or for shipbuilding or ship conversion, alteration, or repair, when the contracts provide for progress payments based on a percentage or stage of completion.

### 32.501 General.

Progress payments may be customary or unusual. Customary progress payments are those made under the general guidance in this subpart, using the customary progress payment rate, the cost base, and frequency of payment established in the Progress Payments clause, and either the ordinary liquidation method or the alternate method as provided in subsections [32.503-8](#) and [32.503-9](#). Any other progress payments are considered unusual, and may be used only in exceptional cases when authorized in accordance with subsection [32.501-2](#).

#### 32.501-1 Customary progress payment rates.

(a) The customary progress payment rate is 80 percent, applicable to the total costs of performing the contract. The customary rate for contracts with small business concerns is 85 percent.

(b) The contracting officer must—

(1) Consider any rate higher than those permitted in paragraph (a) of this section an unusual progress payment; and

(2) Not include a higher rate in a contract unless advance agency approval is obtained as prescribed in [32.501-2](#).

(c) When advance payments and progress payments are authorized under the same contract, the contracting officer must not authorize a progress payment rate higher than the customary rate.

(d) In accordance with [10 U.S.C. 2307\(e\)\(2\)](#) and [41 U.S.C. 4504\(b\)](#), the limit for progress payments is 80 percent on work accomplished under undefinitized contract actions. The contracting officer must not authorize a higher rate under unusual progress payments or other customary progress payments for the undefinitized actions.

#### 32.501-2 Unusual progress payments.

(a) The contracting officer may provide unusual progress payments only if—

(1) The contract necessitates predelivery expenditures that are large in relation to contract price and in relation to the contractor's working capital and credit;

(2) The contractor fully documents an actual need to supplement any private financing available, including guaranteed loans; and

(3) The contractor's request is approved by the head of the contracting activity or a designee. In addition, see [32.502-2](#).

(b) The excess of the unusual progress payment rate approved over the customary progress payment rate should be the lowest amount possible under the circumstances.

(c) Progress payments will not be considered unusual merely because they are on letter contracts or the definitive contracts that supersede letter contracts.

#### 32.501-3 Contract price.

(a) For the purpose of making progress payments and determining the limitation on progress payments, the contract price shall be as follows:

(1) Under firm-fixed price contracts, the contract price is the current amount fixed by the contract plus the not-to-exceed amount for any unpriced modifications.

(2) If the contract is redeterminable or subject to economic price adjustment, the contract price is the initial price until modified.

(3) Under a fixed-price incentive contract, the contract price is the target price plus the not-to-exceed amount of unpriced modifications. However, if the contractor's properly incurred costs exceed the target price, the contracting officer may provisionally increase the price up to the ceiling or maximum price.

(4) Under a letter contract, the contract price is the maximum amount obligated by the contract as modified.

(5) Under an unpriced order issued against a basic ordering agreement, the contract price is the maximum amount obligated by the order, as modified.

(6) Any portion of the contract specifically providing for reimbursement of costs only shall be excluded from the contract price.

(b) The contracting officer shall not make progress payments or increase the contract price beyond the funds obligated under the contract, as amended.

#### 32.501-4 [Reserved]

#### 32.501-5 Other protective terms.

If the contracting officer considers it necessary for protection of the Government's interest, protective terms such as the

following may be used in addition to the Progress Payments clause of the contract:

- (a) Personal or corporate guarantees.
- (b) Subordinations or standbys of indebtedness.
- (c) Special bank accounts.
- (d) Protective covenants of the kinds in paragraph (p) of the clause at [52.232-12](#), Advance Payments.
- (e) A provision, included in the solicitation and resultant contract when first article testing is required (see [Subpart 9.3](#)), limiting progress payments on first article work by a stated amount or percentage.

### 32.502 Preaward matters.

This section covers matters that generally are relevant only before contract award. This does not preclude taking actions discussed here after award, if appropriate; *e.g.*, postaward addition of a Progress Payments clause for consideration.

#### 32.502-1 Use of customary progress payments.

The contracting officer may use a Progress Payments clause in solicitations and contracts, in accordance with this subpart. The contracting officer must reject as nonresponsive bids conditioned on progress payments when the solicitation did not provide for progress payments.

#### 32.502-2 Contract finance office clearance.

The contracting officer shall obtain the approval of the contract finance office or other offices designated under agency procedures before taking any of the following actions:

- (a) Providing a progress payment rate higher than the customary rate (see [32.501-1](#)).
- (b) Deviating from the progress payments terms prescribed in this part.
- (c) Providing progress payments to a contractor—
  - (1) Whose financial condition is in doubt;
  - (2) Who has had an advance payment request or loan guarantee denied for financial reasons (or approved but withdrawn or lapsed) within the previous 12 months; or
  - (3) Who is named in the consolidated list of contractors indebted to the United States (known commonly as the “Hold-up List”).

#### 32.502-3 Solicitation provisions.

(a) The contracting officer shall insert the provision at [52.232-13](#), Notice of Progress Payments, in invitations for bids and requests for proposals that include a Progress Payments clause.

(b)(1) Under the authority of the statutes cited in [32.101](#), an invitation for bids may restrict the availability of progress payments to small business concerns only.

(2) The contracting officer shall insert the provision at [52.232-14](#), Notice of Availability of Progress Payments

Exclusively for Small Business Concerns, in invitations for bids if it is anticipated that—

- (i) Both small business concerns and others may submit bids in response to the same invitation; and
- (ii) Only the small business bidders would need progress payments.

(c) The contracting officer shall insert the provision at [52.232-15](#), Progress Payments Not Included, in invitations for bids if the solicitation will not contain one of the provisions prescribed in paragraphs (a) and (b) of this section.

#### 32.502-4 Contract clauses.

(a)(1) Insert the clause at [52.232-16](#), Progress Payments, in—

- (i) Solicitations that may result in contracts providing for progress payments based on costs; and
- (ii) Fixed-price contracts under which the Government will provide progress payments based on costs.

(2) If advance agency approval has been given in accordance with [32.501-1](#), the contracting officer may substitute a different customary rate for other than small business concerns for the progress payment and liquidation rate indicated.

(3) If an unusual progress payment rate is approved for the prime contractor (see [32.501-2](#)), substitute the approved rate for the customary rate in paragraphs (a)(1), (a)(6), and (b) of the clause.

(4) If the liquidation rate is changed from the customary progress payment rate (see [32.503-8](#) and [32.503-9](#)), substitute the new rate for the rate in paragraphs (a)(1), (a)(6), and (b) of the clause.

(5) If an unusual progress payment rate is approved for a subcontract (see [32.504\(c\)](#) and [32.501-2](#)), modify paragraph (j)(6) of the clause to specify the new rate, the name of the subcontractor, and that the new rate shall be used for that subcontractor in lieu of the customary rate.

(b) If the contractor is a small business concern, use the clause with its Alternate I.

(c) If the contract is a letter contract, use the clause with its Alternate II.

(d) If the contractor is not a small business concern, and progress payments are authorized under an indefinite-delivery contract, basic ordering agreement, or their equivalent, use the clause with its Alternate III.

(e) If the nature of the contract necessitates separate progress payment rates for portions of work that are clearly severable and accounting segregation would be maintained (*e.g.*, annual production requirements), describe the application of separate progress payment rates in a supplementary special provision within the contract. The contractor must submit separate progress payment requests and subsequent invoices for the severable portions of work in order to maintain accounting integrity.

## Subpart 32.6—Contract Debts

### 32.600 Scope of subpart.

This subpart prescribes policies and procedures for identifying, collecting, and deferring collection of contract debts (including interest, if applicable). Sections [32.607](#), [32.608](#), and [32.610](#) of this subpart do not apply to claims against common carriers for transportation overcharges and freight and cargo losses ([31 U.S.C. 3726](#)).

### 32.601 General.

(a) Contract debts are amounts that—

- (1) Have been paid to a contractor to which the contractor is not currently entitled under the terms and conditions of the contract; or
- (2) Are otherwise due from the contractor under the terms and conditions of the contract.

(b) Contract debts include, but are not limited to, the following:

- (1) Billing and price reductions resulting from contract terms for price redetermination or for determination of prices under incentive type contracts.
- (2) Price or cost reductions for defective certified cost or pricing data.
- (3) Financing payments determined to be in excess of the contract limitations at [52.232-16\(a\)\(7\)](#), Progress Payments, or [52.232-32\(d\)\(2\)](#), Performance-Based Payments, or any contract clause for commercial item financing.
- (4) Increases to financing payment liquidation rates.
- (5) Overpayments disclosed by quarterly statements required under price redetermination or incentive contracts.
- (6) Price adjustments resulting from Cost Accounting Standards (CAS) noncompliances or changes in cost accounting practice.
- (7) Reinspection costs for nonconforming supplies or services.
- (8) Duplicate or erroneous payments.
- (9) Damages or excess costs related to defaults in performance.
- (10) Breach of contract obligations concerning progress payments, performance-based payments, advance payments, commercial item financing, or Government-furnished property.
- (11) Government expense of correcting defects.
- (12) Overpayments related to errors in quantity or billing or deficiencies in quality.
- (13) Delinquency in contractor payments due under agreements or arrangements for deferral or postponement of collections.
- (14) Reimbursement of amounts due under [33.102\(b\)\(3\)](#) and [33.104\(h\)\(8\)](#).

### 32.602 Responsibilities.

(a) The contracting officer has primary responsibility for identifying and demanding payment of contract debts except those resulting from errors made by the payment office. The contracting officer shall not collect contract debts or otherwise agree to liquidate contract debts (*e.g.*, offset the amount of the debt against existing unpaid bills due the contractor, or allow contractors to retain contract debts to cover amounts that may become payable in future periods).

(b) The payment office has primary responsibility for—

- (1) Collecting contract debts identified by contracting officers;
- (2) Identifying and collecting duplicate and erroneous payments; and
- (3) Authorizing the liquidation of contract debts in accordance with agency procedures.

### 32.603 Debt determination.

(a) If the contracting officer has any indication that a contractor owes money to the Government under a contract, the contracting officer shall determine promptly whether an actual debt is due and the amount. Any unnecessary delay may contribute to—

- (1) Loss of timely availability of the funds to the program for which the funds were initially provided;
- (2) Increased difficulty in collecting the debt; or
- (3) Actual monetary loss to the Government.

(b) The amount of indebtedness determined by the contracting officer shall be an amount that—

- (1) Is based on the merits of the case; and
- (2) Is consistent with the contract terms.

### 32.604 Demand for payment.

(a) Except as provided in paragraph (c) of this section, the contracting officer shall take the following actions:

(1) Issue the demand for payment as soon as the contracting officer has determined that an actual debt is due the Government and the amount.

(2) Issue the demand for payment even if—

- (i) The debt is or will be the subject of a bilateral modification;
- (ii) The contractor is otherwise obligated to pay the money under the existing contract terms; or
- (iii) The contractor has agreed to repay the debt.

(3) Issue the demand for payment as a part of the final decision, if a final decision is required by [32.605\(a\)](#).

(b) The demand for payment shall include the following:

- (1) A description of the debt, including the debt amount.
- (2) A distribution of the principal amount of the debt by line(s) of accounting subject to the following:
  - (i) If the debt affects multiple lines of accounting, the contracting officer shall, to the maximum extent practicable, identify all affected lines of accounting. If it is not practicable

to identify all affected lines of accounting, the contracting officer may select representative lines of accounting in accordance with paragraph (b)(2)(ii) of this section.

(ii) In selecting representative lines of accounting, the contracting officer shall—

(A) Consider the affected departments or agencies, years of appropriations, and the predominant types of appropriations; and

(B) Not distribute to any line of accounting an amount of the principal in excess of the total obligation for the line of accounting; and

(iii) Include the lines of accounting even if the associated funds are expired or cancelled. While cancelled funds will be deposited in a miscellaneous receipt account of the Treasury if collected, the funds are tracked under the closed year appropriation(s) to comply with the Anti-Deficiency Act.

(iv) If the debt affects multiple contracts and the lines of accounting are not readily available, the contracting officer shall—

(A) Issue the demand for payment without the distribution of the principal amount to the affected lines of accounting;

(B) Include a statement in the demand for payment advising when the distribution will be provided; and

(C) Provide the distribution by the date identified in the demand for payment.

(3) The basis for and amount of any accrued interest or penalty.

(4) (i) For debts resulting from specific contract terms (e.g., debts resulting from incentive clause provisions, Quarterly Limitation on Payments Statement, Cost Accounting Standards, price reduction for defective pricing), a notification stating that payment should be made promptly, and that interest is due in accordance with the terms of the contract. Interest shall be computed from the date specified in the applicable contract clause until repayment by the contractor. The interest rate shall be the rate specified in the applicable contract clause. In the case of a debt arising from a price reduction for defective pricing, or as specifically set forth in a Cost Accounting Standards (CAS) clause in the contract, interest is computed from the date of overpayment by the Government until repayment by the contractor at the underpayment rate established by the Secretary of the Treasury, for the periods affected, under [26 U.S.C. 6621\(a\)\(2\)](#).

(ii) For all other contract debts, a notification stating that any amounts not paid within 30 days from the date of the demand for payment will bear interest. Interest shall be computed from the date of the demand for payment until repayment by the contractor. The interest rate shall be the interest rate established by the Secretary of the Treasury, as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for

each six-month period as established by the Secretary until the amount is paid.

(5) A statement advising the contractor—

(i) To contact the contracting officer if the contractor believes the debt is invalid or the amount is incorrect; and

(ii) If the contractor agrees, to remit a check payable to the agency's payment office annotated with the contract number along with a copy of the demand for payment to the payment office identified in the contract or as otherwise specified in the demand letter in accordance with agency procedures.

(6) Notification that the payment office may initiate procedures, in accordance with the applicable statutory and regulatory requirements, to offset the debt against any payments otherwise due the contractor.

(7) Notification that the debt may be subject to administrative charges in accordance with the requirements of [31 U.S.C. 3717\(e\)](#) and the Debt Collection Improvement Act of 1996.

(8) Notification that the contractor may submit a request for installment payments or deferment of collection if immediate payment is not practicable or if the amount is disputed.

(c) Except as provided in paragraph (d) of this section, the contracting officer should not issue a demand for payment if the contracting officer only becomes aware of the debt when the contractor—

(1) Provides a lump sum payment or submits a credit invoice. (A credit invoice is a contractor's request to liquidate the debt against existing unpaid bills due the contractor); or

(2) Notifies the contracting officer that the payment office overpaid on an invoice payment. When the contractor provides the notification, the contracting officer shall notify the payment office of the overpayment.

(d) If a demand for payment was not issued as provided for in paragraph (c) of this section, the contracting officer shall issue a demand for payment no sooner than 30 days after the contracting officer becomes aware of the debt unless—

(1) The contractor has liquidated the debt;

(2) The contractor has requested an installment payment agreement; or

(3) The payment office has issued a demand for payment.

(e) The contracting officer shall—

(1) Furnish a copy of the demand for payment to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt; and

(2) Forward a copy of the demand to the payment office.

### 32.605 Final decisions.

(a) The contracting officer shall issue a final decision as required by [33.211](#) if—



(1) The contracting officer and the contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(2) The contractor fails to liquidate a debt previously demanded by the contracting officer within the timeline specified in the demand for payment unless the amounts were not repaid because the contractor has requested an installment payment agreement; or

(3) The contractor requests a deferment of collection on a debt previously demanded by the contracting officer (see [32.607-2](#)).

(b) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(c) The contracting officer shall—

(1) Furnish the decision to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt; and

(2) Forward a copy to the payment office identified in the contract.

### 32.606 Debt collection.

(a) If the contractor has not liquidated the debt within 30 days of the date due or requested installment payments or deferment of collection, the payment office shall initiate withholding of principal, interest, penalties, and administrative charges. In the event the contract is assigned under the Assignment of Claims Act of 1940 ([31 U.S.C. 3727](#) and [41 U.S.C. 6305](#)), the rights of the assignee will be scrupulously respected and withholding of payments shall be consistent with those rights. For additional information on assignment of claims, see [Subpart 32.8](#).

(b) As provided for in the Debt Collection Improvement Act of 1996 ([31 U.S.C. 3711\(g\)\(1\)](#)), payment offices are required to transfer any debt that is delinquent more than 180 days to the Department of Treasury for collection.

(c) The contracting officer shall periodically follow up with the payment office to determine whether the debt has been collected and credited to the correct appropriation(s).

### 32.607 Installment payments and deferment of collection.

(a) The contracting officer shall not approve or deny a contractor's request for installment payments or deferment of collections. The office designated in agency procedures is responsible for approving or denying requests for installment payments or deferment of collections.

(b) If a contractor has not appealed the debt or filed an action under the Disputes clause of the contract and the contractor has submitted a proposal for debt deferment or installment payments—

(1) The office designated in agency procedures may arrange for deferment/installment payments if the contractor

is unable to pay at once in full or the contractor's operations under national defense contracts would be seriously impaired. The arrangement shall include appropriate covenants and securities and should be limited to the shortest practicable maturity; and

(2) The deferment/installment agreement shall include a specific schedule or plan for payment. It should permit the Government to make periodic financial reviews of the contractor and to require payments earlier than required by the agreement if the Government considers the contractor's ability to pay improved. It should also provide for required stated or measurable payments on the occurrence of specific events or contingencies that improve the contractor's ability to pay.

(c) If not already applicable under the contract terms, interest on contract debt shall be made an element of any agreement entered into for installment payments or deferment of collection.

#### 32.607-1 Installment payments.

If a contractor requests an installment payment agreement, the contracting officer shall notify the contractor to send a written request for installment payments to the office designated in agency procedures.

#### 32.607-2 Deferment of collection.

(a) All requests for deferment of collection must be submitted in writing to the contracting officer.

(1) If the contractor has appealed the debt under the procedures of the Disputes clause of the contract, the information with the request for deferment may be limited to an explanation of the contractor's financial condition.

(2) Actions filed by contractors under the Disputes Clause shall not suspend or delay collection.

(3) If there is no appeal pending or action filed under the Disputes clause of the contract, the following information about the contractor should be submitted with the request:

(i) Financial condition.

(ii) Contract backlog.

(iii) Projected cash receipts and requirements.

(iv) The feasibility of immediate payment of the debt.

(v) The probable effect on operations of immediate payment in full.

(b) Upon receipt of the contractor's written request, the contracting officer shall promptly provide a notification to the payment office and advise the payment office that the contractor's request is under consideration.

(c) (1) The contracting officer should consider any information necessary to develop a recommendation on the deferment request.

(2) The contracting officer shall forward the following to the office designated in agency procedures for a decision:

(i) A copy of the contractor's request for a deferment of collection.

(ii) A written recommendation on the request and the basis for the recommendation including the advisability of deferment to avoid possible overcollections.

(iii) A statement as to whether the contractor has an appeal pending or action filed under the Disputes clause of the contract and the docket number if the appeal has been filed.

(iv) A copy of the contracting officer's final decision (see [32.605](#)).

(d) The office designated in agency procedures may authorize a deferment pending the resolution of appeal to avoid possible overcollections. The agency is required to use unexpired funds to pay interest on overcollections.

(e) Deferments pending disposition of appeal may be granted to small business concerns and financially weak contractors, balancing the need for Government security against loss and undue hardship on the contractor.

(f) The deferment agreement shall not provide that a claim of the Government will not become due and payable pending mutual agreement on the amount of the claim or, in the case of a dispute, until the decision is reached.

(g) At a minimum, the deferment agreement shall contain the following:

(1) A description of the debt.

(2) The date of first demand for payment.

(3) Notice of an interest charge, in conformity with [32.608](#) and the FAR clause at [52.232-17](#), Interest; or, in the case of a debt arising from a defective pricing or a CAS non-compliance overpayment, interest, as prescribed by the applicable Price Reduction for Defective Certified Cost or Pricing Data or CAS clause (see [32.607\(c\)](#)).

(4) Identification of the office to which the contractor is to send debt payments.

(5) A requirement for the contractor to submit financial information requested by the Government and for reasonable access to the contractor's records and property by Government representatives.

(6) Provision for the Government to terminate the deferment agreement and accelerate the maturity of the debt if the contractor defaults or if bankruptcy or insolvency proceedings are instituted by or against the contractor.

(7) Protective requirements that are considered by the Government to be prudent and feasible in the specific circumstances. The coverage of protective terms at [32.409](#) and [32.501-5](#) may be used as a guide.

(h) If a contractor appeal of the debt determination is pending, the deferment agreement shall also include a requirement that the contractor shall—

(1) Diligently prosecute the appeal; and

(2) Pay the debt in full when the appeal is decided, or when the parties reach agreement on the debt amount.

(i) The deferment agreement may provide for the right to make early payments without prejudice, for refund of overpayments, and for crediting of interest.

### **32.608 Interest.**

#### **32.608-1 Interest charges.**

Unless specified otherwise in the clause at [52.232-17](#), Interest, interest charges shall apply to any contract debt unpaid after 30 days from the issuance of a demand unless—

(a) The contract is a kind excluded under [32.611](#); or

(b) The contract or debt has been exempted from interest charges under agency procedures.

#### **32.608-2 Interest credits.**

(a) An equitable interest credit shall be applied under the following circumstances:

(1) When the amount of debt initially determined is subsequently reduced; *e.g.*, through a successful appeal.

(2) When any amount collected by the Government is in excess of the amount found to be due on appeal under the Disputes Clause of the contract.

(3) When the collection procedures followed in a given case result in an overcollection of the debt due.

(4) When the responsible official determines that the Government has unduly delayed payments to the contractor on the same contract at some time during the period to which the interest charge applied, provided an interest penalty was not paid for such late payment.

(b) Any appropriate interest credits shall be computed under the following procedures:

(1) Interest at the rate under [52.232-17](#) shall be charged on the reduced debt from the date of collection by the Government until the date the monies are remitted to the contractor.

(2) Interest may not be reduced for any time between the due date under the demand and the period covered by a deferment of collection, unless the contract includes an interest clause; *e.g.*, the clause prescribed in [32.611](#).

(3) Interest shall not be credited in an amount that, when added to other amounts refunded or released to the contractor, exceeds the total amount that has been collected, or withheld for the purpose of collecting the debt. This limitation shall be further reduced by the amount of any limitation applicable under paragraph (b)(2) of this subsection.

### **32.609 Delays in receipt of notices or demands.**

If interest is accrued based on the date of the demand letter and delivery of the demand letter is delayed by the Government (*e.g.*, undue delay after dating at the originating office or delays in the mail), the date of the debt and accrual of interest shall be extended to a time that is fair and reasonable under the particular circumstances.

## Subpart 32.7—Contract Funding

### 32.700 Scope of subpart.

This subpart (a) describes basic requirements for contract funding and (b) prescribes procedures for using limitation of cost or limitation of funds clauses. Detailed acquisition funding requirements are contained in agency fiscal regulations.

### 32.701 [Reserved]

### 32.702 Policy.

No officer or employee of the Government may create or authorize an obligation in excess of the funds available, or in advance of appropriations (Anti-Deficiency Act, [31 U.S.C. 1341](#)), unless otherwise authorized by law. Before executing any contract, the contracting officer shall—

(a) Obtain written assurance from responsible fiscal authority that adequate funds are available or

(b) Expressly condition the contract upon availability of funds in accordance with [32.703-2](#).

### 32.703 Contract funding requirements.

#### 32.703-1 General.

(a) If the contract is fully funded, funds are obligated to cover the price or target price of a fixed-price contract or the estimated cost and any fee of a cost-reimbursement contract.

(b) If the contract is incrementally funded, funds are obligated to cover the amount allotted and any corresponding increment of fee.

#### 32.703-2 Contracts conditioned upon availability of funds.

(a) *Fiscal year contracts.* The contracting officer may initiate a contract action properly chargeable to funds of the new fiscal year before these funds are available, provided that the contract includes the clause at [52.232-18](#), Availability of Funds (see [32.706-1\(a\)](#)). This authority may be used only for operation and maintenance and continuing services (e.g., rentals, utilities, and supply items not financed by stock funds)—

(1) Necessary for normal operations; and

(2) For which Congress previously had consistently appropriated funds, unless specific statutory authority exists permitting applicability to other requirements.

(b) *Indefinite-quantity or requirements contracts.* A one-year indefinite-quantity or requirements contract for services that is funded by annual appropriations may extend beyond the fiscal year in which it begins; provided, that—

(1) Any specified minimum quantities are certain to be ordered in the initial fiscal year (see [37.106](#)) and

(2) The contract includes the clause at [52.232-19](#), Availability of Funds for the Next Fiscal Year (see [32.706-1\(b\)](#)).

(c) *Acceptance of supplies or services.* The Government shall not accept supplies or services under a contract conditioned upon the availability of funds until the contracting officer has given the contractor notice, to be confirmed in writing, that funds are available.

#### 32.703-3 Contracts crossing fiscal years.

(a) A contract that is funded by annual appropriations may not cross fiscal years, except in accordance with statutory authorization (e.g., [41 U.S.C. 6302](#), [31 U.S.C. 1308](#), [42 U.S.C. 2459a](#), [42 U.S.C. 3515](#), and paragraph (b) of this subsection), or when the contract calls for an end product that cannot feasibly be subdivided for separate performance in each fiscal year (e.g., contracts for expert or consultant services).

(b) The head of an executive agency, except NASA, may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed one year ([10 U.S.C. 2410a](#) and [41 U.S.C. 3902](#)). Funds made available for a fiscal year may be obligated for the total amount of an action entered into under this authority.

#### 32.704 Limitation of cost or funds.

(a)(1) When a contract contains the clause at [52.232-20](#), Limitation of Cost; or [52.232-22](#), Limitation of Funds, the contracting officer, upon learning that the contractor is approaching the estimated cost of the contract or the limit of the funds allotted, shall promptly obtain funding and programming information pertinent to the contract's continuation and notify the contractor in writing that—

(i) Additional funds have been allotted, or the estimated cost has been increased, in a specified amount;

(ii) The contract is not to be further funded and that the contractor should submit a proposal for an adjustment of fee, if any, based on the percentage of work completed in relation to the total work called for under the contract;

(iii) The contract is to be terminated; or

(iv)(A) The Government is considering whether to allot additional funds or increase the estimated cost—

(B) The contractor is entitled by the contract terms to stop work when the funding or cost limit is reached; and

(C) Any work beyond the funding or cost limit will be at the contractor's risk.

(2) Upon learning that a partially funded contract containing any of the clauses referenced in paragraph (a)(1) of this section will receive no further funds, the contracting officer shall promptly give the contractor written notice of the decision not to provide funds.

(b) Under a cost-reimbursement contract, the contracting officer may issue a change order, a direction to replace or repair defective items or work, or a termination notice without immediately increasing the funds available. Since a contractor is not obligated to incur costs in excess of the estimated cost in the contract, the contracting officer shall ensure availability of funds for directed actions. The contracting officer may direct that any increase in the estimated cost or amount allotted to a contract be used for the sole purpose of funding termination or other specified expenses.

(c) Government personnel encouraging a contractor to continue work in the absence of funds will incur a violation of Revised Statutes section 3679 ([31 U.S.C. 1341](#)) that may subject the violator to civil or criminal penalties.

### **32.705 Unenforceability of Unauthorized Obligations.**

Many supplies or services are acquired subject to supplier license agreements. These are particularly common in information technology acquisitions, but they may apply to any supply or service. For example, computer software and services delivered through the internet (web services) are often subject to license agreements, referred to as End User License Agreements (EULA), Terms of Service (TOS), or other similar legal instruments or agreements. Many of these agreements contain indemnification clauses that are inconsistent with Federal law and unenforceable, but which could create a violation of the Anti-Deficiency Act (31 U.S.C. 1341) if agreed to by the Government.

### **32.706 Contract clauses.**

#### **32.706-1 Clauses for contracting in advance of funds.**

(a) Insert the clause at [52.232-18](#), Availability of Funds, in solicitations and contracts if the contract will be chargeable to funds of the new fiscal year and the contract action will be initiated before the funds are available.

(b) The contracting officer shall insert the clause at [52.232-19](#), Availability of Funds for the Next Fiscal Year, in solicitations and contracts if a one-year indefinite-quantity or requirements contract for services is contemplated and the contract—

(1) Is funded by annual appropriations; and

(2) Is to extend beyond the initial fiscal year (see [32.703-2\(b\)](#)).

#### **32.706-2 Clauses for limitation of cost or funds.**

(a) The contracting officer shall insert the clause at [52.232-20](#), Limitation of Cost, in solicitations and contracts if a fully funded cost-reimbursement contract is contemplated, whether or not the contract provides for payment of a fee.

(b) The contracting officer shall insert the clause at [52.232-22](#), Limitation of Funds, in solicitations and contracts if an incrementally funded cost-reimbursement contract is contemplated.

#### **32.706-3 Clause for unenforceability of unauthorized obligations.**

The contracting officer shall insert the clause at [52.232-39](#), Unenforceability of Unauthorized Obligations in all solicitations and contracts.

## Subpart 32.8—Assignment of Claims

### 32.800 Scope of subpart.

This subpart prescribes policies and procedures for the assignment of claims under the Assignment of Claims Act of 1940, as amended, ([31 U.S.C. 3727](#), [41 U.S.C. 6305](#)) (hereafter referred to as “the Act”).

### 32.801 Definitions.

“Designated agency,” as used in this subpart, means any department or agency of the executive branch of the United States Government (see [32.803\(d\)](#)).

“No-setoff commitment,” as used in this subpart, means a contractual undertaking that, to the extent permitted by the Act, payments by the designated agency to the assignee under an assignment of claims will not be reduced to liquidate the indebtedness of the contractor to the Government.

### 32.802 Conditions.

Under the Assignment of Claims Act, a contractor may assign moneys due or to become due under a contract if all the following conditions are met:

- (a) The contract specifies payments aggregating \$1,000 or more.
- (b) The assignment is made to a bank, trust company, or other financing institution, including any Federal lending agency.
- (c) The contract does not prohibit the assignment.
- (d) Unless otherwise expressly permitted in the contract, the assignment—
  - (1) Covers all unpaid amounts payable under the contract;
  - (2) Is made only to one party, except that any assignment may be made to one party as agent or trustee for two or more parties participating in the financing of the contract; and
  - (3) Is not subject to further assignment.
- (e) The assignee sends a written notice of assignment together with a true copy of the assignment instrument to the—
  - (1) Contracting officer or the agency head;
  - (2) Surety on any bond applicable to the contract; and
  - (3) Disbursing officer designated in the contract to make payment.

### 32.803 Policies.

(a) Any assignment of claims that has been made under the Act to any type of financing institution listed in [32.802\(b\)](#) may thereafter be further assigned and reassigned to any such institution if the conditions in [32.802\(d\)](#) and (e) continue to be met.

(b) A contract may prohibit the assignment of claims if the agency determines the prohibition to be in the Government’s interest.

(c) Under a requirements or indefinite quantity type contract that authorizes ordering and payment by multiple Government activities, amounts due for individual orders for \$1,000 or more may be assigned.

(d) Any contract of a designated agency (see FAR [32.801](#)), except a contract under which full payment has been made, may include a no-setoff commitment only when a determination of need is made by the head of the agency, in accordance with the Presidential delegation of authority dated October 3, 1995, and after such determination has been published in the *Federal Register*. The Presidential delegation makes such determinations of need subject to further guidance issued by the Office of Federal Procurement Policy. The following guidance has been provided:

Use of the no-setoff provision may be appropriate to facilitate the national defense; in the event of a national emergency or natural disaster; or when the use of the no-setoff provision may facilitate private financing of contract performance. However, in the event an offeror is significantly indebted to the United States, the contracting officer should consider whether the inclusion of the no-setoff commitment in a particular contract is in the best interests of the United States. In such an event, the contracting officer should consult with the Government officer(s) responsible for collecting the debt(s).

(e) When an assigned contract does not include a no-setoff commitment, the Government may apply against payments to the assignee any liability of the contractor to the Government arising independently of the assigned contract if the liability existed at the time notice of the assignment was received even though that liability had not yet matured so as to be due and payable.

### 32.804 Extent of assignee’s protection.

(a) No payments made by the Government to the assignee under any contract assigned in accordance with the Act may be recovered on account of any liability of the contractor to the Government. This immunity of the assignee is effective whether the contractor’s liability arises from or independently of the assigned contract.

(b) Except as provided in paragraph (c) of this section, the inclusion of a no-setoff commitment in an assigned contract entitles the assignee to receive contract payments free of reduction or setoff for—

- (1) Any liability of the contractor to the Government arising independently of the contract; and
- (2) Any of the following liabilities of the contractor to the Government arising from the assigned contract:
  - (i) Renegotiation under any statute or contract clause.
  - (ii) Fines.
  - (iii) Penalties, exclusive of amounts that may be collected or withheld from the contractor under, or for failure to comply with, the terms of the contract.

- (iv) Taxes or social security contributions.
- (v) Withholding or nonwithholding of taxes or social security contributions.

(c) In some circumstances, a setoff may be appropriate even though the assigned contract includes a no-setoff commitment; e.g.—

- (1) When the assignee has neither made a loan under the assignment nor made a commitment to do so; or
- (2) To the extent that the amount due on the contract exceeds the amount of any loans made or expected to be made under a firm commitment for financing.

**32.805 Procedure.**

(a) *Assignments.* (1) Assignments by corporations shall be—

- (i) Executed by an authorized representative;
- (ii) Attested by the secretary or the assistant secretary of the corporation; and
- (iii) Impressed with the corporate seal or accompanied by a true copy of the resolution of the corporation’s board of directors authorizing the signing representative to execute the assignment.

(2) Assignments by a partnership may be signed by one partner, if the assignment is accompanied by adequate evidence that the signer is a general partner of the partnership and is authorized to execute assignments on behalf of the partnership.

(3) Assignments by an individual shall be signed by that individual and the signature acknowledged before a notary public or other person authorized to administer oaths.

(b) *Filing.* The assignee shall forward to each party specified in 32.802(e) an original and three copies of the notice of assignment, together with one true copy of the instrument of assignment. The true copy shall be a certified duplicate or photostat copy of the original assignment.

(c) *Format for notice of assignment.* The following is a suggested format for use by an assignee in providing the notice of assignment required by 32.802(e).

NOTICE OF ASSIGNMENT

To: \_\_\_\_\_ [Address to one of the parties specified in 32.802(e)].

This has reference to Contract No. \_\_\_\_\_ dated \_\_\_\_\_, entered into between \_\_\_\_\_ [Contractor’s name and address] and \_\_\_\_\_ [Government agency, name of office, and address], for \_\_\_\_\_ [Describe nature of the contract].

Moneys due or to become due under the contract described above have been assigned to the undersigned under the provisions of the Assignment of Claims Act of 1940, as amended, (31 U.S.C. 3727, 41 U.S.C. 6305).

A true copy of the instrument of assignment executed by the Contractor on \_\_\_\_\_ [Date], is attached to the original notice.

Payments due or to become due under this contract should be made to the undersigned assignee.

Please return to the undersigned the three enclosed copies of this notice with appropriate notations showing the date and hour of receipt, and signed by the person acknowledging receipt on behalf of the addressee.

Very truly yours,

\_\_\_\_\_  
[Name of Assignee]

By \_\_\_\_\_  
[Signature of Signing Officer]

\_\_\_\_\_  
[Title of Signing Officer]

\_\_\_\_\_  
[ADDRESS OF ASSIGNEE]

ACKNOWLEDGEMENT

Receipt is acknowledged of the above notice and of a copy of the instrument of assignment. They were received \_\_\_\_ (a.m.) (p.m.) on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Title]

\_\_\_\_\_  
On behalf of

\_\_\_\_\_  
[Name of Addressee of this Notice]

(d) *Examination by the Government.* In examining and processing notices of assignment and before acknowledging their receipt, contracting officers should assure that the following conditions and any additional conditions specified in agency regulations, have been met:

(1) The contract has been properly approved and executed.

(2) The contract is one under which claims may be assigned.

(3) The assignment covers only money due or to become due under the contract.

(4) The assignee is registered separately in the System for Award Management unless one of the exceptions in 4.1102 applies.

(e) *Release of assignment.* (1) A release of an assignment is required whenever—

(i) There has been a further assignment or reassignment under the Act; or

(ii) The contractor wishes to reestablish its right to receive further payments after the contractor’s obligations to

**PART 33—PROTESTS, DISPUTES, AND APPEALS**

*Sec.*

33.000	Scope of part.	33.204	Policy.
33.001	General.	33.205	Relationship of the Disputes statute to Pub. L. 85-804.
<b>Subpart 33.1—Protests</b>			
33.101	Definitions.	33.206	Initiation of a claim.
33.102	General.	33.207	Contractor certification.
33.103	Protests to the agency.	33.208	Interest on claims.
33.104	Protests to GAO.	33.209	Suspected fraudulent claims.
33.105	Protest at the U.S. Court of Federal Claims.	33.210	Contracting officer’s authority.
33.106	Solicitation provision and contract clause.	33.211	Contracting officer’s decision.
<b>Subpart 33.2—Disputes and Appeals</b>			
33.201	Definitions.	33.212	Contracting officer’s duties upon appeal.
33.202	Disputes.	33.213	Obligation to continue performance.
33.203	Applicability.	33.214	Alternative dispute resolution (ADR).
		33.215	Contract clauses.

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**33.000 Scope of part.**

This part prescribes policies and procedures for filing protests and for processing contract disputes and appeals.

**33.001 General.**

There are other Federal court-related protest authorities and dispute-appeal authorities that are not covered by this part of the FAR, *e.g.*, 28 U.S.C. 1491 for Court of Federal Claims jurisdiction. Contracting officers should contact their designated legal advisor for additional information whenever they become aware of any litigation related to their contracts.

**Subpart 33.1—Protests****33.101 Definitions.**

As used in this subpart—

“Day” means a calendar day, unless otherwise specified. In the computation of any period—

(1) The day of the act, event, or default from which the designated period of time begins to run is not included; and

(2) The last day after the act, event, or default is included unless—

(i) The last day is a Saturday, Sunday, or Federal holiday; or

(ii) In the case of a filing of a paper at any appropriate administrative forum, the last day is a day on which weather or other conditions cause the closing of the forum for all or part of the day, in which event the next day on which the appropriate administrative forum is open is included.

“Filed” means the complete receipt of any document by an agency before its close of business. Documents received after close of business are considered filed as of the next day. Unless otherwise stated, the agency close of business is presumed to be 4:30 p.m., local time.

“Interested party for the purpose of filing a protest” means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

“Protest” means a written objection by an interested party to any of the following:

(1) A solicitation or other request by an agency for offers for a contract for the procurement of property or services.

(2) The cancellation of the solicitation or other request.

(3) An award or proposed award of the contract.

(4) A termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

“Protest venue” means protests filed with the agency, the Government Accountability Office, or the U.S. Court of Federal Claims. U.S. District Courts do not have any bid protest jurisdiction.

**33.102 General.**

(a) Without regard to the protest venue, contracting officers shall consider all protests and seek legal advice, whether protests are submitted before or after award and whether filed directly with the agency, the Government Accountability Office (GAO), or the U.S. Court of Federal Claims. (See [19.302](#) for protests of small business status, [19.305](#) for protests of disadvantaged business status, [19.306](#) for protests of HUBZone small business status, and [19.307](#) for protests of service-disabled veteran-owned small business status, and [19.308](#) for protests of the status of an economically disadvantaged women-owned small business concern or of a women-owned small business concern eligible under the Women-Owned Small Business Program.)

(b) If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency may—

(1) Take any action that could have been recommended by the Comptroller General had the protest been filed with the Government Accountability Office;

(2) Pay appropriate costs as stated in [33.104\(h\)](#); and

(3) Require the awardee to reimburse the Government’s costs, as provided in this paragraph, where a postaward protest is sustained as the result of an awardee’s intentional or negligent misstatement, misrepresentation, or miscertification. In addition to any other remedy available, and pursuant to the requirements of [Subpart 32.6](#), the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

(i) When a protest is sustained by GAO under circumstances that may allow the Government to seek reimbursement for protest costs, the contracting officer will determine whether the protest was sustained based on the awardee’s negligent or intentional misrepresentation. If the protest was sustained on several issues, protest costs shall be apportioned according to the costs attributable to the awardee’s actions.

(ii) The contracting officer shall review the amount of the debt, degree of the awardee’s fault, and costs of collection, to determine whether a demand for reimbursement ought to be made. If it is in the best interests of the Government to seek reimbursement, the contracting officer shall notify the contractor in writing of the nature and amount of the debt, and the intention to collect by offset if necessary. Prior to issuing a final decision, the contracting officer shall afford the contractor an opportunity to inspect and copy agency records pertaining to the debt to the extent permitted by statute and regulation, and to request review of the matter by the head of the contracting activity.

(iii) When appropriate, the contracting officer shall also refer the matter to the agency debarment official for consideration under [Subpart 9.4](#).

(c) In accordance with [31 U.S.C. 1558](#), with respect to any protest filed with the GAO, if the funds available to the agency for a contract at the time a protest is filed in connection with a solicitation for, proposed award of, or award of such a contract would otherwise expire, such funds shall remain available for obligation for 100 days after the date on which the final ruling is made on the protest. A ruling is considered final on the date on which the time allowed for filing an appeal or request for reconsideration has expired, or the date on which a decision is rendered on such appeal or request, whichever is later.

(d) *Protest likely after award.* The contracting officer may stay performance of a contract within the time period contained in paragraph [33.104\(c\)\(1\)](#) if the contracting officer makes a written determination that—

(1) A protest is likely to be filed; and

(2) Delay of performance is, under the circumstances, in the best interests of the United States.

(e) An interested party wishing to protest is encouraged to seek resolution within the agency (see [33.103](#)) before filing a protest with the GAO, but may protest to the GAO in accordance with GAO regulations (4 CFR Part 21).

(f) No person may file a protest at GAO for a procurement integrity violation unless that person reported to the contracting officer the information constituting evidence of the violation within 14 days after the person first discovered the possible violation ([41 U.S.C. 2106](#)).

### 33.103 Protests to the agency.

(a) *Reference.* Executive Order 12979, Agency Procurement Protests, establishes policy on agency procurement protests.

(b) Prior to submission of an agency protest, all parties shall use their best efforts to resolve concerns raised by an interested party at the contracting officer level through open and frank discussions.

(c) The agency should provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests. Where appropriate, the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel are acceptable protest resolution methods.

(d) The following procedures are established to resolve agency protests effectively, to build confidence in the Government's acquisition system, and to reduce protests outside of the agency:

(1) Protests shall be concise and logically presented to facilitate review by the agency. Failure to substantially comply with any of the requirements of paragraph (d)(2) of this section may be grounds for dismissal of the protest.

(2) Protests shall include the following information:

(i) Name, address, and fax and telephone numbers of the protester.

(ii) Solicitation or contract number.

(iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.

(iv) Copies of relevant documents.

(v) Request for a ruling by the agency.

(vi) Statement as to the form of relief requested.

(vii) All information establishing that the protester is an interested party for the purpose of filing a protest.

(viii) All information establishing the timeliness of the protest.

(3) All protests filed directly with the agency will be addressed to the contracting officer or other official designated to receive protests.

(4) In accordance with agency procedures, interested parties may request an independent review of their protest at a level above the contracting officer; solicitations should advise potential bidders and offerors that this review is available. Agency procedures and/or solicitations shall notify potential bidders and offerors whether this independent review is available as an alternative to consideration by the contracting officer of a protest or is available as an appeal of a contracting officer decision on a protest. Agencies shall designate the official(s) who are to conduct this independent review, but the official(s) need not be within the contracting officer's supervisory chain. When practicable, officials designated to conduct the independent review should not have had previous personal involvement in the procurement. If there is an agency appellate review of the contracting officer's decision on the protest, it will not extend GAO's timeliness requirements. Therefore, any subsequent protest to the GAO must be filed within 10 days of knowledge of initial adverse agency action (4 CFR 21.2(a)(3)).

(e) Protests based on alleged apparent improprieties in a solicitation shall be filed before bid opening or the closing date for receipt of proposals. In all other cases, protests shall be filed no later than 10 days after the basis of protest is known or should have been known, whichever is earlier. The agency, for good cause shown, or where it determines that a protest raises issues significant to the agency's acquisition system, may consider the merits of any protest which is not timely filed.

(f) *Action upon receipt of protest.*(1) Upon receipt of a protest before award, a contract may not be awarded, pending agency resolution of the protest, unless contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.

(2) If award is withheld pending agency resolution of the protest, the contracting officer will inform the offerors whose offers might become eligible for award of the contract. If appropriate, the offerors should be requested, before expiration of the time for acceptance of their offers, to extend the time for acceptance to avoid the need for resolicitation. In the

## Subpart 33.2—Disputes and Appeals

### 33.201 Definitions.

As used in this subpart—

“Accrual of a claim” means the date when all events, that fix the alleged liability of either the Government or the contractor and permit assertion of the claim, were known or should have been known. For liability to be fixed, some injury must have occurred. However, monetary damages need not have been incurred.

“Alternative dispute resolution (ADR)” means any type of procedure or combination of procedures voluntarily used to resolve issues in controversy. These procedures may include, but are not limited to, conciliation, facilitation, mediation, fact-finding, minitrials, arbitration, and use of ombudsmen.

“Defective certification” means a certificate which alters or otherwise deviates from the language in [33.207\(c\)](#) or which is not executed by a person authorized to bind the contractor with respect to the claim. Failure to certify shall not be deemed to be a defective certification.

“Issue in controversy” means a material disagreement between the Government and the contractor that—

- (1) May result in a claim; or
- (2) Is all or part of an existing claim.

“Misrepresentation of fact” means a false statement of substantive fact, or any conduct which leads to the belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

### 33.202 Disputes.

[41 U.S.C. chapter 71](#), Disputes, establishes procedures and requirements for asserting and resolving claims subject to the Disputes statute. In addition, the Disputes statute provides for—

- (a) The payment of interest on contractor claims;
- (b) Certification of contractor claims; and
- (c) A civil penalty for contractor claims that are fraudulent or based on a misrepresentation of fact.

### 33.203 Applicability.

(a) Except as specified in paragraph (b) of this section, this part applies to any express or implied contract covered by the Federal Acquisition Regulation.

(b) This subpart does not apply to any contract with—

- (1) A foreign government or agency of that government; or
- (2) An international organization or a subsidiary body of that organization, if the agency head determines that the application of the Disputes statute to the contract would not be in the public interest.

(c) This part applies to all disputes with respect to contracting officer decisions on matters “arising under” or “relating to” a contract. Agency Boards of Contract Appeals (BCAs)

authorized under the Disputes statute continue to have all of the authority they possessed before the Disputes statute with respect to disputes arising under a contract, as well as authority to decide disputes relating to a contract. The clause at [52.233-1](#), Disputes, Disputes, recognizes the “all disputes” authority established by the Disputes statute and states certain requirements and limitations of the Disputes statute for the guidance of contractors and contracting agencies. The clause is not intended to affect the rights and obligations of the parties as provided by the Disputes statute or to constrain the authority of the statutory agency BCAs in the handling and deciding of contractor appeals under the Disputes statute.

### 33.204 Policy.

The Government’s policy is to try to resolve all contractual issues in controversy by mutual agreement at the contracting officer’s level. Reasonable efforts should be made to resolve controversies prior to the submission of a claim. Agencies are encouraged to use ADR procedures to the maximum extent practicable. Certain factors, however, may make the use of ADR inappropriate (see [5 U.S.C. 572\(b\)](#)). Except for arbitration conducted pursuant to the Administrative Dispute Resolution Act (ADRA), ([5 U.S.C. 571](#), *et seq.*) agencies have authority which is separate from that provided by the ADRA to use ADR procedures to resolve issues in controversy. Agencies may also elect to proceed under the authority and requirements of the ADRA.

### 33.205 Relationship of the Disputes statute to Pub.

#### L. 85-804.

(a) Requests for relief under Public Law 85-804 ([50 U.S.C. 1431-1435](#)) are not claims within the Disputes statute or the Disputes clause at [52.233-1](#), Disputes, and shall be processed under [Subpart 50.1](#), Extraordinary Contractual Actions. However, relief formerly available only under Public Law 85-804; *i.e.*, legal entitlement to rescission or reformation for mutual mistake, is now available within the authority of the contracting officer under the Contract Disputes statute and the Disputes clause. In case of a question whether the contracting officer has authority to settle or decide specific types of claims, the contracting officer should seek legal advice.

(b) A contractor’s allegation that it is entitled to rescission or reformation of its contract in order to correct or mitigate the effect of a mistake shall be treated as a claim under the Disputes statute. A contract may be reformed or rescinded by the contracting officer if the contractor would be entitled to such remedy or relief under the law of Federal contracts. Due to the complex legal issues likely to be associated with allegations of legal entitlement, contracting officers shall make written decisions, prepared with the advice and assistance of legal counsel, either granting or denying relief in whole or in part.

(c) A claim that is either denied or not approved in its entirety under paragraph (b) of this section may be cognizable

as a request for relief under Public Law 85-804 as implemented by [Subpart 50.1](#). However, the claim must first be submitted to the contracting officer for consideration under the Disputes statute because the claim is not cognizable under Public Law 85-804, as implemented by [Subpart 50.1](#), unless other legal authority in the agency concerned is determined to be lacking or inadequate.

### 33.206 Initiation of a claim.

(a) Contractor claims shall be submitted, in writing, to the contracting officer for a decision within 6 years after accrual of a claim, unless the contracting parties agreed to a shorter time period. This 6-year time period does not apply to contracts awarded prior to October 1, 1995. The contracting officer shall document the contract file with evidence of the date of receipt of any submission from the contractor deemed to be a claim by the contracting officer.

(b) The contracting officer shall issue a written decision on any Government claim initiated against a contractor within 6 years after accrual of the claim, unless the contracting parties agreed to a shorter time period. The 6-year period shall not apply to contracts awarded prior to October 1, 1995, or to a Government claim based on a contractor claim involving fraud.

### 33.207 Contractor certification.

(a) Contractors shall provide the certification specified in paragraph (c) of this section when submitting any claim exceeding \$100,000.

(b) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(c) The certification shall state as follows:

I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the contractor.

(d) The aggregate amount of both increased and decreased costs shall be used in determining when the dollar thresholds requiring certification are met (see example in [15.403-4\(a\)\(1\)\(iii\)](#) regarding certified cost or pricing data).

(e) The certification may be executed by any person authorized to bind the contractor with respect to the claim.

(f) A defective certification shall not deprive a court or an agency BCA of jurisdiction over that claim. Prior to the entry of a final judgment by a court or a decision by an agency BCA, however, the court or agency BCA shall require a defective certification to be corrected.

### 33.208 Interest on claims.

(a) The Government shall pay interest on a contractor's claim on the amount found due and unpaid from the date that—

(1) The contracting officer receives the claim (certified if required by [33.207\(a\)](#)); or

(2) Payment otherwise would be due, if that date is later, until the date of payment.

(b) Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Disputes statute, which is applicable to the period during which the contracting officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. (See the clause at [52.232-17](#) for the right of the Government to collect interest on its claims against a contractor.)

(c) With regard to claims having defective certifications, interest shall be paid from either the date that the contracting officer initially receives the claim or October 29, 1992, whichever is later. However, if a contractor has provided a proper certificate prior to October 29, 1992, after submission of a defective certificate, interest shall be paid from the date of receipt by the Government of a proper certificate.

### 33.209 Suspected fraudulent claims.

If the contractor is unable to support any part of the claim and there is evidence that the inability is attributable to misrepresentation of fact or to fraud on the part of the contractor, the contracting officer shall refer the matter to the agency official responsible for investigating fraud.

### 33.210 Contracting officer's authority.

Except as provided in this section, contracting officers are authorized, within any specific limitations of their warrants, to decide or resolve all claims arising under or relating to a contract subject to the Disputes statute. In accordance with agency policies and [33.214](#), contracting officers are authorized to use ADR procedures to resolve claims. The authority to decide or resolve claims does not extend to—

(a) A claim or dispute for penalties or forfeitures prescribed by statute or regulation that another Federal agency is specifically authorized to administer, settle, or determine; or

(b) The settlement, compromise, payment, or adjustment of any claim involving fraud.

### 33.211 Contracting officer's decision.

(a) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the contracting officer shall—

(1) Review the facts pertinent to the claim;

(2) Secure assistance from legal and other advisors;

(3) Coordinate with the contract administration officer or contracting office, as appropriate; and

- (4) Prepare a written decision that shall include—
  - (i) A description of the claim or dispute;
  - (ii) A reference to the pertinent contract terms;
  - (iii) A statement of the factual areas of agreement and disagreement;
  - (iv) A statement of the contracting officer’s decision, with supporting rationale;
  - (v) Paragraphs substantially as follows:

“This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number.

With regard to appeals to the agency board of contract appeals, you may, solely at your election, proceed under the board’s—

- (1) Small claim procedure for claims of \$50,000 or less or, in the case of a small business concern (as defined in the Small Business Act and regulations under that Act), \$150,000 or less; or
- (2) Accelerated procedure for claims of \$100,000 or less.

Instead of appealing to the agency board of contract appeals, you may bring an action directly in the United States Court of Federal Claims (except as provided in [41 U.S.C. 7102\(d\)](#), regarding Maritime Contracts) within 12 months of the date you receive this decision”; and

- (vi) Demand for payment prepared in accordance with [32.604](#) and [32.605](#) in all cases where the decision results in a finding that the contractor is indebted to the Government.

- (b) The contracting officer shall furnish a copy of the decision to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. This requirement shall apply to decisions on claims initiated by or against the contractor.

- (c) The contracting officer shall issue the decision within the following statutory time limitations:

- (1) For claims of \$100,000 or less, 60 days after receiving a written request from the contractor that a decision be rendered within that period, or within a reasonable time after receipt of the claim if the contractor does not make such a request.
- (2) For claims over \$100,000, 60 days after receiving a certified claim; provided, however, that if a decision will not be issued within 60 days, the contracting officer shall notify the contractor, within that period, of the time within which a decision will be issued.

- (d) The contracting officer shall issue a decision within a reasonable time, taking into account—

- (1) The size and complexity of the claim;
- (2) The adequacy of the contractor’s supporting data; and
- (3) Any other relevant factors.

- (e) The contracting officer shall have no obligation to render a final decision on any claim exceeding \$100,000 which contains a defective certification, if within 60 days after receipt of the claim, the contracting officer notifies the contractor, in writing, of the reasons why any attempted certification was found to be defective.

- (f) In the event of undue delay by the contracting officer in rendering a decision on a claim, the contractor may request the tribunal concerned to direct the contracting officer to issue a decision in a specified time period determined by the tribunal.

- (g) Any failure of the contracting officer to issue a decision within the required time periods will be deemed a decision by the contracting officer denying the claim and will authorize the contractor to file an appeal or suit on the claim.

- (h) The amount determined payable under the decision, less any portion already paid, should be paid, if otherwise proper, without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party.

**33.212 Contracting officer’s duties upon appeal.**

To the extent permitted by any agency procedures controlling contacts with agency BCA personnel, the contracting officer shall provide data, documentation, information, and support as may be required by the agency BCA for use on a pending appeal from the contracting officer’s decision.

**33.213 Obligation to continue performance.**

- (a) In general, before passage of the Disputes statute, the obligation to continue performance applied only to claims arising under a contract. However, the Disputes statute, at [41 U.S.C. 7103\(g\)](#), authorizes agencies to require a contractor to continue contract performance in accordance with the contracting officer’s decision pending a final resolution of any claim arising under, or relating to, the contract. (A claim arising under a contract is a claim that can be resolved under a contract clause, other than the clause at [52.233-1](#), Disputes, that provides for the relief sought by the claimant; however, relief for such claim can also be sought under the clause at [52.233-1](#). A claim relating to a contract is a claim that cannot be resolved under a contract clause other than the clause at [52.233-1](#).) This distinction is recognized by the clause with its Alternate I (see [33.215](#)).

- (b) In all contracts that include the clause at [52.233-1](#), Disputes, with its Alternate I, in the event of a dispute not arising under, but relating to, the contract, the contracting officer shall consider providing, through appropriate agency proce-

dures, financing of the continued performance; provided, that the Government's interest is properly secured.

### 33.214 Alternative dispute resolution (ADR).

(a) The objective of using ADR procedures is to increase the opportunity for relatively inexpensive and expeditious resolution of issues in controversy. Essential elements of ADR include—

- (1) Existence of an issue in controversy;
- (2) A voluntary election by both parties to participate in the ADR process;
- (3) An agreement on alternative procedures and terms to be used in lieu of formal litigation; and
- (4) Participation in the process by officials of both parties who have the authority to resolve the issue in controversy.

(b) If the contracting officer rejects a contractor's request for ADR proceedings, the contracting officer shall provide the contractor a written explanation citing one or more of the conditions in [5 U.S.C. 572\(b\)](#) or such other specific reasons that ADR procedures are inappropriate for the resolution of the dispute. In any case where a contractor rejects a request of an agency for ADR proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

(c) ADR procedures may be used at any time that the contracting officer has authority to resolve the issue in controversy. If a claim has been submitted, ADR procedures may be applied to all or a portion of the claim. When ADR procedures are used subsequent to the issuance of a contracting officer's final decision, their use does not alter any of the time limitations or procedural requirements for filing an appeal of the

contracting officer's final decision and does not constitute a reconsideration of the final decision.

(d) When appropriate, a neutral person may be used to facilitate resolution of the issue in controversy using the procedures chosen by the parties.

(e) The confidentiality of ADR proceedings shall be protected consistent with [5 U.S.C. 574](#).

(f)(1) A solicitation shall not require arbitration as a condition of award, unless arbitration is otherwise required by law. Contracting officers should have flexibility to select the appropriate ADR procedure to resolve the issues in controversy as they arise.

(2) An agreement to use arbitration shall be in writing and shall specify a maximum award that may be issued by the arbitrator, as well as any other conditions limiting the range of possible outcomes.

(g) Binding arbitration, as an ADR procedure, may be agreed to only as specified in agency guidelines. Such guidelines shall provide advice on the appropriate use of binding arbitration and when an agency has authority to settle an issue in controversy through binding arbitration.

### 33.215 Contract clauses.

(a) Insert the clause at [52.233-1](#), Disputes, in solicitations and contracts, unless the conditions in [33.203\(b\)](#) apply. If it is determined under agency procedures that continued performance is necessary pending resolution of any claim arising under or relating to the contract, the contracting officer shall use the clause with its Alternate I.

(b) Insert the clause at [52.233-4](#) in all solicitations and contracts.

\* \* \* \* \*

**36.000 Scope of part.**

This part prescribes policies and procedures peculiar to contracting for construction and architect-engineer services. It includes requirements for using certain clauses and standard forms that apply also to contracts for dismantling, demolition, or removal of improvements.

**36.001 Definitions.**

As used in this part—

“Construction and demolition materials and debris” means materials and debris generated during construction, renovation, demolition, or dismantling of all structures and buildings and associated infrastructure.

“Diverting” means redirecting materials that might otherwise be placed in the waste stream to recycling or recovery, excluding diversion to waste-to-energy facilities.

**Subpart 36.1—General****36.101 Applicability.**

(a) Construction and architect-engineer contracts are subject to the requirements in other parts of this regulation, which shall be followed when applicable.

(b) When a requirement in this part is inconsistent with a requirement in another part of this regulation, this [Part 36](#) shall take precedence if the acquisition of construction or architect-engineer services is involved.

(c) A contract for both construction and supplies or services shall include—

- (1) Clauses applicable to the predominant part of the work (see [subpart 22.4](#)), or
- (2) If the contract is divided into parts, the clauses applicable to each portion.

**36.102 Definitions.**

As used in this part—

“Contract” is intended to refer to a contract for construction or a contract for architect-engineer services, unless another meaning is clearly intended.

“Design” means defining the construction requirement (including the functional relationships and technical systems to be used, such as architectural, environmental, structural, electrical, mechanical, and fire protection), producing the technical specifications and drawings, and preparing the construction cost estimate.

“Design-bid-build” means the traditional delivery method where design and construction are sequential and contracted for separately with two contracts and two contractors.

“Design-build” means combining design and construction in a single contract with one contractor.

“Firm” in conjunction with architect-engineer services, means any individual, partnership, corporation, association, or other legal entity permitted by law to practice the professions of architecture or engineering.

“Plans and specifications” means drawings, specifications, and other data for and preliminary to the construction.

“Record drawings” means drawings submitted by a contractor or subcontractor at any tier to show the construction of a particular structure or work as actually completed under the contract.

“Two-phase design-build selection procedures” is a selection method in which a limited number of offerors (normally five or fewer) is selected during Phase One to submit detailed proposals for Phase Two (see [subpart 36.3](#)).

**36.103 Methods of contracting.**

(a) The contracting officer shall use sealed bid procedures for a construction contract if the conditions in [6.401\(a\)](#) apply, unless the contract will be performed outside the United States and its outlying areas. (See [6.401\(b\)\(2\)](#).)

(b) Contracting officers shall acquire architect-engineer services by negotiation, and select sources in accordance with applicable law, [subpart 36.6](#), and agency regulations.

**36.104 Policy.**

(a) Unless the traditional acquisition approach of design-bid-build established under [40 U.S.C. chapter 11](#), Selection of Architects and Engineers, or another acquisition procedure authorized by law is used, the contracting officer shall use the two-phase selection procedures authorized by [10 U.S.C. 2305a](#) or [41 U.S.C. 3309](#) when entering into a contract for the design and construction of a public building, facility, or work, if the contracting officer makes a determination that the procedures are appropriate for use (see [subpart 36.3](#)). Other acquisition procedures authorized by law include the procedures established in this part and other parts of this chapter and, for DoD, the design-build process described in [10 U.S.C. 2862](#).

(b) Agencies shall implement high-performance sustainable building design, construction, renovation, repair, commissioning, operation and maintenance, management, and deconstruction practices so as to—

(1) Ensure that all new construction, major renovation, or repair and alteration of Federal buildings complies with the Guiding Principles for Federal Leadership in High-Performance and Sustainable Buildings (available at [http://www.wbdg.org/pdfs/hpsb\\_guidance.pdf](http://www.wbdg.org/pdfs/hpsb_guidance.pdf));

(2) Pursue cost-effective, innovative strategies, such as highly reflective and vegetated roofs, to minimize consumption of energy, water, and materials;

(3) Identify alternatives to renovation that reduce existing assets' deferred maintenance costs;

(4) Ensure that rehabilitation of Federally-owned historic buildings utilizes best practices and technologies in retrofitting to promote long-term viability of the buildings; and

(5) Ensure pollution prevention and eliminate waste by diverting at least 50 percent of construction and demolition materials and debris by the end of Fiscal Year 2015.



### Subpart 36.3—Two-Phase Design-Build Selection Procedures

#### 36.300 Scope of subpart.

This subpart prescribes policies and procedures for the use of the two-phase design-build selection procedures authorized by [10 U.S.C. 2305a](#) and [41 U.S.C. 3309](#).

#### 36.301 Use of two-phase design-build selection procedures.

(a) During formal or informal acquisition planning (see [Part 7](#)), if considering the use of two-phase design-build selection procedures, the contracting officer shall conduct the evaluation in paragraph (b) of this section.

(b) The two-phase design-build selection procedures shall be used when the contracting officer determines that this method is appropriate, based on the following:

- (1) Three or more offers are anticipated.
- (2) Design work must be performed by offerors before developing price or cost proposals, and offerors will incur a substantial amount of expense in preparing offers.
- (3) The following criteria have been considered:
  - (i) The extent to which the project requirements have been adequately defined.
  - (ii) The time constraints for delivery of the project.
  - (iii) The capability and experience of potential contractors.
  - (iv) The suitability of the project for use of the two-phase selection method.
  - (v) The capability of the agency to manage the two-phase selection process.
  - (vi) Other criteria established by the head of the contracting activity.

#### 36.302 Scope of work.

The agency shall develop, either in-house or by contract, a scope of work that defines the project and states the Government's requirements. The scope of work may include criteria and preliminary design, budget parameters, and schedule or delivery requirements. If the agency contracts for development of the scope of work, the procedures in [Subpart 36.6](#) shall be used.

#### 36.303 Procedures.

One solicitation may be issued covering both phases, or two solicitations may be issued in sequence. Proposals will be

evaluated in Phase One to determine which offerors will submit proposals for Phase Two. One contract will be awarded using competitive negotiation.

#### 36.303-1 Phase One.

- (a) Phase One of the solicitation(s) shall include—
- (1) The scope of work;
  - (2) The phase-one evaluation factors, including—
    - (i) Technical approach (but not detailed design or technical information);
    - (ii) Technical qualifications, such as—
      - (A) Specialized experience and technical competence;
      - (B) Capability to perform;
      - (C) Past performance of the offeror's team (including the architect-engineer and construction members); and
    - (iii) Other appropriate factors (excluding cost or price related factors, which are not permitted in Phase One);
  - (3) Phase-two evaluation factors (see [36.303-2](#)); and
  - (4) A statement of the maximum number of offerors that will be selected to submit phase-two proposals. The maximum number specified shall not exceed five unless the contracting officer determines, for that particular solicitation, that a number greater than five is in the Government's interest and is consistent with the purposes and objectives of two-phase design-build contracting.
- (b) After evaluating phase-one proposals, the contracting officer shall select the most highly qualified offerors (not to exceed the maximum number specified in the solicitation in accordance with [36.303-1\(a\)\(4\)](#)) and request that only those offerors submit phase-two proposals.

#### 36.303-2 Phase Two.

(a) Phase Two of the solicitation(s) shall be prepared in accordance with [Part 15](#), and include phase-two evaluation factors, developed in accordance with [15.304](#). Examples of potential phase-two technical evaluation factors include design concepts, management approach, key personnel, and proposed technical solutions.

(b) Phase Two of the solicitation(s) shall require submission of technical and price proposals, which shall be evaluated separately, in accordance with [Part 15](#).

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**PART 37—SERVICE CONTRACTING**

*Sec.*

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	<b>Subpart 37.1—Service Contracts—General</b>	37.205	Contracting officer responsibilities.
37.101	Definitions.		<b>Subpart 37.3—Dismantling, Demolition, or Removal of Improvements</b>
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37.104	Personal services contracts.	37.302	Bonds or other security.
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37.116	Accepting and Dispensing of \$1 Coin.	37.602	Performance work statement.
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37.200	Scope of subpart.		
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**37.000 Scope of part.**

This part prescribes policy and procedures that are specific to the acquisition and management of services by contract. This part applies to all contracts and orders for services regardless of the contract type or kind of service being acquired. This part requires the use of performance-based acquisitions for services to the maximum extent practicable and prescribes policies and procedures for use of performance-based acquisition methods (see [subpart 37.6](#)). Additional guidance for research and development services is in [Part 35](#); architect-engineering services is in [Part 36](#); information technology is in [Part 39](#); and transportation services is in [Part 47](#). [Parts 35, 36, 39, and 47](#) take precedence over this part in the event of inconsistencies. This part includes, but is not limited to, contracts for services to which 41 U.S.C. chapter 67, Service Contract Labor Standards, applies (see [subpart 22.10](#)).

**Subpart 37.1—Service Contracts—General****37.101 Definitions.**

As used in this part—

“Child care services” means child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services.

“Nonpersonal services contract” means a contract under which the personnel rendering the services are not subject, either by the contract’s terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

“Service contract” means a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply. A service contract may be either a nonpersonal or personal contract. It can also cover services performed by either professional or nonprofessional personnel whether on an individual or organizational basis. Some of the areas in which service contracts are found include the following:

- (1) Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment.
- (2) Routine recurring maintenance of real property.
- (3) Housekeeping and base services.
- (4) Advisory and assistance services.
- (5) Operation of Government-owned equipment, real property, and systems.
- (6) Communications services.
- (7) Architect-Engineering (see [subpart 36.6](#)).
- (8) Transportation and related services (see [Part 47](#)).
- (9) Research and development (see [Part 35](#)).

**37.102 Policy.**

(a) Performance-based acquisition (see [subpart 37.6](#)) is the preferred method for acquiring services (Public Law 106-398, section 821). When acquiring services, including those acquired under supply contracts or orders, agencies must—

(1) Use performance-based acquisition methods to the maximum extent practicable, except for—

(i) Architect-engineer services acquired in accordance with [40 U.S.C. 1101 et seq.](#);

(ii) Construction (see [Part 36](#));

(iii) Utility services (see [Part 41](#)); or

(iv) Services that are incidental to supply purchases; and

(2) Use the following order of precedence (Public Law 106-398, section 821(a));

(i) A firm-fixed price performance-based contract or task order.

(ii) A performance-based contract or task order that is not firm-fixed price.

(iii) A contract or task order that is not performance-based.

(b) Agencies shall generally rely on the private sector for commercial services (see OMB Circular No. A-76, Performance of Commercial Activities and [subpart 7.3](#)).

(c) Agencies shall not award a contract for the performance of an inherently governmental function (see [subpart 7.5](#)).

(d) Non-personal service contracts are proper under general contracting authority.

(e) Agency program officials are responsible for accurately describing the need to be filled, or problem to be resolved, through service contracting in a manner that ensures full understanding and responsive performance by contractors and, in so doing, should obtain assistance from contracting officials, as needed. To the maximum extent practicable, the program officials shall describe the need to be filled using performance-based acquisition methods.

(f) Agencies shall establish effective management practices in accordance with Office of Federal Procurement Policy (OFPP) Policy Letter 93-1, Management Oversight of Service Contracting, to prevent fraud, waste, and abuse in service contracting.

(g) Services are to be obtained in the most cost-effective manner, without barriers to full and open competition, and free of any potential conflicts of interest.

(h) Agencies shall ensure that sufficiently trained and experienced officials are available within the agency to manage and oversee the contract administration function.

(i) Agencies shall ensure that service contracts that require the delivery, use, or furnishing of products are consistent with [part 23](#).

**37.103 Contracting officer responsibility.**

(a) The contracting officer is responsible for ensuring that a proposed contract for services is proper. For this purpose the contracting officer shall—

(1) Determine whether the proposed service is for a personal or nonpersonal services contract using the definitions at [2.101](#) and [37.101](#) and the guidelines in [37.104](#);

(2) In doubtful cases, obtain the review of legal counsel; and

(3) Document the file (except as provided in paragraph (b) of this section) with—

(i) The opinion of legal counsel, if any,

(ii) A memorandum of the facts and rationale supporting the conclusion that the contract does not violate the provisions in [37.104\(b\)](#), and

(iii) Any further documentation that the contracting agency may require.

(b) Nonpersonal services contracts are exempt from the requirements of paragraph (a)(3) of this section.

(c) Ensure that performance-based acquisition methods are used to the maximum extent practicable when acquiring services.

(d) Ensure that contracts for child care services include requirements for criminal history background checks on employees who will perform child care services under the contract in accordance with [42 U.S.C. 13041](#), as amended, and agency procedures.

(e) Ensure that service contractor reporting requirements are met in accordance with [subpart 4.17](#), Service Contracts Inventory.

**37.104 Personal services contracts.**

(a) A personal services contract is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. The Government is normally required to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws unless Congress has specifically authorized acquisition of the services by contract.

(b) Agencies shall not award personal services contracts unless specifically authorized by statute (*e.g.*, [5 U.S.C. 3109](#)) to do so.

(c)(1) An employer-employee relationship under a service contract occurs when, as a result of (i) the contract's terms or (ii) the manner of its administration during performance, contractor personnel are subject to the relatively continuous supervision and control of a Government officer or employee. However, giving an order for a specific article or service, with the right to reject the finished product or result, is not the type of supervision or control that converts an individual who is an independent contractor (such as a contractor employee) into a Government employee.

(2) Each contract arrangement must be judged in the light of its own facts and circumstances, the key question always being: Will the Government exercise relatively con-

tinuous supervision and control over the contractor personnel performing the contract. The sporadic, unauthorized supervision of only one of a large number of contractor employees might reasonably be considered not relevant, while relatively continuous Government supervision of a substantial number of contractor employees would have to be taken strongly into account (see (d) of this section).

(d) The following descriptive elements should be used as a guide in assessing whether or not a proposed contract is personal in nature:

(1) Performance on site.

(2) Principal tools and equipment furnished by the Government.

(3) Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission.

(4) Comparable services, meeting comparable needs, are performed in the same or similar agencies using civil service personnel.

(5) The need for the type of service provided can reasonably be expected to last beyond 1 year.

(6) The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order to—

(i) Adequately protect the Government's interest;

(ii) Retain control of the function involved; or

(iii) Retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

(e) When specific statutory authority for a personal service contract is cited, obtain the review and opinion of legal counsel.

(f) Personal services contracts for the services of individual experts or consultants are limited by the Classification Act. In addition, the Office of Personnel Management has established requirements which apply in acquiring the personal services of experts or consultants in this manner (*e.g.*, benefits, taxes, conflicts of interest). Therefore, the contracting officer shall effect necessary coordination with the cognizant civilian personnel office.

**37.105 Competition in service contracting.**

(a) Unless otherwise provided by statute, contracts for services shall be awarded through sealed bidding whenever the conditions in [6.401\(a\)](#) are met, (except see [6.401\(b\)](#)).

(b) The provisions of statute and [Part 6](#) of this regulation requiring competition apply fully to service contracts. The method of contracting used to provide for competition may vary with the type of service being acquired and may not necessarily be limited to price competition.

**37.106 Funding and term of service contracts.**

(a) When contracts for services are funded by annual appropriations, the term of contracts so funded shall not extend beyond the end of the fiscal year of the appropriation except when authorized by law (see paragraph (b) of this sec-

tion for certain service contracts, [32.703-2](#) for contracts conditioned upon availability of funds, and [32.703-3](#) for contracts crossing fiscal years).

(b) The head of an executive agency, except NASA, may enter into a contract, exercise an option, or place an order under a contract for severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the contract awarded, option exercised, or order placed does not exceed one year ([10 U.S.C. 2410a](#) and [41 U.S.C. 3902](#)). Funds made available for a fiscal year may be obligated for the total amount of an action entered into under this authority.

(c) Agencies with statutory multiyear authority shall consider the use of this authority to encourage and promote economical business operations when acquiring services.

### 37.107 Service Contract Labor Standards.

[41 U.S.C. chapter 65](#), Service Contract Labor Standards, provides for minimum wages and fringe benefits as well as other conditions of work under certain types of service contracts. Whether or not the Service Contract Labor Standards statute applies to a specific service contract will be determined by the definitions and exceptions given in the Service Contract Labor Standards statute, or implementing regulations.

### 37.108 Small business Certificate of Competency.

In those service contracts for which the Government requires the highest competence obtainable, as evidenced in a solicitation by a request for a technical/management proposal and a resultant technical evaluation and source selection, the small business Certificate of Competency procedures may not apply (see [subpart 19.6](#)).

### 37.109 Services of quasi-military armed forces.

Contracts with “Pinkerton Detective Agencies or similar organizations” are prohibited by [5 U.S.C. 3108](#). This prohibition applies only to contracts with organizations that offer quasi-military armed forces for hire, or with their employees, regardless of the contract’s character. An organization providing guard or protective services does not thereby become a “quasi-military armed force,” even though the guards are armed or the organization provides general investigative or detective services. (See 57 Comp. Gen. 524.)

### 37.110 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at [52.237-1](#), Site Visit, in solicitations for services to be performed on Government installations, unless the solicitation is for construction.

(b) The contracting officer shall insert the clause at [52.237-2](#), Protection of Government Buildings, Equipment, and Vegetation, in solicitations and contracts for services to

be performed on Government installations, unless a construction contract is contemplated.

(c) The contracting officer may insert the clause at [52.237-3](#), Continuity of Services, in solicitations and contracts for services, when—

(1) The services under the contract are considered vital to the Government and must be continued without interruption and when, upon contract expiration, a successor, either the Government or another contractor, may continue them; and

(2) The Government anticipates difficulties during the transition from one contractor to another or to the Government. Examples of instances where use of the clause may be appropriate are services in remote locations or services requiring personnel with special security clearances.

(d) See [9.508](#) regarding the use of an appropriate provision and clause concerning the subject of conflict-of-interest, which may at times be significant in solicitations and contracts for services.

(e) The contracting officer shall also insert in solicitations and contracts for services the provisions and clauses prescribed elsewhere in 48 CFR Chapter 1, as appropriate for each acquisition, depending on the conditions that are applicable.

### 37.111 Extension of services.

Award of contracts for recurring and continuing service requirements are often delayed due to circumstances beyond the control of contracting offices. Examples of circumstances causing such delays are bid protests and alleged mistakes in bid. In order to avoid negotiation of short extensions to existing contracts, the contracting officer may include an option clause (see [17.208\(f\)](#)) in solicitations and contracts which will enable the Government to require continued performance of any services within the limits and at the rates specified in the contract. However, these rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance thereunder shall not exceed 6 months.

### 37.112 Government use of private sector temporaries.

Contracting officers may enter into contracts with temporary help service firms for the brief or intermittent use of the skills of private sector temporaries. Services furnished by temporary help firms shall not be regarded or treated as personal services. These services shall not be used in lieu of regular recruitment under civil service laws or to displace a Federal employee. Acquisition of these services shall comply with the authority, criteria, and conditions of 5 CFR Part 300, Subpart E, Use of Private Sector Temporaries, and agency procedures.

### 37.113 Severance payments to foreign nationals.

#### 37.113-1 Waiver of cost allowability limitations.

(a) The head of the agency may waive the [31.205-6\(g\)\(6\)](#) cost allowability limitations on severance payments to foreign nationals for contracts that—

(1) Provide significant support services for—

(i) Members of the armed forces stationed or deployed outside the United States, or

(ii) Employees of an executive agency posted outside the United States; and

(2) Will be performed in whole or in part outside the United States.

(b) Waivers can be granted only before contract award.

(c) Waivers cannot be granted for—

(1) Military banking contracts, which are covered by [10 U.S.C. 2324\(e\)\(2\)](#); or

(2) Severance payments made by a contractor to a foreign national employed by the contractor under a DoD service contract in the Republic of the Philippines, if the discontinuation of the foreign national is the result of the termination of basing rights of the United States military in the Republic of the Philippines (section 1351(b) of Public Law 102-484, [10 U.S.C. 1592](#), note).

#### 37.113-2 Solicitation provision and contract clause.

(a) Use the provision at [52.237-8](#), Restriction on Severance Payments to Foreign Nationals, in all solicitations that meet the criteria in [37.113-1\(a\)](#), except for those excluded by [37.113-1\(c\)](#).

(b) When the head of an agency has granted a waiver pursuant to [37.113-1](#), use the clause at [52.237-9](#), Waiver of Limitation on Severance Payments to Foreign Nationals.

#### 37.114 Special acquisition requirements.

Contracts for services which require the contractor to provide advice, opinions, recommendations, ideas, reports, analyses, or other work products have the potential for influencing the authority, accountability, and responsibilities of Government officials. These contracts require special management attention to ensure that they do not result in performance of inherently governmental functions by the contractor and that Government officials properly exercise their authority. Agencies must ensure that—

(a) A sufficient number of qualified Government employees are assigned to oversee contractor activities, especially those that involve support of Government policy or decision making. During performance of service contracts, the functions being performed shall not be changed or expanded to become inherently governmental.

(b) A greater scrutiny and an appropriate enhanced degree of management oversight is exercised when contracting for

functions that are not inherently governmental but closely support the performance of inherently governmental functions (see [7.503\(c\)](#)).

(c) All contractor personnel attending meetings, answering Government telephones, and working in other situations where their contractor status is not obvious to third parties are required to identify themselves as such to avoid creating an impression in the minds of members of the public or Congress that they are Government officials, unless, in the judgment of the agency, no harm can come from failing to identify themselves. They must also ensure that all documents or reports produced by contractors are suitably marked as contractor products or that contractor participation is appropriately disclosed.

### 37.115 Uncompensated overtime.

#### 37.115-1 Scope.

The policies in this section are based on Section 834 of Public Law 101-510 ([10 U.S.C. 2331](#)).

#### 37.115-2 General policy.

(a) Use of uncompensated overtime is not encouraged.

(b) When professional or technical services are acquired on the basis of the number of hours to be provided, rather than on the task to be performed, the solicitation shall require offerors to identify uncompensated overtime hours and the uncompensated overtime rate for direct charge Fair Labor Standards Act—exempt personnel included in their proposals and sub-contractor proposals. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.

(c) Contracting officers must ensure that the use of uncompensated overtime in contracts to acquire services on the basis of the number of hours provided will not degrade the level of technical expertise required to fulfill the Government's requirements (see [15.305](#) for competitive negotiations and [15.404-1\(d\)](#) for cost realism analysis). When acquiring these services, contracting officers must conduct a risk assessment and evaluate, for award on that basis, any proposals received that reflect factors such as—

(1) Unrealistically low labor rates or other costs that may result in quality or service shortfalls; and

(2) Unbalanced distribution of uncompensated overtime among skill levels and its use in key technical positions.

#### 37.115-3 Solicitation provision.

The contracting officer shall insert the provision at [52.237-10](#), Identification of Uncompensated Overtime, in all solicitations valued above the simplified acquisition threshold, for professional or technical services to be acquired on the basis of the number of hours to be provided.



**Subpart 37.2—Advisory and Assistance Services**

**37.200 Scope of subpart.**

This subpart prescribes policies and procedures for acquiring advisory and assistance services by contract. The subpart applies to contracts, whether made with individuals or organizations, that involve either personal or nonpersonal services.

**37.201 Definition.**

“Covered personnel” means—

(1) An officer or an individual who is appointed in the civil service by one of the following acting in an official capacity—

- (i) The President;
- (ii) A Member of Congress;
- (iii) A member of the uniformed services;
- (iv) An individual who is an employee under

[5 U.S.C. 2105](#);

(v) The head of a Government-controlled corporation; or

(vi) An adjutant general appointed by the Secretary concerned under [32 U.S.C. 709\(c\)](#).

(2) A member of the Armed Services of the United States.

(3) A person assigned to a Federal agency who has been transferred to another position in the competitive service in another agency.

**37.202 Exclusions.**

The following activities and programs are excluded or exempted from the definition of advisory or assistance services:

(a) Routine information technology services unless they are an integral part of a contract for the acquisition of advisory and assistance services.

(b) Architectural and engineering services as defined in [40 U.S.C. 1102](#).

(c) Research on theoretical mathematics and basic research involving medical, biological, physical, social, psychological, or other phenomena.

**37.203 Policy.**

(a) The acquisition of advisory and assistance services is a legitimate way to improve Government services and operations. Accordingly, advisory and assistance services may be used at all organizational levels to help managers achieve maximum effectiveness or economy in their operations.

(b) Subject to [37.205](#), agencies may contract for advisory and assistance services, when essential to the agency’s mission, to—

(1) Obtain outside points of view to avoid too limited judgment on critical issues;

(2) Obtain advice regarding developments in industry, university, or foundation research;

(3) Obtain the opinions, special knowledge, or skills of noted experts;

(4) Enhance the understanding of, and develop alternative solutions to, complex issues;

(5) Support and improve the operation of organizations;

or

(6) Ensure the more efficient or effective operation of managerial or hardware systems.

(c) Advisory and assistance services shall not be—

(1) Used in performing work of a policy, decision-making, or managerial nature which is the direct responsibility of agency officials;

(2) Used to bypass or undermine personnel ceilings, pay limitations, or competitive employment procedures;

(3) Contracted for on a preferential basis to former Government employees;

(4) Used under any circumstances specifically to aid in influencing or enacting legislation; or

(5) Used to obtain professional or technical advice which is readily available within the agency or another Federal agency.

(d) *Limitation on payment for advisory and assistance services.* Contractors may not be paid for services to conduct evaluations or analyses of any aspect of a proposal submitted for an initial contract award unless—

(1) Neither covered personnel from the requesting agency, nor from another agency, with adequate training and capabilities to perform the required proposal evaluation, are readily available and a written determination is made in accordance with [37.204](#);

(2) The contractor is a Federally-Funded Research and Development Center (FFRDC) as authorized in [41 U.S.C. 1709\(c\)](#) and the work placed under the FFRDC’s contract meets the criteria of [35.017-3](#); or

(3) Such functions are otherwise authorized by law.

**37.204 Guidelines for determining availability of personnel.**

(a) The head of an agency shall determine, for each evaluation or analysis of proposals, if sufficient personnel with the requisite training and capabilities are available within the agency to perform the evaluation or analysis of proposals submitted for the acquisition.

(b) If, for a specific evaluation or analysis, such personnel are not available within the agency, the head of the agency shall—

(1) Determine which Federal agencies may have personnel with the required training and capabilities; and

(2) Consider the administrative cost and time associated with conducting the search, the dollar value of the procurement, other costs, such as travel costs involved in the use of such personnel, and the needs of the Federal agencies to make management decisions on the best use of available personnel in performing the agency's mission.

(c) If the supporting agency agrees to make the required personnel available, the agencies shall execute an agreement for the detail of the supporting agency's personnel to the requesting agency.

(d) If the requesting agency, after reasonable attempts to obtain personnel with the required training and capabilities, is

unable to identify such personnel, the head of the agency may make the determination required by [37.203](#).

(e) An agency may make a determination regarding the availability of covered personnel for a class of proposals for which evaluation and analysis would require expertise so unique or specialized that it is not reasonable to expect such personnel to be available.

**37.205 Contracting officer responsibilities.**

The contracting officer shall ensure that the determination required in accordance with the guidelines at [37.204](#) has been made prior to issuing a solicitation.

### Subpart 37.3—Dismantling, Demolition, or Removal of Improvements

#### 37.300 Scope of subpart.

This subpart prescribes procedures for contracting for dismantling or demolition of buildings, ground improvements and other real property structures and for the removal of such structures or portions of them (hereafter referred to as “dismantling, demolition, or removal of improvements”).

#### 37.301 Labor standards.

Contracts for dismantling, demolition, or removal of improvements are subject to either [41 U.S.C. chapter 67](#), Service Contract Labor Standards, or [40 U.S.C. chapter 31](#), subchapter IV, Wage Rate Requirements (Construction). If the contract is solely for dismantling, demolition, or removal of improvements, the Service Contract Labor Standards statute applies unless further work which will result in the construction, alteration, or repair of a public building or public work at that location is contemplated. If such further construction work is intended, even though by separate contract, then the Construction Wage Rate Requirements statute applies to the contract for dismantling, demolition, or removal.

#### 37.302 Bonds or other security.

When a contract is solely for dismantling, demolition, or removal of improvements, [40 U.S.C. chapter 31](#), subchapter III, Bonds, (see [28.102](#)) does not apply. However, the contracting officer may require the contractor to furnish a performance bond or other security (see [28.103](#)) in an amount that the contracting officer considers adequate to—

- (a) Ensure completion of the work;
- (b) Protect property to be retained by the Government;
- (c) Protect property to be provided as compensation to the contractor; and
- (d) Protect the Government against damage to adjoining property.

#### 37.303 Payments.

- (a) The contract may provide that the—
  - (1) Government pay the contractor for the dismantling or demolition of structures; or
  - (2) Contractor pay the Government for the right to salvage and remove the materials resulting from the dismantling or demolition operation.

(b) The contracting officer shall consider the usefulness to the Government of all salvageable property. Any of the property that is more useful to the Government than its value as salvage to the contractor should be expressly designated in the contract for retention by the Government. The contracting officer shall determine the fair market value of any property not so designated, since the contractor will get title to this property, and its value will therefore be important in determining what payment, if any, shall be made to the contractor and whether additional compensation will be made if the contract is terminated.

#### 37.304 Contract clauses.

(a) The contracting officer shall insert the clause at [52.237-4](#), Payment by Government to Contractor, in solicitations and contracts solely for dismantling, demolition, or removal of improvements whenever the contracting officer determines that the Government shall make payment to the contractor in addition to any title to property that the contractor may receive under the contract. If the contracting officer determines that all material resulting from the dismantling or demolition work is to be retained by the Government, use the basic clause with its Alternate I.

(b) The contracting officer shall insert the clause at [52.237-5](#), Payment by Contractor to Government in solicitations and contracts for dismantling, demolition, or removal of improvements whenever the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due to the Government, except if the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments and the Government to transfer title to the contractor for increments of property only upon receipt of those payments.

(c) The contracting officer shall insert the clause at [52.237-6](#), Incremental Payment by Contractor to Government, in solicitations and contracts for dismantling, demolition, or removal of improvements if (1) the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due the Government, and (2) the contracting officer determines that it would be advantageous to the Government for the contractor to pay in increments, and for the Government to transfer title to the contractor for increments of property only upon receipt of those payments. This determination may be appropriate, for example, if it encourages greater competition or participation of small business concerns.

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### Subpart 37.4—Nonpersonal Health Care Services

#### 37.400 Scope of subpart.

This subpart prescribes policies and procedures for obtaining health care services of physicians, dentists and other health care providers by nonpersonal services contracts, as defined in [37.101](#).

#### 37.401 Policy.

Agencies may enter into nonpersonal health care services contracts with physicians, dentists and other health care providers under authority of [10 U.S.C. 2304](#) and [41 U.S.C. chapter 33](#), Planning and Solicitation. Each contract shall—

(a) State that the contract is a nonpersonal health care services contract, as defined in [37.101](#), under which the contractor is an independent contractor;

(b) State that the Government may evaluate the quality of professional and administrative services provided, but retains no control over the medical, professional aspects of services rendered (*e.g.*, professional judgments, diagnosis for specific medical treatment);

(c) Require that the contractor indemnify the Government for any liability producing act or omission by the contractor,

its employees and agents occurring during contract performance;

(d) Require that the contractor maintain medical liability insurance, in a coverage amount acceptable to the contracting officer, which is not less than the amount normally prevailing within the local community for the medical specialty concerned; and

(e) State that the contractor is required to ensure that its subcontracts for provisions of health care services, contain the requirements of the clause at [52.237-7](#), including the maintenance of medical liability insurance.

#### 37.402 Contracting officer responsibilities.

Contracting officers shall obtain evidence of insurability concerning medical liability insurance from the apparent successful offeror prior to contract award and shall obtain evidence of insurance demonstrating the required coverage prior to commencement of performance.

#### 37.403 Contract clause.

The contracting officer shall insert the clause at [52.237-7](#), Indemnification and Medical Liability Insurance, in solicitations and contracts for nonpersonal health care services. The contracting officer may include the clause in bilateral purchase orders for nonpersonal health care services awarded under the procedures in [Part 13](#).

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**38.000 Scope of part.**

This part prescribes policies and procedures for contracting for supplies and services under the Federal Supply Schedule program, which is directed and managed by the General Services Administration (see [Subpart 8.4](#), Federal Supply Schedules, for additional information). GSA may delegate certain responsibilities to other agencies (*e.g.*, GSA has delegated authority to the Department of Veterans Affairs (VA) to procure medical supplies under the VA Federal Supply Schedules Program). The VA Federal Supply Schedules Program is covered by this subpart. Additionally, the Department of Defense manages a similar system of schedule contracting for military items; however, the Department of Defense systems are not a part of the Federal Supply Schedule program.

### **Subpart 38.1—Federal Supply Schedule Program**

**38.101 General.**

(a) The Federal Supply Schedule program, pursuant to [41 U.S.C. 152\(3\)](#), provides Federal agencies with a simplified process of acquiring commercial supplies and services in varying quantities while obtaining volume discounts. Indefinite-delivery contracts are awarded using competitive procedures to firms. The firms provide supplies and services at

stated prices for given periods of time, for delivery within a stated geographic area such as the 48 contiguous states, the District of Columbia, Alaska, Hawaii, and overseas. The schedule contracting office issues Federal Supply Schedule publications that contain a general overview of the Federal Supply Schedule (FSS) program and address pertinent topics.

(b) Each schedule identifies agencies that are required to use the contracts as primary sources of supply.

(c) Federal agencies not identified in the schedules as mandatory users may issue orders under the schedules. Contractors are encouraged to accept the orders.

(d) Although GSA awards most Federal Supply Schedule contracts, it may authorize other agencies to award schedule contracts and publish schedules. For example, the Department of Veterans Affairs awards schedule contracts for certain medical and nonperishable subsistence items.

(e) When establishing Federal Supply Schedules, GSA, or an agency delegated that authority, is responsible for complying with all applicable statutory and regulatory requirements (*e.g.*, [Parts 5](#), [6](#), and [19](#)). The requirements of parts [5](#), [6](#), and [19](#) apply at the acquisition planning stage prior to issuing the schedule solicitation and, generally, do not apply to orders and BPAs placed under resulting schedule contracts (except see [8.404](#) and [8.405-5](#)).

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**39.000 Scope of part.**

This part prescribes acquisition policies and procedures for use in acquiring—

(a) Information technology, including financial management systems, consistent with other parts of this regulation, OMB Circular No. A-127, Financial Management Systems and OMB Circular No. A-130, Management of Federal Information Resources.

(b) Information and information technology.

**39.001 Applicability.**

This part applies to the acquisition of information technology by or for the use of agencies except for acquisitions of information technology for national security systems. However, acquisitions of information technology for national security systems shall be conducted in accordance with [40 U.S.C. 11302](#) with regard to requirements for performance and results-based management; the role of the agency Chief Information Officer in acquisitions; and accountability. These requirements are addressed in OMB Circular No. A-130.

**39.002 Definitions.**

As used in this part—

“Modular contracting” means use of one or more contracts to acquire information technology systems in successive, interoperable increments.

“National security system” means any telecommunications or information system operated by the United States Government, the function, operation, or use of which—

- (1) Involves intelligence activities;
- (2) Involves cryptologic activities related to national security;
- (3) Involves command and control of military forces;
- (4) Involves equipment that is an integral part of a weapon or weapons system; or
- (5) Is critical to the direct fulfillment of military or intelligence missions. This does not include a system that is to be used for routine administrative and business applications, such as payroll, finance, logistics, and personnel management applications.

“Year 2000 compliant,” with respect to information technology, means that the information technology accurately processes date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology, used in combination with the information technology being acquired, properly exchanges date/time data with it.

**Subpart 39.1—General****39.101 Policy.**

(a) Division A, Section 101(h), Title VI, Section 622 of the Omnibus Appropriations and Authorization Act for Fiscal Year 1999 (Pub. L. 105-277) requires that agencies may not use appropriated funds to acquire information technology that does not comply with [39.106](#), unless the agency’s Chief Infor-

mation Officer determines that noncompliance with [39.106](#) is necessary to the function and operation of the agency or the acquisition is required by a contract in effect before October 21, 1998. The Chief Information Officer must send to the Office of Management and Budget a copy of all waivers for forwarding to Congress.

(b)(1) In acquiring information technology, agencies shall identify their requirements pursuant to—

(i) OMB Circular A-130, including consideration of security of resources, protection of privacy, national security and emergency preparedness, accommodations for individuals with disabilities, and energy efficiency;

(ii) Electronic Product Environmental Assessment Tool (EPEAT) standards (see [23.704](#));

(iii) Policies to enable power management, double-sided printing, and other energy-efficient or environmentally preferable features on all agency electronic products; and

(iv) Best management practices for energy-efficient management of servers and Federal data centers.

(2) When developing an acquisition strategy, contracting officers should consider the rapidly changing nature of information technology through market research (see [Part 10](#)) and the application of technology refreshment techniques.

(c) Agencies must follow OMB Circular A-127, Financial Management Systems, when acquiring financial management systems. Agencies may acquire only core financial management software certified by the Joint Financial Management Improvement Program.

(d) In acquiring information technology, agencies shall include the appropriate information technology security policies and requirements, including use of common security configurations available from the National Institute of Standards and Technology’s website at <http://checklists.nist.gov>. Agency contracting officers should consult with the requiring official to ensure the appropriate standards are incorporated.

(e) When acquiring information technology using Internet Protocol, agencies must include the appropriate Internet Protocol compliance requirements in accordance with [11.002\(g\)](#).

**39.102 Management of risk.**

(a) Prior to entering into a contract for information technology, an agency should analyze risks, benefits, and costs. (See [Part 7](#) for additional information regarding requirements definition.) Reasonable risk taking is appropriate as long as risks are controlled and mitigated. Contracting and program office officials are jointly responsible for assessing, monitoring and controlling risk when selecting projects for investment and during program implementation.

(b) Types of risk may include schedule risk, risk of technical obsolescence, cost risk, risk implicit in a particular contract type, technical feasibility, dependencies between a new project and other projects or systems, the number of simulta-

neous high risk projects to be monitored, funding availability, and program management risk.

(c) Appropriate techniques should be applied to manage and mitigate risk during the acquisition of information technology. Techniques include, but are not limited to: prudent project management; use of modular contracting; thorough acquisition planning tied to budget planning by the program, finance and contracting offices; continuous collection and evaluation of risk-based assessment data; prototyping prior to implementation; post implementation reviews to determine actual project cost, benefits and returns; and focusing on risks and returns using quantifiable measures.

### 39.103 Modular contracting.

(a) This section implements [41 U.S.C. 2308](#). Modular contracting is intended to reduce program risk and to incentivize contractor performance while meeting the Government's need for timely access to rapidly changing technology. Consistent with the agency's information technology architecture, agencies should, to the maximum extent practicable, use modular contracting to acquire major systems (see [2.101](#)) of information technology. Agencies may also use modular contracting to acquire non-major systems of information technology.

(b) When using modular contracting, an acquisition of a system of information technology may be divided into several smaller acquisition increments that—

(1) Are easier to manage individually than would be possible in one comprehensive acquisition;

(2) Address complex information technology objectives incrementally in order to enhance the likelihood of achieving workable systems or solutions for attainment of those objectives;

(3) Provide for delivery, implementation, and testing of workable systems or solutions in discrete increments, each of which comprises a system or solution that is not dependent on any subsequent increment in order to perform its principal functions;

(4) Provide an opportunity for subsequent increments to take advantage of any evolution in technology or needs that occur during implementation and use of the earlier increments; and

(5) Reduce risk of potential adverse consequences on the overall project by isolating and avoiding custom-designed components of the system.

(c) The characteristics of an increment may vary depending upon the type of information technology being acquired and the nature of the system being developed. The following factors may be considered:

(1) To promote compatibility, the information technology acquired through modular contracting for each increment should comply with common or commercially acceptable information technology standards when available and appro-

priate, and shall conform to the agency's master information technology architecture.

(2) The performance requirements of each increment should be consistent with the performance requirements of the completed, overall system within which the information technology will function and should address interface requirements with succeeding increments.

(d) For each increment, contracting officers shall choose an appropriate contracting technique that facilitates the acquisition of subsequent increments. Pursuant to [Parts 16](#) and [17](#) of the Federal Acquisition Regulation, contracting officers shall select the contract type and method appropriate to the circumstances (*e.g.*, indefinite delivery, indefinite quantity contracts, single contract with options, successive contracts, multiple awards, task order contracts). Contract(s) shall be structured to ensure that the Government is not required to procure additional increments.

(e) To avoid obsolescence, a modular contract for information technology should, to the maximum extent practicable, be awarded within 180 days after the date on which the solicitation is issued. If award cannot be made within 180 days, agencies should consider cancellation of the solicitation in accordance with [14.209](#) or [15.206\(e\)](#). To the maximum extent practicable, deliveries under the contract should be scheduled to occur within 18 months after issuance of the solicitation.

### 39.104 Information technology services.

When acquiring information technology services, solicitations must not describe any minimum experience or educational requirement for proposed contractor personnel unless the contracting officer determines that the needs of the agency—

(a) Cannot be met without that requirement; or

(b) Require the use of other than a performance-based acquisition (see [Subpart 37.6](#)).

### 39.105 Privacy.

Agencies shall ensure that contracts for information technology address protection of privacy in accordance with the Privacy Act ([5 U.S.C. 552a](#)) and [Part 24](#). In addition, each agency shall ensure that contracts for the design, development, or operation of a system of records using commercial information technology services or information technology support services include the following:

(a) Agency rules of conduct that the contractor and the contractor's employees shall be required to follow.

(b) A list of the anticipated threats and hazards that the contractor must guard against.

(c) A description of the safeguards that the contractor must specifically provide.

(d) Requirements for a program of Government inspection during performance of the contract that will ensure the continued efficacy and efficiency of safeguards and the discovery and countering of new threats and hazards.

## Subpart 41.1—General

### 41.100 Scope of part.

This part prescribes policies, procedures, and contract format for the acquisition of utility services. (See [41.102\(b\)](#) for services that are excluded from this part.)

### 41.101 Definitions.

As used in this part,

“Areawide contract” means a contract entered into between the General Services Administration (GSA) and a utility service supplier to cover utility service needs of Federal agencies within the franchise territory of the supplier. Each areawide contract includes an “Authorization” form for requesting service, connection, disconnection, or change in service.

“Authorization” means the document executed by the ordering agency and the utility supplier to order service under an areawide contract.

“Connection charge” means all nonrecurring costs, whether refundable or nonrefundable, to be paid by the Government to the utility supplier for the required connecting facilities, which are installed, owned, operated, and maintained by the utility supplier (see Termination liability).

“Delegated agency” means an agency that has received a written delegation of authority from GSA to contract for utility services for periods not exceeding ten years (see [41.103\(b\)](#)).

“Federal Power and Water Marketing Agency” means a Government entity that produces, manages, transports, controls, and sells electrical and water supply service to customers.

“Franchise territory” means a geographical area that a utility supplier has a right to serve based upon a franchise, a certificate of public convenience and necessity, or other legal means.

“Intervention” means action by GSA or a delegated agency to formally participate in a utility regulatory proceeding on behalf of all Federal executive agencies.

“Multiple service locations” means the various locations or delivery points in the utility supplier’s service area to which it provides service under a single contract.

“Rates” may include rate schedules, riders, rules, terms and conditions of service, and other tariff and service charges, *e.g.*, facilities use charges.

“Separate contract” means a utility services contract (other than a GSA areawide contract, an Authorization under an areawide contract, or an interagency agreement), to cover the acquisition of utility services.

“Termination liability” means a contingent Government obligation to pay a utility supplier the unamortized portion of a connection charge and any other applicable nonrefundable service charge as defined in the contract in the event the Gov-

ernment terminates the contract before the cost of connection facilities has been recovered by the utility supplier (see “Connection charge”).

“Utility service” means a service such as furnishing electricity, natural or manufactured gas, water, sewerage, thermal energy, chilled water, steam, hot water, or high temperature hot water. The application of [Part 41](#) to other services (*e.g.*, rubbish removal, snow removal) may be appropriate when the acquisition is not subject to the 41 U.S.C. chapter 67, Service Contract Labor Standards (see [37.107](#)).

### 41.102 Applicability.

(a) Except as provided in paragraph (b) of this section, this part applies to the acquisition of utility services for the Government, including connection charges and termination liabilities.

(b) This part does not apply to—

(1) Utility services produced, distributed, or sold by another Federal agency. In those cases, agencies shall use interagency agreements (see [41.206](#));

(2) Utility services obtained by purchase, exchange, or otherwise by a Federal power or water marketing agency incident to that agency’s marketing or distribution program;

(3) Cable television (CATV) and telecommunications services;

(4) Acquisition of natural or manufactured gas when purchased as a commodity;

(5) Acquisition of utilities services in foreign countries;

(6) Acquisition of rights in real property, acquisition of public utility facilities, and on-site equipment needed for the facility’s own distribution system, or construction/maintenance of Government-owned equipment and real property; or

(7) Third party financed shared-savings projects authorized by [42 U.S.C. 8287](#). However, agencies may utilize [Part 41](#) for any energy savings or purchased utility service directly resulting from implementation of a third party financed shared-savings project under [42 U.S.C. 8287](#) for periods not to exceed 25 years.

### 41.103 Statutory and delegated authority.

(a) *Statutory authority.* (1) The General Services Administration (GSA) is authorized by [40 U.S.C. 501](#) to prescribe policies and methods governing the acquisition and supply of utility services for Federal agencies. This authority includes related functions such as managing public utility services and representing Federal agencies in proceedings before Federal and state regulatory bodies. GSA is authorized by [40 U.S.C. 501](#) to contract for utility services for periods not exceeding ten years.

(2) The Department of Defense (DoD) is authorized by [10 U.S.C. 2304](#) and [40 U.S.C. 113\(e\)\(3\)](#) to acquire utility services for military facilities.

(3) The Department of Energy (DOE) is authorized by the Department of Energy Organization Act ([42 U.S.C. 7251](#), *et seq.*) to acquire utility services. DOE is authorized by the Atomic Energy Act of 1954, as amended ([42 U.S.C. 2204](#)), to enter into new contracts or modify existing contracts for electric services for periods not exceeding 25 years for uranium enrichment installations.

(b) *Delegated authority.* GSA has delegated its authority to enter into utility service contracts for periods not exceeding ten years to DoD and DOE, and for connection charges only to the Department of Veteran Affairs. Contracting pursuant to this delegated authority shall be consistent with the requirements of this part. Other agencies requiring utility service contracts for periods over one year, but not exceeding

ten years, may request a delegation of authority from GSA at the address specified in [41.301\(a\)](#). In keeping with its statutory authority, GSA will, as necessary, conduct reviews of delegated agencies' acquisitions of utility services to ensure compliance with the terms of the delegation and applicable laws and regulations.

(c) Requests for delegations of contracting authority from GSA shall include a certification from the acquiring agency's Senior Procurement Executive that the agency has—

- (1) An established acquisition program;
- (2) Personnel technically qualified to deal with specialized utilities problems; and
- (3) The ability to accomplish its own pre-award contract review.

## Subpart 42.7—Indirect Cost Rates

### 42.700 Scope of subpart.

This subpart prescribes policies and procedures for establishing—

- (a) Billing rates; and
- (b) Final indirect cost rates.

### 42.701 Definition.

“Billing rate,” as used in this subpart, means an indirect cost rate—

- (1) Established temporarily for interim reimbursement of incurred indirect costs; and
- (2) Adjusted as necessary pending establishment of final indirect cost rates.

### 42.702 Purpose.

(a) Establishing final indirect cost rates under this subpart provides—

- (1) Uniformity of approach with a contractor when more than one contract or agency is involved;
- (2) Economy of administration; and
- (3) Timely settlement under cost-reimbursement contracts.

(b) Establishing billing rates provides a method for interim reimbursement of indirect costs at estimated rates subject to adjustment during contract performance and at the time the final indirect cost rates are established.

### 42.703 General.

#### 42.703-1 Policy.

(a) A single agency (see [42.705-1](#)) shall be responsible for establishing final indirect cost rates for each business unit. These rates shall be binding on all agencies and their contracting offices, unless otherwise specifically prohibited by statute. An agency shall not perform an audit of indirect cost rates when the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government ([10 U.S.C. 2313\(d\)](#) and [41 U.S.C. 4706\(e\)](#)).

(b) Billing rates and final indirect cost rates shall be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.

(c) To ensure compliance with [10 U.S.C. 2324\(a\)](#) and [41 U.S.C. 4303\(a\)](#)—

- (1) Final indirect cost rates shall be used for contract closeout for a business unit, unless the quick-closeout procedure in [42.708](#) is used. These final rates shall be binding for all cost-reimbursement contracts at the business unit, subject

to any specific limitation in a contract or advance agreement; and

(2) Established final indirect cost rates shall be used in negotiating the final price of fixed-price incentive and fixed-price redeterminable contracts and in other situations requiring that indirect costs be settled before contract prices are established, unless the quick-closeout procedure in [42.708](#) is used.

#### 42.703-2 Certificate of indirect costs.

(a) *General.* In accordance with [10 U.S.C. 2324\(h\)](#) and [41 U.S.C. 4307](#), a proposal shall not be accepted and no agreement shall be made to establish final indirect cost rates unless the costs have been certified by the contractor.

(b) *Waiver of certification.* (1) The agency head, or designee, may waive the certification requirement when—

(i) It is determined to be in the interest of the United States; and

(ii) The reasons for the determination are put in writing and made available to the public.

(2) A waiver may be appropriate for a contract with—

(i) A foreign government or international organization, such as a subsidiary body of the North Atlantic Treaty Organization;

(ii) A state or local government subject to OMB Circular A-87;

(iii) An educational institution subject to OMB Circular A-21; and

(iv) A nonprofit organization subject to OMB Circular A-122.

(c) *Failure to certify.* (1) If the contractor has not certified its proposal for final indirect cost rates and a waiver is not appropriate, the contracting officer may unilaterally establish the rates.

(2) Rates established unilaterally should be—

(i) Based on audited historical data or other available data as long as unallowable costs are excluded; and

(ii) Set low enough to ensure that unallowable costs will not be reimbursed.

(d) *False certification.* The contracting officer should consult with legal counsel to determine appropriate action when a contractor’s certificate of final indirect costs is thought to be false.

(e) *Penalties for unallowable costs.* [10 U.S.C. 2324\(a\)](#) through (d) and [41 U.S.C. 4303](#) prescribe penalties for submission of unallowable costs in final indirect cost rate proposals (see [42.709](#) for penalties and contracting officer responsibilities).

(f) *Contract clause.* (1) Except as provided in paragraph (f)(2) of this subsection, the clause at [52.242-4](#), Certification of Final Indirect Costs, shall be incorporated into all solicitations and contracts which provide for establishment of final indirect cost rates.

(2) The Department of Energy may provide an alternate clause in its agency supplement for its Management and Operating contracts.

#### 42.704 Billing rates.

(a) The contracting officer (or cognizant Federal agency official) or auditor responsible under [42.705](#) for establishing the final indirect cost rates also shall be responsible for determining the billing rates.

(b) The contracting officer (or cognizant Federal agency official) or auditor shall establish billing rates on the basis of information resulting from recent review, previous rate audits or experience, or similar reliable data or experience of other contracting activities. In establishing billing rates, the contracting officer (or cognizant Federal agency official) or auditor should ensure that the billing rates are as close as possible to the final indirect cost rates anticipated for the contractor's fiscal period, as adjusted for any unallowable costs. When the contracting officer (or cognizant Federal agency official) or auditor determines that the dollar value of contracts requiring use of billing rates does not warrant submission of a detailed billing rate proposal, the billing rates may be established by making appropriate adjustments from the prior year's indirect cost experience to eliminate unallowable and nonrecurring costs and to reflect new or changed conditions.

(c) Once established, billing rates may be prospectively or retroactively revised by mutual agreement of the contracting officer (or cognizant Federal agency official) or auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment. When agreement cannot be reached, the billing rates may be unilaterally determined by the contracting officer (or cognizant Federal agency official).

(d) The elements of indirect cost and the base or bases used in computing billing rates shall not be construed as determinative of the indirect costs to be distributed or of the bases of distribution to be used in the final settlement.

(e) When the contractor provides to the cognizant contracting officer the certified final indirect cost rate proposal in accordance with [42.705-1\(b\)](#) or [42.705-2\(b\)](#), the contractor and the Government may mutually agree to revise billing rates to reflect the proposed indirect cost rates, as approved by the Government to reflect historically disallowed amounts from prior years' audits, until the proposal has been audited and settled. The historical decrement will be determined by either the cognizant contracting officer ([42.705-1\(b\)](#)) or the cognizant auditor ([42.705-2\(b\)](#)).

#### 42.705 Final indirect cost rates.

(a) Final indirect cost rates shall be established on the basis of—

- (1) Contracting officer determination procedure (see [42.705-1](#)), or
- (2) Auditor determination procedure (see [42.705-2](#)).

(b) Within 120 days (or longer period, if approved in writing by the contracting officer,) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the contractor must submit a completion invoice or voucher reflecting the settled amounts and rates. To determine whether a period longer than 120 days is appropriate, the contracting officer should consider whether there are extenuating circumstances, such as the following:

- (1) Pending closeout of subcontracts awaiting Government audit.
- (2) Pending contractor, subcontractor, or Government claims.
- (3) Delays in the disposition of Government property.
- (4) Delays in contract reconciliation.
- (5) Any other pertinent factors.

(c)(1) If the contractor fails to submit a completion invoice or voucher within the time specified in paragraph (b) of this section, the contracting officer may—

- (i) Determine the amounts due to the contractor under the contract; and
- (ii) Record this determination in a unilateral modification to the contract.

(2) This contracting officer determination must be issued as a final decision in accordance with [33.211](#).

#### 42.705-1 Contracting officer determination procedure.

(a) *Applicability and responsibility.* Contracting officer determination shall be used for the following, with the indicated cognizant contracting officer (or cognizant Federal agency official) responsible for establishing the final indirect cost rates:

(1) Business units of a multidivisional corporation under the cognizance of a corporate administrative contracting officer (see [Subpart 42.6](#)), with that officer responsible for the determination, assisted, as required, by the administrative contracting officers, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.

(2) Business units not under the cognizance of a corporate administrative contracting officer, but having a resident administrative contracting officer (see [42.602](#)), with that officer responsible for the determination. For this purpose, a nonresident administrative contracting officer is considered as resident if at least 75 percent of the administrative contracting officer's time is devoted to a single contractor.

(3) For business units not included in paragraph (a)(1) or (a)(2) of this subsection, the contracting officer (or cognizant Federal agency official) will determine whether the rates will be contracting officer or auditor determined.

- (4) Educational institutions (see [42.705-3](#)).
- (5) State and local governments (see [42.705-4](#)).

(6) Nonprofit organizations other than educational and state and local governments (see [42.705-5](#)).

(b) *Procedures.* (1) In accordance with the Allowable Cost and Payment clause at [52.216-7](#), the contractor is required to submit an adequate final indirect cost rate proposal to the contracting officer (or cognizant Federal agency official) and to the cognizant auditor.

(i) The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, contracting officer, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible.

(ii) Each contractor is required to submit the final indirect cost rate proposal within the six-month period following the expiration of each of its fiscal years. The contracting officer may grant, in writing, reasonable extensions, for exceptional circumstances only, when requested in writing by the contractor.

(iii) Upon receipt of the proposal—

(A) The cognizant auditor will review the adequacy of the contractor’s proposal for audit in support of negotiating final indirect cost rates and will provide a written description of any inadequacies to the contractor and contracting officer.

(B) If the auditor and contractor are unable to resolve the proposal’s inadequacies identified by the auditor, the auditor will elevate the issue to the contracting office to resolve the inadequacies.

(iv) The proposal must be supported with adequate supporting data, some of which may be required subsequent to finding that the proposal is adequate for audit in support of negotiating final indirect cost rates (*e.g.*, during the course of the performance of the advisory audit). See the clause at [52.216-7\(d\)\(2\)](#) for the description of an adequate final indirect cost rate proposal and supporting data.

(2) Once a proposal has been determined to be adequate for audit in support of negotiating final indirect cost rates, the auditor will audit the proposal and prepare an advisory audit report to the contracting officer (or cognizant Federal agency official), including a listing of any relevant advance agreements or restrictive terms of specific contracts.

(3) The contracting officer (or cognizant Federal agency official) shall head the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. Contracting offices having significant dollar interest shall be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position should be invited to attend.

(4) The Government negotiating team shall develop a negotiation position. Pursuant to [10 U.S.C. 2324\(f\)](#) and [41 U.S.C. 4305](#), the contracting officer shall—

(i) Not resolve any questioned costs until obtaining—

(A) Adequate documentation on the costs; and

(B) The contract auditor’s opinion on the allowability of the costs.

(ii) Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor’s final indirect cost rates.

(5) The cognizant contracting officer shall—

(i) Conduct negotiations;

(ii) Prepare a written indirect cost rate agreement conforming to the requirements of the contracts;

(iii) Prepare, sign, and place in the contractor general file (see [4.801\(c\)\(3\)](#)) a negotiation memorandum covering—

(A) The disposition of significant matters in the advisory audit report;

(B) Reconciliation of all costs questioned, with identification of items and amounts allowed or disallowed in the final settlement as well as the disposition of period costing or allocability issues;

(C) Reasons why any recommendations of the auditor or other Government advisors were not followed; and

(D) Identification of certified cost or pricing data submitted during the negotiations and relied upon in reaching a settlement; and

(iv) Distribute resulting documents in accordance with [42.706](#).

(v) Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.

**42.705-2 Auditor determination procedure.**

(a) *Applicability and responsibility.* (1) The cognizant Government auditor shall establish final indirect cost rates for business units not covered in [42.705-1\(a\)](#).

(2) In addition, auditor determination may be used for business units that are covered in [42.705-1\(a\)](#) when the contracting officer (or cognizant Federal agency official) and auditor agree that the indirect costs can be settled with little difficulty and any of the following circumstances apply:

(i) The business unit has primarily fixed-price contracts, with only minor involvement in cost-reimbursement contracts.

(ii) The administrative cost of contracting officer determination would exceed the expected benefits.

(iii) The business unit does not have a history of disputes and there are few cost problems.

(iv) The contracting officer (or cognizant Federal agency official) and auditor agree that special circumstances require auditor determination.

(b) *Procedures.* (1) The contractor shall submit to the cognizant contracting officer (or cognizant Federal agency offi-

cial) and auditor a final indirect cost rate proposal in accordance with [42.705-1\(b\)\(1\)](#).

(2) Once a proposal has been determined to be adequate for audit in support of negotiating final indirect cost rates, the auditor shall—

(i) Audit the proposal and prepare an advisory audit report, including a listing of any relevant advance agreements or restrictive terms of specific contracts;

(ii) Seek agreement on indirect costs with the contractor;

(iii) Prepare an indirect cost rate agreement conforming to the requirements of the contracts. The agreement shall be signed by the contractor and the auditor;

(iv) If agreement with the contractor is not reached, forward the audit report to the contracting officer (or cognizant Federal agency official) identified in the Directory of Contract Administration Services Components (see [42.203](#)), who will then resolve the disagreement; and

(v) Distribute resulting documents in accordance with [42.706](#).

#### 42.705-3 Educational institutions.

(a) *General.* (1) Postdetermined final indirect cost rates shall be used in the settlement of indirect costs for all cost-reimbursement contracts with educational institutions, unless predetermined final indirect cost rates are authorized and used (see paragraph (b) of this subsection).

(2) OMB Circular No. A-21, Cost Principles for Educational Institutions, assigns each educational institution to a single Government agency for the negotiation of indirect cost rates and provides that those rates shall be accepted by all Federal agencies. Cognizant Government agencies and educational institutions are listed in the Directory of Federal Contract Audit Offices (see [42.103](#)).

(3) The cognizant agency shall establish the billing rates and final indirect cost rates at the educational institution, consistent with the requirements of this subpart, [Subpart 31.3](#), and the OMB Circular. The agency shall follow the procedures outlined in [42.705-1\(b\)](#).

(4) If the cognizant agency is unable to reach agreement with an institution, the appeals system of the cognizant agency shall be followed for resolution of the dispute.

(b) *Predetermined final indirect cost rates.* (1) Under cost-reimbursement research and development contracts with universities, colleges, or other educational institutions ([41 U.S.C. 4708](#)), payment for reimbursable indirect costs may be made on the basis of predetermined final indirect cost rates. The cognizant agency is not required to establish predetermined rates, but if they are established, their use must be extended to all the institution's Government contracts.

(2) In deciding whether the use of predetermined rates would be appropriate for the educational institution con-

cerned, the agency should consider both the stability of the institution's indirect costs and bases over a period of years and any anticipated changes in the amount of the direct and indirect costs.

(3) Unless their use is approved at a level in the agency (see paragraph (a)(2) of this subsection) higher than the contracting officer, predetermined rates shall not be used when—

(i) There has been no recent audit of the indirect costs;

(ii) There have been frequent or wide fluctuations in the indirect cost rates and the bases over a period of years; or

(iii) The estimated reimbursable costs for any individual contract are expected to exceed \$1 million annually.

(4)(i) If predetermined rates are to be used and no rates have been previously established for the institution's current fiscal year, the agency shall obtain from the institution a proposal for predetermined rates.

(ii) If the proposal is found to be generally acceptable, the agency shall negotiate the predetermined rates with the institution. The rates should be based on an audit of the institution's costs for the year immediately preceding the year in which the rates are being negotiated. If this is not possible, an earlier audit may be used, but appropriate steps should be taken to identify and evaluate significant variations in costs incurred or in bases used that may have a bearing on the reasonableness of the proposed rates. However, in the case of smaller contracts (*i.e.*, contracts that do not exceed the simplified acquisition threshold), an audit made at an earlier date is acceptable if—

(A) There have been no significant changes in the contractor's organization; and

(B) It is reasonably apparent that another audit would have little effect on the rates finally agreed upon and the potential for overpayment of indirect cost is relatively insignificant.

(5) If predetermined rates are used—

(i) The contracting officer shall include the negotiated rates and bases in the contract Schedule; and

(ii) See [16.307\(g\)](#), which prescribes the clause at [52.216-15](#), Predetermined Indirect Cost Rates.

(6) Predetermined indirect cost rates shall be applicable for a period of not more than four years. The agency shall obtain the contractor's proposal for new predetermined rates sufficiently in advance so that the new rates, based on current data, may be promptly negotiated near the beginning of the new fiscal year or other period agreed to by the parties (see paragraphs (b) and (d) of the clause at [52.216-15](#), Predetermined Indirect Cost Rates).

(7) Contracting officers shall use billing rates established by the agency to reimburse the contractor for work performed during a period not covered by predetermined rates.



**42.705-4 State and local governments.**

OMB Circular No. A-87 concerning cost principles for state and local governments (see [Subpart 31.6](#)) establishes the cognizant agency concept and procedures for determining a cognizant agency for approving state and local government indirect costs associated with federally-funded programs and activities. The indirect cost rates negotiated by the cognizant agency will be used by all Federal agencies that also award contracts to these same state and local governments.

**42.705-5 Nonprofit organizations other than educational and state and local governments.**

(See OMB Circular No. A-122.)

**42.706 Distribution of documents.**

(a) The contracting officer or auditor shall promptly distribute executed copies of the indirect cost rate agreement to the contractor and to each affected contracting agency and shall provide copies of the agreement for the contract files, in accordance with the guidance for contract modifications in [Subpart 4.2](#), Contract Distribution.

(b) Copies of the negotiation memorandum prepared under contracting officer determination or audit report prepared under auditor determination shall be furnished, as appropriate, to the contracting offices and Government audit offices.

**42.707 Cost-sharing rates and limitations on indirect cost rates.**

(a) Cost-sharing arrangements, when authorized, may call for the contractor to participate in the costs of the contract by accepting indirect cost rates lower than the anticipated actual rates. In such cases, a negotiated indirect cost rate ceiling may be incorporated into the contract for prospective application. For cost sharing under research and development contracts, see [35.003\(b\)](#).

(b)(1) Other situations may make it prudent to provide a final indirect cost rate ceiling in a contract. Examples of such circumstances are when the proposed contractor—

(i) Is a new or recently reorganized company, and there is no past or recent record of incurred indirect costs;

(ii) Has a recent record of a rapidly increasing indirect cost rate due to a declining volume of sales without a commensurate decline in indirect expenses; or

(iii) Seeks to enhance its competitive position in a particular circumstance by basing its proposal on indirect cost rates lower than those that may reasonably be expected to occur during contract performance, thereby causing a cost overrun.

(2) In such cases, an equitable ceiling covering the final indirect cost rates may be negotiated and specified in the contract.

(c) When ceiling provisions are utilized, the contract shall also provide that—

(1) The Government will not be obligated to pay any additional amount should the final indirect cost rates exceed the negotiated ceiling rates, and

(2) In the event the final indirect cost rates are less than the negotiated ceiling rates, the negotiated rates will be reduced to conform with the lower rates.

**42.708 Quick-closeout procedure.**

(a) The contracting officer responsible for contract closeout shall negotiate the settlement of direct and indirect costs for a specific contract, task order, or delivery order to be closed, in advance of the determination of final direct costs and indirect rates set forth in [42.705](#), if—

(1) The contract, task order, or delivery order is physically complete;

(2) The amount of unsettled direct costs and indirect costs to be allocated to the contract, task order, or delivery order is relatively insignificant. Cost amounts will be considered relatively insignificant when the total unsettled direct costs and indirect costs to be allocated to any one contract, task order, or delivery order does not exceed the lesser of—

(i) \$1,000,000; or

(ii) 10 percent of the total contract, task order, or delivery order amount;

(3) The contracting officer performs a risk assessment and determines that the use of the quick-closeout procedure is appropriate. The risk assessment shall include—

(i) Consideration of the contractor's accounting, estimating, and purchasing systems;

(ii) Other concerns of the cognizant contract auditors; and

(iii) Any other pertinent information, such as, documented history of Federal Government approved indirect cost rate agreements, changes to contractor's rate structure, volatility of rate fluctuations during affected periods, mergers or acquisitions, special contract provisions limiting contractor's recovery of otherwise allowable indirect costs under cost reimbursement or time-and-materials contracts; and

(4) Agreement can be reached on a reasonable estimate of allocable dollars.

(b) Determinations of final indirect costs under the quick-closeout procedure provided for by the Allowable Cost and Payment clause at [52.216-7](#) shall be final for the contract it covers and no adjustment shall be made to other contracts for over- or under-recoveries of costs allocated or allocable to the contract covered by the agreement.

(c) Indirect cost rates used in the quick closeout of a contract shall not be considered a binding precedent when establishing the final indirect cost rates for other contracts.

**42.709 Scope.**

(a) This section implements [10 U.S.C. 2324\(a\)](#) through (d) and [41 U.S.C. 4303](#) through (d). It covers the assessment of

penalties against contractors which include unallowable indirect costs in—

(1) Final indirect cost rate proposals; or

(2) The final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract.

(b) This section applies to all contracts in excess of \$700,000, except fixed-price contracts without cost incentives or any firm-fixed-price contracts for the purchase of commercial items.

#### 42.709-1 General.

(a) The following penalties apply to contracts covered by this section:

(1) If the indirect cost is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the penalty is equal to—

(i) The amount of the disallowed costs allocated to contracts that are subject to this section for which an indirect cost proposal has been submitted; plus

(ii) Interest on the paid portion, if any, of the disallowance.

(2) If the indirect cost was determined to be unallowable for that contractor before proposal submission, the penalty is two times the amount in paragraph (a)(1)(i) of this section.

(b) These penalties are in addition to other administrative, civil, and criminal penalties provided by law.

(c) It is not necessary for unallowable costs to have been paid to the contractor in order to assess a penalty.

#### 42.709-2 Responsibilities.

(a) The cognizant contracting officer is responsible for—

(1) Determining whether the penalties in [42.709-1\(a\)](#) should be assessed;

(2) Determining whether such penalties should be waived pursuant to [42.709-5](#); and

(3) Referring the matter to the appropriate criminal investigative organization for review and for appropriate coordination of remedies, if there is evidence that the contractor knowingly submitted unallowable costs.

(b) The contract auditor, in the review and/or the determination of final indirect cost proposals for contracts subject to this section, is responsible for—

(1) Recommending to the contracting officer which costs may be unallowable and subject to the penalties in [42.709-1\(a\)](#);

(2) Providing rationale and supporting documentation for any recommendation; and

(3) Referring the matter to the appropriate criminal investigative organization for review and for appropriate coordination of remedies, if there is evidence that the contractor knowingly submitted unallowable costs.

#### 42.709-3 Assessing the penalty.

Unless a waiver is granted pursuant to [42.709-5](#), the cognizant contracting officer shall—

(a) Assess the penalty in [42.709-1\(a\)\(1\)](#), when the submitted cost is expressly unallowable under a cost principle in the FAR or an executive agency supplement that defines the allowability of specific selected costs; or

(b) Assess the penalty in [42.709-1\(a\)\(2\)](#), when the submitted cost was determined to be unallowable for that contractor prior to submission of the proposal. Prior determinations of unallowability may be evidenced by—

(1) A DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved (see 48 CFR 242.705-2), or any similar notice which the contractor elected not to appeal and was not withdrawn by the cognizant Government agency;

(2) A contracting officer final decision which was not appealed;

(3) A prior executive agency Board of Contract Appeals or court decision involving the contractor, which upheld the cost disallowance; or

(4) A determination or agreement of unallowability under [31.201-6](#).

(c) Issue a final decision (see [33.211](#)) which includes a demand for payment of any penalty assessed under paragraph (a) or (b) of this section. The letter shall state that the determination is a final decision under the Disputes clause of the contract. (Demanding payment of the penalty is separate from demanding repayment of any paid portion of the disallowed cost.)

#### 42.709-4 Computing interest.

For [42.709-1\(a\)\(1\)\(ii\)](#), compute interest on any paid portion of the disallowed cost as follows:

(a) Consider the overpayment to have occurred, and interest to have begun accumulating, from the midpoint of the contractor's fiscal year. Use an alternate equitable method if the cost was not paid evenly over the fiscal year.

(b) Use the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(c) Compute interest from the date of overpayment to the date of the demand letter for payment of the penalty.

(d) Determine the paid portion of the disallowed costs in consultation with the contract auditor.

#### 42.709-5 Waiver of the penalty.

The cognizant contracting officer shall waive the penalties at [42.709-1\(a\)](#) when—

(a) The contractor withdraws the proposal before the Government formally initiates an audit of the proposal and the contractor submits a revised proposal (an audit will be deemed to be formally initiated when the Government provides the contractor with written notice, or holds an entrance confer-

## Subpart 42.12—Novation and Change-of-Name Agreements

### 42.1200 Scope of subpart.

This subpart prescribes policies and procedures for—

- (a) Recognition of a successor in interest to Government contracts when contractor assets are transferred;
- (b) Recognition of a change in a contractor's name; and
- (c) Execution of novation agreements and change-of-name agreements by the responsible contracting officer.

### 42.1201 [Reserved]

### 42.1202 Responsibility for executing agreements.

The contracting officer responsible for processing and executing novation and change-of-name agreements shall be determined as follows:

(a) If any of the affected contracts held by the transferor have been assigned to an administrative contracting officer (ACO) (see 2.1 and [42.202](#)), the responsible contracting officer shall be—

(1) This ACO; or

(2) The ACO responsible for the corporate office, if affected contracts are in more than one plant or division of the transferor.

(b) If none of the affected contracts held by the transferor have been assigned to an ACO, the contracting officer responsible for the largest unsettled (unbilled plus billed but unpaid) dollar balance of contracts shall be the responsible contracting officer.

(c) If several transferors are involved, the responsible contracting officer shall be—

(1) The ACO administering the largest unsettled dollar balance; or

(2) The contracting officer (or ACO) designated by the agency having the largest unsettled dollar balance, if none of the affected contracts have been assigned to an ACO.

### 42.1203 Processing agreements.

(a) If a contractor wishes the Government to recognize a successor in interest to its contracts or a name change, the contractor must submit a written request to the responsible contracting officer (see [42.1202](#)). If the contractor received its contract under [subpart 8.7](#) under [41 U.S.C. chapter 85](#), Committee for Purchase from People Who Are Blind or Severely Disabled, use the procedures at [8.716](#) instead.

(b) The responsible contracting officer shall—

(1) Identify and request that the contractor submit the information necessary to evaluate the proposed agreement for recognizing a successor in interest or a name change. This information should include the items identified in [42.1204](#) (e) and (f) or [42.1205](#)(a), as applicable;

(2) Notify each contract administration office and contracting office affected by a proposed agreement for recognizing a successor in interest, and provide those offices with a list of all affected contracts; and

(3) Request submission of any comments or objections to the proposed transfer within 30 days after notification. Any submission should be accompanied by supporting documentation.

(c) Upon receipt of the necessary information, the responsible contracting officer shall determine whether or not it is in the Government's interest to recognize the proposed successor in interest on the basis of—

(1) The comments received from the affected contract administration offices and contracting offices;

(2) The proposed successor's responsibility under [subpart 9.1](#), Responsible Prospective Contractors; and

(3) Any factor relating to the proposed successor's performance of contracts with the Government that the Government determines would impair the proposed successor's ability to perform the contract satisfactorily.

(d) The execution of a novation agreement does not preclude the use of any other method available to the contracting officer to resolve any other issues related to a transfer of contractor assets, including the treatment of costs.

(e) Any separate agreement between the transferor and transferee regarding the assumption of liabilities (*e.g.*, long-term incentive compensation plans, cost accounting standards noncompliances, environmental cleanup costs, and final overhead costs) should be referenced specifically in the novation agreement.

(f) Before novation and change-of-name agreements are executed, the responsible contracting officer shall ensure that Government counsel has reviewed them for legal sufficiency.

(g) The responsible contracting officer shall—

(1) Forward a signed copy of the executed novation or change-of-name agreement to the transferor and to the transferee; and

(2) Retain a signed copy in the case file.

(h) Following distribution of the agreement, the responsible contracting officer shall—

(1) Prepare a [Standard Form 30](#), Amendment of Solicitation/Modification of Contract, incorporating a summary of the agreement and attaching a complete list of contracts affected;

(2) Retain the original [Standard Form 30](#) with the attached list in the case file;

(3) Send a signed copy of the [Standard Form 30](#), with attached list to the transferor and to the transferee; and

(4) Send a copy of this [Standard Form 30](#) with attached list to each contract administration office or contracting office involved, which shall be responsible for further appropriate distribution.

**42.1204 Applicability of novation agreements.**

(a) [41 U.S.C. 6305](#) prohibits transfer of Government contracts from the contractor to a third party. The Government may, when in its interest, recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of—

(1) All the contractor's assets; or

(2) The entire portion of the assets involved in performing the contract. (See [14.404-2\(l\)](#) for the effect of novation agreements after bid opening but before award.) Examples of such transactions include, but are not limited to—

(i) Sale of these assets with a provision for assuming liabilities;

(ii) Transfer of these assets incident to a merger or corporate consolidation; and

(iii) Incorporation of a proprietorship or partnership, or formation of a partnership.

(b) A novation agreement is unnecessary when there is a change in the ownership of a contractor as a result of a stock purchase, with no legal change in the contracting party, and when that contracting party remains in control of the assets and is the party performing the contract. However, whether there is a purchase of assets or a stock purchase, there may be issues related to the change in ownership that appropriately should be addressed in a formal agreement between the contractor and the Government (see [42.1203\(e\)](#)).

(c) When it is in the Government's interest not to concur in the transfer of a contract from one company to another company, the original contractor remains under contractual obligation to the Government, and the contract may be terminated for reasons of default, should the original contractor not perform.

(d) When considering whether to recognize a third party as a successor in interest to Government contracts, the responsible contracting officer shall identify and evaluate any significant organizational conflicts of interest in accordance with [subpart 9.5](#). If the responsible contracting officer determines that a conflict of interest cannot be resolved, but that it is in the best interest of the Government to approve the novation request, a request for a waiver may be submitted in accordance with the procedures at [9.503](#).

(e) When a contractor asks the Government to recognize a successor in interest, the contractor shall submit to the responsible contracting officer three signed copies of the proposed novation agreement and one copy each, as applicable, of the following:

(1) The document describing the proposed transaction, *e.g.*, purchase/sale agreement or memorandum of understanding.

(2) A list of all affected contracts between the transferor and the Government, as of the date of sale or transfer of assets, showing for each, as of that date, the—

(i) Contract number and type;

(ii) Name and address of the contracting office;

(iii) Total dollar value, as amended; and

(iv) Approximate remaining unpaid balance.

(3) Evidence of the transferee's capability to perform.

(4) Any other relevant information requested by the responsible contracting officer.

(f) Except as provided in paragraph (g) of this section, the contractor shall submit to the responsible contracting officer one copy of each of the following documents, as applicable, as the documents become available:

(1) An authenticated copy of the instrument effecting the transfer of assets; *e.g.*, bill of sale, certificate of merger, contract, deed, agreement, or court decree.

(2) A certified copy of each resolution of the corporate parties' boards of directors authorizing the transfer of assets.

(3) A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets.

(4) An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government contracts.

(5) The opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer.

(6) Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, audited by independent accountants.

(7) Evidence that any security clearance requirements have been met.

(8) The consent of sureties on all contracts listed under paragraph (e)(2) of this section if bonds are required, or a statement from the transferor that none are required.

(g) If the Government has acquired the documents during its participation in the pre-merger or pre-acquisition review process, or the Government's interests are adequately protected with an alternative formulation of the information, the responsible contracting officer may modify the list of documents to be submitted by the contractor.

(h) When recognizing a successor in interest to a Government contract is consistent with the Government's interest, the responsible contracting officer shall execute a novation agreement with the transferor and the transferee. It shall ordinarily provide in part that—

(1) The transferee assumes all the transferor's obligations under the contract;

(2) The transferor waives all rights under the contract against the Government;

(3) The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted instead of the guarantee); and

(4) Nothing in the agreement shall relieve the transferor or transferee from compliance with any Federal law.

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**Subpart 42.16—Small Business Contract Administration**

**42.1601 General.**

The contracting officer shall make every reasonable effort to respond in writing within 30 days to any written request to the contracting officer from a small business concern with

respect to a contract administration matter. In the event the contracting officer cannot respond to the request within the 30-day period, the contracting officer shall, within the period, transmit to the contractor a written notification of the specific date the contracting officer expects to respond. This provision shall not apply to a request for a contracting officer decision under [41 U.S.C. chapter 71](#), Contract Disputes.

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**43.000 Scope of part.**

This part prescribes policies and procedures for preparing and processing contract modifications for all types of contracts including construction and architect-engineer contracts. It does not apply to—

(a) Orders for supplies or services not otherwise changing the terms of contracts or agreements (*e.g.*, delivery orders under indefinite-delivery contracts); or

(b) Modifications for extraordinary contractual relief (see [Subpart 50.1](#)).

**Subpart 43.1—General****43.101 Definitions.**

As used in this part—

“Administrative change” means a unilateral (see [43.103\(b\)](#)) contract change, in writing, that does not affect the substantive rights of the parties (*e.g.*, a change in the paying office or the appropriation data).

“Effective date”—

(1) For a solicitation amendment, change order, or administrative change, the effective date shall be the issue date of the amendment, change order, or administrative change.

(2) For a supplemental agreement, the effective date shall be the date agreed upon by the contracting parties.

(3) For a modification issued as a confirming notice of termination for the convenience of the Government, the effective date of the confirming notice shall be the same as the effective date of the initial notice.

(4) For a modification converting a termination for default to a termination for the convenience of the Government, the effective date shall be the same as the effective date of the termination for default.

(5) For a modification confirming the termination contracting officer’s previous letter determination of the amount due in settlement of a contract termination for convenience, the effective date shall be the same as the effective date of the previous letter determination.

**43.102 Policy.**

(a) Only contracting officers acting within the scope of their authority are empowered to execute contract modifications on behalf of the Government. Other Government personnel shall not—

(1) Execute contract modifications;

(2) Act in such a manner as to cause the contractor to believe that they have authority to bind the Government; or

(3) Direct or encourage the contractor to perform work that should be the subject of a contract modification.

(b) Contract modifications, including changes that could be issued unilaterally, shall be priced before their execution if this can be done without adversely affecting the interest of the

Government. If a significant cost increase could result from a contract modification and time does not permit negotiation of a price, at least a ceiling price shall be negotiated unless impractical.

**43.103 Types of contract modifications.**

Contract modifications are of the following types:

(a) *Bilateral*. A bilateral modification (supplemental agreement) is a contract modification that is signed by the contractor and the contracting officer. Bilateral modifications are used to—

(1) Make negotiated equitable adjustments resulting from the issuance of a change order;

(2) Definitize letter contracts; and

(3) Reflect other agreements of the parties modifying the terms of contracts.

(b) *Unilateral*. A unilateral modification is a contract modification that is signed only by the contracting officer. Unilateral modifications are used, for example, to—

(1) Make administrative changes;

(2) Issue change orders;

(3) Make changes authorized by clauses other than a changes clause (*e.g.*, Property clause, Options clause, or Suspension of Work clause); and

(4) Issue termination notices.

**43.104 Notification of contract changes.**

(a) When a contractor considers that the Government has effected or may effect a change in the contract that has not been identified as such in writing and signed by the contracting officer, it is necessary that the contractor notify the Government in writing as soon as possible. This will permit the Government to evaluate the alleged change and—

(1) Confirm that it is a change, direct the mode of further performance, and plan for its funding;

(2) Countermand the alleged change; or

(3) Notify the contractor that no change is considered to have occurred.

(b) The clause at [52.243-7](#), Notification of Changes, which is prescribed in [43.107](#)—

(1) Incorporates the policy expressed in paragraph (a) of this section;

(2) Requires the contractor to notify the Government promptly of any Government conduct that the contractor considers a change to the contract, and

(3) Specifies the responsibilities of the contractor and the Government with respect to such notifications.

**43.105 Availability of funds.**

(a) The contracting officer shall not execute a contract modification that causes or will cause an increase in funds

without having first obtained a certification of fund availability, except for modifications to contracts that—

(1) Are conditioned on availability of funds (see [32.703-2](#)); or

(2) Contain a limitation of cost or funds clause (see [32.704](#)).

(b) The certification required by paragraph (a) of this section shall be based on the negotiated price, except that modifications executed before agreement on price may be based on the best available estimate of cost.

**43.106 [Reserved]**

**43.107 Contract clause.**

The contracting officer may insert a clause substantially the same as the clause at [52.243-7](#), Notification of Changes, in solicitations and contracts. The clause is available for use primarily in negotiated research and development or supply contracts for the acquisition of major weapon systems or principal subsystems. If the contract amount is expected to be less than \$1,000,000, the clause shall not be used, unless the contracting officer anticipates that situations will arise that may result in a contractor alleging that the Government has effected changes other than those identified as such in writing and signed by the contracting officer.



## Subpart 44.2—Consent to Subcontracts

### 44.201 Consent and advance notification requirements.

#### 44.201-1 Consent requirements.

(a) If the contractor has an approved purchasing system, consent is required for subcontracts specifically identified by the contracting officer in the subcontracts clause of the contract. The contracting officer may require consent to subcontract if the contracting officer has determined that an individual consent action is required to protect the Government adequately because of the subcontract type, complexity, or value, or because the subcontract needs special surveillance. These can be subcontracts for critical systems, subsystems, components, or services. Subcontracts may be identified by subcontract number or by class of items (e.g., subcontracts for engines on a prime contract for airframes).

(b) If the contractor does not have an approved purchasing system, consent to subcontract is required for cost-reimbursement, time-and-materials, labor-hour, or letter contracts, and also for unpriced actions (including unpriced modifications and unpriced delivery orders) under fixed-price contracts that exceed the simplified acquisition threshold, for—

(1) Cost-reimbursement, time-and-materials, or labor-hour subcontracts; and

(2) Fixed-price subcontracts that exceed—

(i) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(c) Consent may be required for subcontracts under prime contracts for architect-engineer services.

(d) The contracting officer's written authorization for the contractor to purchase from Government sources (see [Part 51](#)) constitutes consent.

#### 44.201-2 Advance notification requirements.

Under cost-reimbursement contracts, the contractor is required by statute to notify the contracting officer as follows:

(a) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, unless the contractor maintains an approved purchasing system, [10 U.S.C. 2306](#) requires notification before the award of any cost-plus-fixed-fee subcontract, or any fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(b) For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, even if the contractor has an approved purchasing system, [41 U.S.C. 3905](#) requires notification before the award of any cost-plus-fixed-fee subcontract, or any fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

### 44.202 Contracting officer's evaluation.

#### 44.202-1 Responsibilities.

(a) The cognizant administrative contracting officer (ACO) is responsible for consent to subcontracts, except when the contracting officer retains the contract for administration or withholds the consent responsibility from delegation to the ACO. In such cases, the contract administration office should assist the contracting office in its evaluation as requested.

(b) The contracting officer responsible for consent shall review the contractor's notification and supporting data to ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment.

(c) Designation of specific subcontractors during contract negotiations does not in itself satisfy the requirements for advance notification or consent pursuant to the clause at [52.244-2](#). However, if, in the opinion of the contracting officer, the advance notification or consent requirements were satisfied for certain subcontracts evaluated during negotiations, the contracting officer shall identify those subcontracts in paragraph (j) of the clause at [52.244-2](#).

#### 44.202-2 Considerations.

(a) The contracting officer responsible for consent must, at a minimum, review the request and supporting data and consider the following:

(1) Is the decision to subcontract consistent with the contractor's approved make-or-buy program, if any (see [15.407-2](#))?

(2) Is the subcontract for special test equipment, equipment or real property that are available from Government sources?

(3) Is the selection of the particular supplies, equipment, or services technically justified?

(4) Has the contractor complied with the prime contract requirements regarding—

(i) Small business subcontracting, including, if applicable, its plan for subcontracting with small, veteran-owned, service-disabled veteran-owned, HUBZone, small disadvantaged and women-owned small business concerns (see [Part 19](#)); and

(ii) Purchase from nonprofit agencies designated by the Committee for Purchase From People Who Are Blind or Severely Disabled [41 U.S.C. 8504](#) (see [Part 8](#))?

(5) Was adequate price competition obtained or its absence properly justified?

(6) Did the contractor adequately assess and dispose of subcontractors' alternate proposals, if offered?

(7) Does the contractor have a sound basis for selecting and determining the responsibility of the particular subcontractor?

(8) Has the contractor performed adequate cost or price analysis or price comparisons and obtained certified cost or pricing data and data other than certified cost or pricing data?

(9) Is the proposed subcontract type appropriate for the risks involved and consistent with current policy?

(10) Has adequate consideration been obtained for any proposed subcontract that will involve the use of Government-provided equipment and real property?

(11) Has the contractor adequately and reasonably translated prime contract technical requirements into subcontract requirements?

(12) Does the prime contractor comply with applicable cost accounting standards for awarding the subcontract?

(13) Is the proposed subcontractor in the System for Award Management Exclusions (see [Subpart 9.4](#))?

(b) Particularly careful and thorough consideration under paragraph (a) of this section is necessary when—

(1) The prime contractor's purchasing system or performance is inadequate;

(2) Close working relationships or ownership affiliations between the prime and subcontractor may preclude free competition or result in higher prices;

(3) Subcontracts are proposed for award on a non-competitive basis, at prices that appear unreasonable, or at prices higher than those offered to the Government in comparable circumstances; or

(4) Subcontracts are proposed on a cost-reimbursement, time-and-materials, or labor-hour basis.

#### 44.203 Consent limitations.

(a) The contracting officer's consent to a subcontract or approval of the contractor's purchasing system does not constitute a determination of the acceptability of the subcontract terms or price, or of the allowability of costs, unless the consent or approval specifies otherwise.

(b) Contracting officers shall not consent to—

(1) Cost-reimbursement subcontracts if the fee exceeds the fee limitations of [15.404-4\(c\)\(4\)\(i\)](#);

(2) Subcontracts providing for payment on a cost-plus-a-percentage-of-cost basis;

(3) Subcontracts obligating the contracting officer to deal directly with the subcontractor;

(4) Subcontracts that make the results of arbitration, judicial determination, or voluntary settlement between the prime contractor and subcontractor binding on the Government; or

(5) Repetitive or unduly protracted use of cost-reimbursement, time-and-materials, or labor-hour subcontracts (contracting officers should follow the principles of [16.103\(c\)](#)).

(c) Contracting officers should not refuse consent to a subcontract merely because it contains a clause giving the subcontractor the right of indirect appeal to an agency board of contract appeals if the subcontractor is affected by a dispute between the Government and the prime contractor. Indirect appeal means assertion by the subcontractor of the prime contractor's right to appeal or the prosecution of an appeal by the prime contractor on the subcontractor's behalf. The clause may also provide that the prime contractor and subcontractor shall be equally bound by the contracting officer's or board's decision. The clause may not attempt to obligate the contracting officer or the appeals board to decide questions that do not arise between the Government and the prime contractor or that are not cognizable under the clause at [52.233-1](#), Disputes.

#### 44.204 Contract clauses.

(a)(1) The contracting officer shall insert the clause at [52.244-2](#), Subcontracts, in solicitations and contracts when contemplating—

(i) A cost-reimbursement contract;

(ii) A letter contract that exceeds the simplified acquisition threshold;

(iii) A fixed-price contract that exceeds the simplified acquisition threshold under which unpriced contract actions (including unpriced modifications or unpriced delivery orders) are anticipated;

(iv) A time-and-materials contract that exceeds the simplified acquisition threshold; or

(v) A labor-hour contract that exceeds the simplified acquisition threshold.

(2) If a cost-reimbursement contract is contemplated, for civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, the contracting officer shall use the clause with its Alternate I.

(3) Use of this clause is not required in—

(i) Fixed-price architect-engineer contracts; or

(ii) Contracts for mortuary services, refuse services, or shipment and storage of personal property, when an agency-prescribed clause on approval of subcontractors' facilities is required.

(b) The contracting officer may insert the clause at [52.244-4](#), Subcontractors and Outside Associates and Consultants (Architect-Engineer Services), in architect-engineer contracts.

**Subpart 44.4—Subcontracts for Commercial Items and Commercial Components**

**44.400 Scope of subpart.**

This subpart prescribes the policies limiting the contract clauses a contractor may be required to apply to any subcontractors that are furnishing commercial items or commercial components in accordance with [41 U.S.C. 3307](#).

**44.401 Applicability.**

This subpart applies to all contracts and subcontracts. For the purpose of this subpart, the term “subcontract” has the same meaning as defined in [Part 12](#).

**44.402 Policy requirements.**

(a) Contractors and subcontractors at all tiers shall, to the maximum extent practicable:

(1) Be required to incorporate commercial items or non-developmental items as components of items delivered to the Government; and

(2) Not be required to apply to any of its divisions, subsidiaries, affiliates, subcontractors or suppliers that are fur-

nishing commercial items or commercial components any clause, except those—

(i) Required to implement provisions of law or executive orders applicable to subcontractors furnishing commercial items or commercial components; or

(ii) Determined to be consistent with customary commercial practice for the item being acquired.

(b) The clause at [52.244-6](#), Subcontracts for Commercial Items, implements the policy in paragraph (a) of this section. Notwithstanding any other clause in the prime contract, only those clauses identified in the clause at [52.244-6](#) are required to be in subcontracts for commercial items or commercial components.

(c) Agencies may supplement the clause at [52.244-6](#) only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items.

**44.403 Contract clause.**

The contracting officer shall insert the clause at [52.244-6](#), Subcontracts for Commercial Items, in solicitations and contracts other than those for commercial items.

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**46.000 Scope of part.**

This part prescribes policies and procedures to ensure that supplies and services acquired under Government contract conform to the contract's quality and quantity requirements. Included are inspection, acceptance, warranty, and other measures associated with quality requirements.

**Subpart 46.1—General****46.101 Definitions.**

As used in this part—

“Acceptance” means the act of an authorized representative of the Government by which the Government, for itself or as agent of another, assumes ownership of existing identified supplies tendered or approves specific services rendered as partial or complete performance of the contract.

“Conditional acceptance” means acceptance of supplies or services that do not conform to contract quality requirements, or are otherwise incomplete, that the contractor is required to correct or otherwise complete by a specified date.

“Contract quality requirements” means the technical requirements in the contract relating to the quality of the product or service and those contract clauses prescribing inspection, and other quality controls incumbent on the contractor, to assure that the product or service conforms to the contractual requirements.

“Critical nonconformance” means a nonconformance that is likely to result in hazardous or unsafe conditions for individuals using, maintaining, or depending upon the supplies or services; or is likely to prevent performance of a vital agency mission.

“Government contract quality assurance” means the various functions, including inspection, performed by the Government to determine whether a contractor has fulfilled the contract obligations pertaining to quality and quantity.

“Major nonconformance” means a nonconformance, other than critical, that is likely to result in failure of the supplies or services, or to materially reduce the usability of the supplies or services for their intended purpose.

“Minor nonconformance” means a nonconformance that is not likely to materially reduce the usability of the supplies or services for their intended purpose, or is a departure from established standards having little bearing on the effective use or operation of the supplies or services.

“Off-the-shelf item” means an item produced and placed in stock by a contractor, or stocked by a distributor, before receiving orders or contracts for its sale. The item may be commercial or produced to military or Federal specifications or description.

“Patent defect” means any defect which exists at the time of acceptance and is not a latent defect.

“Subcontractor” (see [44.101](#)).

“Testing” means that element of inspection that determines the properties or elements, including functional operation of supplies or their components, by the application of established scientific principles and procedures.

**46.102 Policy.**

Agencies shall ensure that—

(a) Contracts include inspection and other quality requirements, including warranty clauses when appropriate, that are determined necessary to protect the Government's interest;

(b) Supplies or services tendered by contractors meet contract requirements;

(c) Government contract quality assurance is conducted before acceptance (except as otherwise provided in this part), by or under the direction of Government personnel;

(d) No contract precludes the Government from performing inspection;

(e) Nonconforming supplies or services are rejected, except as otherwise provided in [46.407](#);

(f) Contracts for commercial items shall rely on a contractor's existing quality assurance system as a substitute for compliance with Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired permit in-process inspection ([41 U.S.C. 3307](#)). Any in-process inspection by the Government shall be conducted in a manner consistent with commercial practice; and

(g) The quality assurance and acceptance services of other agencies are used when this will be effective, economical, or otherwise in the Government's interest (see [Subpart 42.1](#)).

**46.103 Contracting office responsibilities.**

Contracting offices are responsible for—

(a) Receiving from the activity responsible for technical requirements any specifications for inspection, testing, and other contract quality requirements essential to ensure the integrity of the supplies or services (the activity responsible for technical requirements is responsible for prescribing contract quality requirements, such as inspection and testing requirements or, for service contracts, a quality assurance surveillance plan);

(b) Including in solicitations and contracts the appropriate requirements for the contractor's control of quality for the supplies or services to be acquired;

(c) Issuing any necessary instructions to the cognizant contract administration office and acting on recommendations submitted by that office (see [42.301](#) and [46.104\(f\)](#));

(d) When contract administration is retained (see [42.201](#)), verifying that the contractor fulfills the contract quality requirements; and

(e) Ensuring that nonconformances are identified, and establishing the significance of a nonconformance when con-

sidering the acceptability of supplies or services which do not meet contract requirements.

#### **46.104 Contract administration office responsibilities.**

When a contract is assigned for administration to the contract administration office cognizant of the contractor's plant, that office, unless specified otherwise, shall—

(a) Develop and apply efficient procedures for performing Government contract quality assurance actions under the contract in accordance with the written direction of the contracting office;

(b) Perform all actions necessary to verify whether the supplies or services conform to contract quality requirements;

(c) Maintain, as part of the performance records of the contract, suitable records reflecting—

(1) The nature of Government contract quality assurance actions, including, when appropriate, the number of observations made and the number and type of defects; and

(2) Decisions regarding the acceptability of the products, the processes, and the requirements, as well as action to correct defects.

(d) Implement any specific written instructions from the contracting office;

(e) Report to the contracting office any defects observed in design or technical requirements, including contract quality requirements; and

(f) Recommend any changes necessary to the contract, specifications, instructions, or other requirements that will provide more effective operations or eliminate unnecessary costs (see [46.103\(c\)](#)).

#### **46.105 Contractor responsibilities.**

(a) The contractor is responsible for carrying out its obligations under the contract by—

(1) Controlling the quality of supplies or services;

(2) Tendering to the Government for acceptance only those supplies or services that conform to contract requirements;

(3) Ensuring that vendors or suppliers of raw materials, parts, components, subassemblies, etc., have an acceptable quality control system; and

(4) Maintaining substantiating evidence, when required by the contract, that the supplies or services conform to contract quality requirements, and furnishing such information to the Government as required.

(b) The contractor may be required to provide and maintain an inspection system or program for the control of quality that is acceptable to the Government (see [46.202](#)).

(c) The control of quality by the contractor may relate to, but is not limited to—

(1) Manufacturing processes, to ensure that the product is produced to, and meets, the contract's technical requirements;

(2) Drawings, specifications, and engineering changes, to ensure that manufacturing methods and operations meet the contract's technical requirements;

(3) Testing and examination, to ensure that practices and equipment provide the means for optimum evaluation of the characteristics subject to inspection;

(4) Reliability and maintainability assessment (life, endurance, and continued readiness);

(5) Fabrication and delivery of products, to ensure that only conforming products are tendered to the Government;

(6) Technical documentation, including drawings, specifications, handbooks, manuals, and other technical publications;

(7) Preservation, packaging, packing, and marking; and

(8) Procedures and processes for services to ensure that services meet contract performance requirements.

(d) The contractor is responsible for performing all inspections and tests required by the contract except those specifically reserved for performance by the Government (see [46.201\(c\)](#)).

## Subpart 47.2—Contracts for Transportation or for Transportation-Related Services

### 47.200 Scope of subpart.

(a) This subpart prescribes procedures for the acquisition by sealed bid or negotiated contracts of—

(1) Freight transportation (including local drayage) from rail, motor (including bus), domestic water (including inland, coastwise, and intercoastal) carriers, and from freight forwarders; and

(2) Transportation-related services including but not limited to stevedoring, storage, packing, marking, and ocean freight forwarding.

(b) Except as provided in paragraph (c) of this section, this subpart does not apply to—

(1) The acquisition of freight transportation from—

(i) Domestic or international air carriers; and

(ii) International ocean carriers (see [Subparts 47.4](#) and [47.5](#));

(2) Freight transportation acquired by bills of lading;

(3) Household goods for which rates are negotiated under [49 U.S.C. 10721](#) and [13712](#). (These statutes do not apply in intrastate moves); or

(4) Contracts at or below the simplified acquisition threshold.

(c) With appropriate modifications, the procedures in this subpart may be applied to the acquisition of freight transportation from the carriers listed in paragraph (b)(1) of this section and passenger transportation from any carrier or mode.

(d) The procedures in this subpart are applicable to the transportation of household goods of persons being relocated at Government expense except when acquired—

(1) Under the commuted rate schedules as required in the Federal Travel Regulation (41 CFR Chapter 302);

(2) By DoD under the DoD 4500.9-R, Defense Transportation Regulation; or

(3) Under [49 U.S.C. 10721](#) and [13712](#) rates. (These statutes do not apply in intrastate moves.)

(e) Additional guidance for DoD acquisition of freight and passenger transportation is in the Defense Transportation Regulation.

### 47.201 Definitions.

As used in this subpart—

“General freight” means supplies, goods, and transportable property not encompassed in the definitions of “household goods” or “office furniture.”

“Office furniture” means furniture, equipment, fixtures, records, and other equipment and materials used in Government offices, hospitals, and similar establishments.

### 47.202 Presolicitation planning.

Contracting officers shall inform activities that plan to acquire transportation or transportation-related services of the applicable lead-time requirements, that is—

(a) The Service Contract Labor Standards statute requirement to obtain a wage determination by accessing the Wage Determination OnLine website (<http://www.wdol.gov>) using the WDOL process or by submitting a request directly to the Department of Labor on this website using the e98 process before the issuance of an invitation for bid, request for proposal, or commencement of negotiations for any contract exceeding \$2,500 that may be subject to the Service Contract Labor Standards statute (see [subpart 22.10](#));

(b) The possible requirement to provide, during the solicitation period, time for prospective offerors or contractors to inspect origin and destination locations; or

(c) The possible requirement for inspection by agency personnel of prospective contractor facilities and equipment.

### 47.203 [Reserved]

### 47.204 Single-movement contracts.

Single-movement contracts may be awarded for unique transportation services that are not otherwise available under carrier tariffs or covered by DoD or GSA contracts; e.g., special requirements at origin and/or destination.

### 47.205 Availability of term contracts and basic ordering agreements for transportation or for transportation-related services.

(a) All Government agencies may contract for transportation or for transportation-related services and execute basic ordering agreements (BOA’s) (see [subpart 16.7](#)) unless agency regulations prescribe otherwise. However, it is generally more economical and efficient for most agencies to make use of term contracts and basic ordering agreements that have been executed by agencies that employ personnel experienced in contracting for transportation or for transportation-related services. The Department of Defense (DoD) and the General Services Administration (GSA) contract for transportation or for transportation-related services on behalf of other activities and agencies. For instance, GSA awards term contracts for services such as local drayage, office moves, and ocean-freight forwarding (see [47.105](#) for assistance).

(b) Agencies may obtain transportation or transportation-related services for which the cost does not exceed the simplified acquisition threshold if term contracts or basic ordering agreements are not available.

### 47.206 Preparation of solicitations and contracts.

(a) Contracting officers shall prepare solicitations and contracts for transportation or for transportation-related services as prescribed elsewhere in the FAR for fixed-price service

contracts to the extent that those requirements are applicable and not inconsistent with the requirements in [subpart 47.2](#).

(b) In addition, the contracting officer shall include in solicitations and contracts for transportation or for transportation-related services provisions, clauses, and instructions as prescribed in section [47.207](#).

#### **47.207 Solicitation provisions, contract clauses, and special requirements.**

The contracting officer shall include provisions, clauses, and special requirements in solicitations and contracts for transportation or for transportation-related services as prescribed in [47.207-1](#) through [47.207-9](#).

##### **47.207-1 Qualifications of offerors.**

(a) *Operating authorities.* The contracting officer shall insert the clause at [52.247-2](#), Permits, Authorities, or Franchises, when regulated transportation is involved. The clause need not be used when a Federal office move is intrastate and the contracting officer determines that it is in the Government's interest not to apply the requirement for holding or obtaining State authority to operate within the State.

(b) *Performance capability for Federal office moving contracts.* (1) The contracting officer shall insert the clause at [52.247-3](#), Capability to Perform a Contract for the Relocation of a Federal Office, when a Federal office is relocated, to ensure that offerors are capable to perform interstate or intrastate moving contracts involving the relocation of Federal offices.

(2) If a Federal office move is intrastate and the contracting officer determines that it is in the Government's interest not to apply the requirements for holding or obtaining State authority to operate within the State, and to maintain a facility within the State or commercial zone, the contracting officer shall use the clause with its Alternate I.

(c) *Inspection of shipping and receiving facilities.* The contracting officer shall insert the provision at [52.247-4](#), Inspection of Shipping and Receiving Facilities, when it is desired for offerors to inspect the shipping, receiving, or other sites to ensure realistic bids.

(d) *Familiarization with conditions.* The contracting officer shall insert the clause at [52.247-5](#), Familiarization with Conditions, to ensure that offerors become familiar with conditions under which and where the services will be performed.

(e) *Financial statement.* The contracting officer shall insert the provision at [52.247-6](#), Financial Statement, to ensure that offerors are prepared to furnish financial statements.

##### **47.207-2 Duration of contract and time of performance.**

The contracting officer shall—

(a) Establish a specific expiration date (month, day, and year) for the contract or state the length of time that the con-

tract will remain in effect; *e.g.*, 6 months commencing from the date of award; and

(b) Include the following items as appropriate:

(1) A statement of the time period during which the service is required when the service is a one-time job; *e.g.*, a routine office relocation.

(2) A time schedule for the performance of segments of a major job; *e.g.*, an office relocation for which the work phases must be coordinated to meet other needs of the agency.

(3) Statements of performance times for particular services; *e.g.*, pickup and delivery services. Specify—

(i) On which days of the week and during which hours of the day pickup and delivery services may be required;

(ii) The maximum time allowable to the contractor for accomplishing delivery under regular or priority service; and

(iii) How much advance notice the contractor will be given for regular pickup services and, if applicable, priority pickup services.

##### **47.207-3 Description of shipment, origin, and destination.**

(a) *Origin of shipments.* The contracting officer shall include in solicitations full details regarding the location from which the freight is to be shipped. For example, if a single location is shown, furnish the shipper's name, street address, city, State, and ZIP code. If several or indefinite locations are involved, as in the case of multiple shippers or drayage contracts, describe the area of origin including boundaries and ZIP codes.

(b) *Destination of shipments.* The contracting officer shall include full details regarding delivery points. For example, if a single delivery point is shown, furnish the consignee's name, street address, city, State, and ZIP code. If several or indefinite delivery points are involved, describe the delivery area, including boundaries and ZIP codes.

(c) *Description of the freight.* The contracting officer shall include in solicitations—

(1) An inventory if the freight consists of nonbulk items; and

(2) The freight classification description, which should be obtained from the transportation office. If a freight classification description is not available, use a clear nontechnical description. Include additional details necessary to ensure that the prospective offerors have complete information about the freight; *e.g.*, size, weight, hazardous material, whether packed for export, or unusual value.

(d) *Exclusion of freight.* The contracting officer shall—

(1) Clearly identify any freight or types of shipments that are subject to exclusion; *e.g.*, bulk freight, hazardous commodities, or shipments under or over specified weights; and



**48.000 Scope of part.**

This part prescribes policies and procedures for using and administering value engineering techniques in contracts.

**48.001 Definitions.**

As used in this part—

“Acquisition savings” means savings resulting from the application of a value engineering change proposal (VECP) to contracts awarded by the same contracting office or its successor for essentially the same unit. Acquisition savings include—

(1) Instant contract savings, that are the net cost reductions on the contract under which the VECP is submitted and accepted, and that are equal to the instant unit cost reduction multiplied by the number of instant contract units affected by the VECP, less the contractor’s allowable development and implementation costs;

(2) Concurrent contract savings, that are net reductions in the prices of other contracts that are definitized and ongoing at the time the VECP is accepted; and

(3) Future contract savings, that are the product of the future unit cost reduction multiplied by the number of future contract units in the sharing base. On an instant contract, future contract savings include savings on increases in quantities after VECP acceptance that are due to contract modifications, exercise of options, additional orders, and funding of subsequent year requirements on a multiyear contract.

“Collateral costs” means agency costs of operation, maintenance, logistic support, or Government-furnished property.

“Collateral savings” means those measurable net reductions resulting from a VECP in the agency’s overall projected collateral costs, exclusive of acquisition savings, whether or not the acquisition cost changes.

“Contracting office” includes any contracting office that the acquisition is transferred to, such as another branch of the agency or another agency’s office that is performing a joint acquisition action.

“Contractor’s development and implementation costs” means those costs the contractor incurs on a VECP specifically in developing, testing, preparing, and submitting the VECP, as well as those costs the contractor incurs to make the contractual changes required by Government acceptance of a VECP.

“Future unit cost reduction” means the instant unit cost reduction adjusted as the contracting officer considers necessary for projected learning or changes in quantity during the sharing period. It is calculated at the time the VECP is accepted and applies either—

(1) Throughout the sharing period, unless the contracting officer decides that recalculation is necessary because

conditions are significantly different from those previously anticipated, or

(2) To the calculation of a lump-sum payment, that cannot later be revised.

“Government costs” means those agency costs that result directly from developing and implementing the VECP, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the normal administrative costs of processing the VECP or any increase in instant contract cost or price resulting from negative instant contract savings, except that for use in [52.248-3](#), see the definition at [52.248-3\(b\)](#).

“Instant contract” means the contract under which the VECP is submitted. It does not include increases in quantities after acceptance of the VECP that are due to contract modifications, exercise of options, or additional orders. If the contract is a multiyear contract, the term does not include quantities funded after VECP acceptance. In a fixed-price contract with prospective price redetermination, the term refers to the period for which firm prices have been established.

“Instant unit cost reduction” means the amount of the decrease in unit cost of performance (without deducting any contractor’s development or implementation costs) resulting from using the VECP on the instant contract. In service contracts, the instant unit cost reduction is normally equal to the number of hours per line-item task saved by using the VECP on the instant contract, multiplied by the appropriate contract labor rate.

“Negative instant contract savings” means the increase in the instant contract cost or price when the acceptance of a VECP results in an excess of the contractor’s allowable development and implementation costs over the product of the instant unit cost reduction multiplied by the number of instant contract units affected.

“Net acquisition savings” means total acquisition savings, including instant, concurrent, and future contract savings, less Government costs.

“Sharing base” means the number of affected end items on contracts of the contracting office accepting the VECP.

“Sharing period” means the period beginning with acceptance of the first unit incorporating the VECP and ending at a calendar date or event determined by the contracting officer for each VECP.

“Unit” means the item or task to which the contracting officer and the contractor agree the VECP applies.

“Value engineering proposal” means, in connection with an A-E contract, a change proposal developed by employees of the Federal Government or contractor value engineering personnel under contract to an agency to provide value engineering services for the contract or program.

## Subpart 48.1—Policies and Procedures

### 48.101 General.

(a) Value engineering is the formal technique by which contractors may (1) voluntarily suggest methods for performing more economically and share in any resulting savings or (2) be required to establish a program to identify and submit to the Government methods for performing more economically. Value engineering attempts to eliminate, without impairing essential functions or characteristics, anything that increases acquisition, operation, or support costs.

(b) There are two value engineering approaches:

(1) The first is an incentive approach in which contractor participation is voluntary and the contractor uses its own resources to develop and submit any value engineering change proposals (VECP's). The contract provides for sharing of savings and for payment of the contractor's allowable development and implementation costs only if a VECP is accepted. This voluntary approach should not in itself increase costs to the Government.

(2) The second approach is a mandatory program in which the Government requires and pays for a specific value engineering program effort. The contractor must perform value engineering of the scope and level of effort required by the Government's program plan and included as a separately priced item of work in the contract Schedule. No value engineering sharing is permitted in architect engineer contracts. All other contracts with a program clause share in savings on accepted VECP's, but at a lower percentage rate than under the voluntary approach. The objective of this value engineering program requirement is to ensure that the contractor's value engineering effort is applied to areas of the contract that offer opportunities for considerable savings consistent with the functional requirements of the end item of the contract.

### 48.102 Policies.

(a) As required by [41 U.S.C. 1711](#), agencies shall establish and maintain cost-effective value engineering procedures and processes. Agencies shall provide contractors a substantial financial incentive to develop and submit VECP's. Contracting activities will include value engineering provisions in appropriate supply, service, architect-engineer and construction contracts as prescribed by [48.201](#) and [48.202](#) except where exemptions are granted on a case-by-case basis, or for specific classes of contracts, by the agency head.

(b) Agencies shall—

- (1) Establish guidelines for processing VECP's,
- (2) Process VECP's objectively and expeditiously, and
- (3) Provide contractors a fair share of the savings on accepted VECP's.

(c) Agencies shall consider requiring incorporation of value engineering clauses in appropriate subcontracts.

(d)(1) Agencies other than the Department of Defense shall use the value engineering program requirement clause ([52.248-1](#), Alternates I or II) in initial production contracts for major system programs (see definition of major system in [34.001](#)) and for contracts for major systems research and development except where the contracting officer determines and documents the file to reflect that such use is not appropriate.

(2) In Department of Defense contracts, the VE program requirement clause ([52.248-1](#), Alternates I or II), shall be placed in initial production solicitations and contracts (first and second production buys) for major system acquisition programs as defined in DoD Directive 5000.1, except as specified in subdivisions (d)(2)(i) and (ii) of this section. A program requirement clause may be included in initial production contracts for less than major systems acquisition programs if there is a potential for savings. The contracting officer is not required to include a program requirement clause in initial production contracts—

(i) Where, in the judgment of the contracting officer, the prime contractor has demonstrated an effective VE program during either earlier program phases, or during other recent comparable production contracts.

(ii) Which are awarded on the basis of competition.

(e) Value engineering incentive payments do not constitute profit or fee within the limitations imposed by [10 U.S.C. 2306\(d\)](#) and [41 U.S.C. 3905](#) (see [15.404-4\(c\)\(4\)\(i\)](#)).

(f) Generally, profit or fee on the instant contract should not be adjusted downward as a result of acceptance of a VECP. Profit or fee shall be excluded when calculating instant or future contract savings.

(g) The contracting officer determines the sharing periods and sharing rates on a case-by-case basis using the guidelines in [48.104-1](#) and [48.104-2](#), respectively. In establishing a sharing period and sharing rate, the contracting officer must consider the following, as appropriate, and must insert supporting rationale in the contract file:

- (1) Extent of the change.
- (2) Complexity of the change.
- (3) Development risk (e.g., contractor's financial risk).
- (4) Development cost.
- (5) Performance and/or reliability impact.
- (6) Production period remaining at the time of VECP acceptance.
- (7) Number of units affected.

(h) Contracts for architect-engineer services must require a mandatory value engineering program to reduce total ownership cost in accordance with [48.101\(b\)\(2\)](#). However, there must be no sharing of value engineering savings in contracts for architect-engineer services.

**50.000 Scope of part.**

This part—

(a)(1) Prescribes policies and procedures for entering into, amending, or modifying contracts in order to facilitate the national defense under the extraordinary emergency authority granted by Public Law 85-804 ([50 U.S.C. 1431-1434](#)) and Executive Order 10789, dated November 14, 1958. It does not cover advance payments (see [subpart 32.4](#)); and

(2) Implements indemnification authority granted by Pub. L. 85-804 and paragraph 1A of E.O. 10789 with respect to any matter that has been, or could be, designated by the Secretary of Homeland Security as a qualified anti-terrorism technology as defined in the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act); and

(b) Implements SAFETY Act liability protections to promote development and use of anti-terrorism technologies.

### Subpart 50.1—Extraordinary Contractual Actions

**50.100 Definitions.**

As used in this part—

“Approving authority” means an agency official or contract adjustment board authorized to approve actions under Pub. L. 85-804 and E.O. 10789.

“Secretarial level” means a level at or above the level of a deputy assistant agency head, or a contract adjustment board.

**50.101 General.****50.101-1 Authority.**

(a) Pub. L. 85-804 empowers the President to authorize agencies exercising functions in connection with the national defense to enter into, amend, and modify contracts, without regard to other provisions of law related to making, performing, amending, or modifying contracts, whenever the President considers that such action would facilitate the national defense.

(b) E.O. 10789 authorizes the heads of the following agencies to exercise the authority conferred by Pub. L. 85-804 and to delegate it to other officials within the agency: the Government Printing Office; the Department of Homeland Security; the Tennessee Valley Authority; the National Aeronautics and Space Administration; the General Services Administration; the Defense, Army, Navy, Air Force, Treasury, Interior, Agriculture, Commerce, and Transportation Departments; the Department of Energy for functions transferred to that Department from other authorized agencies; and any other agency that may be authorized by the President.

**50.101-2 Policy.**

(a) The authority conferred by Pub. L. 85-804 may not—

(1) Be used in a manner that encourages carelessness and laxity on the part of persons engaged in the defense effort; or

(2) Be relied upon when other adequate legal authority exists within the agency.

(b) Actions authorized under Pub. L. 85-804 shall be accomplished as expeditiously as practicable, consistent with the care, restraint, and exercise of sound judgment appropriate to the use of such extraordinary authority.

(c) Certain kinds of relief previously available only under Pub. L. 85-804; *e.g.*, rescission or reformation for mutual mistake, are now available under the authority of [41 U.S.C. chapter 71](#), Contract Disputes. In accordance with paragraph (a)(2) of this subsection, [part 33](#) must be followed in preference to [subpart 50.1](#) for such relief. In case of doubt as to whether [part 33](#) applies, the contracting officer should seek legal advice.

**50.101-3 Records.**

Agencies shall maintain complete records of all actions taken under this [subpart 50.1](#). For each request for relief processed, these records shall include, as a minimum—

(a) The contractor’s request;

(b) All relevant memorandums, correspondence, affidavits, and other pertinent documents;

(c) The Memorandum of Decision (see [50.103-6](#) and [50.104-2](#)); and

(d) A copy of the contractual document implementing an approved request.

**50.102 Delegation of and limitations on exercise of authority.****50.102-1 Delegation of authority.**

An agency head may delegate in writing authority under Pub. L. 85-804 and E.O. 10789, subject to the following limitations:

(a) Authority delegated shall be to a level high enough to ensure uniformity of action.

(b) Authority to approve requests to obligate the Government in excess of \$65,000 may not be delegated below the secretarial level.

(c) Regardless of dollar amount, authority to approve any amendment without consideration that increases the contract price or unit price may not be delegated below the secretarial level, except in extraordinary cases or classes of cases when the agency head finds that special circumstances clearly justify such delegation.

(d) Regardless of dollar amount, authority to indemnify against unusually hazardous or nuclear risks, including extension of such indemnification to subcontracts, shall be exercised only by the Secretary or Administrator of the agency

concerned, the Public Printer, or the Chairman of the Board of Directors of the Tennessee Valley Authority (see [50.104-3](#)).

#### 50.102-2 Contract adjustment boards.

An agency head may establish a contract adjustment board with authority to approve, authorize, and direct appropriate action under this [subpart 50.1](#) and to make all appropriate determinations and findings. The decisions of the board shall not be subject to appeal; however, the board may reconsider and modify, correct, or reverse its previous decisions. The board shall determine its own procedures and have authority to take all action necessary or appropriate to conduct its functions.

#### 50.102-3 Limitations on exercise of authority.

(a) Pub. L. 85-804 is not authority for—

- (1) Using a cost-plus-a-percentage-of-cost system of contracting;
- (2) Making any contract that violates existing law limiting profit or fees;
- (3) Providing for other than full and open competition for award of contracts for supplies or services; or
- (4) Waiving any bid bond, payment bond, performance bond, or other bond required by law.

(b) No contract, amendment, or modification shall be made under Pub. L. 85-804's authority—

- (1) Unless the approving authority finds that the action will facilitate the national defense;
- (2) Unless other legal authority within the agency concerned is deemed to be lacking or inadequate;
- (3) Except within the limits of the amounts appropriated and the statutory contract authorization (however, indemnification agreements authorized by an agency head ([50.104-3](#)) are not limited to amounts appropriated or to contract authorization); and
- (4) That will obligate the Government for any amount over \$31.5 million, unless the Senate and House Committees on Armed Services are notified in writing of the proposed obligation and 60 days of continuous session of Congress have passed since the transmittal of such notification. However, this paragraph (b)(4) does not apply to indemnification agreements authorized under [50.104-3](#).

(c) No contract shall be amended or modified unless the contractor submits a request before all obligations (including final payment) under the contract have been discharged. No amendment or modification shall increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder, if the contract was negotiated under [14.404-1\(f\)](#).

(d) No informal commitment shall be formalized unless—

- (1) The contractor submits a written request for payment within 6 months after furnishing, or arranging to furnish, supplies or services in reliance upon the commitment; and

(2) The approving authority finds that, at the time the commitment was made, it was impracticable to use normal contracting procedures.

(e) The exercise of authority by officials below the secretarial level is subject to the following additional limitations:

(1) The action shall not—

- (i) Release a contractor from performance of an obligation over \$65,000;
- (ii) Result in an increase in cost to the Government over \$65,000;
- (iii) Deal with, or directly affect, any matter that has been submitted to the Government Accountability Office; or
- (iv) Involve disposal of Government surplus property.

(2) Mistakes shall not be corrected by an action obligating the Government for over \$1,000, unless the contracting officer receives notice of the mistake before final payment.

(3) The correction of a contract because of a mistake in its making shall not increase the original contract price to an amount higher than the next lowest responsive offer of a responsible offeror.

(f) No executive department or agency shall exercise the indemnification authority granted under paragraph 1A of E.O. 10789 with respect to any supply or service that has been, or could be, designated by the Secretary of Homeland Security as a qualified anti-terrorism technology unless—

(1) For the Department of Defense, the Secretary of Defense has determined that the exercise of authority under E.O. 10789 is necessary for the timely and effective conduct of the United States military or intelligence activities, after consideration of the authority provided under the SAFETY Act (Subtitle G of title VIII of the Homeland Security Act of 2002, [6 U.S.C. 441-444](#)); or

(2) For other departments and agencies that have authority under E.O. 10789—

(i) The Secretary of Homeland Security has advised whether the use of the authority under the SAFETY Act would be appropriate; and

(ii) The Director of the Office of Management and Budget has approved the exercise of authority under the Executive order.

#### 50.103 Contract adjustments.

This section prescribes standards and procedures for processing contractors' requests for contract adjustment under Pub. L. 85-804 and E.O. 10789.

##### 50.103-1 General.

The fact that losses occur under a contract is not sufficient basis for exercising the authority conferred by Pub. L. 85-804. Whether appropriate action will facilitate the national defense is a judgment to be made on the basis of all of the facts of the case. Although it is impossible to predict or enumerate all the

types of cases in which action may be appropriate, examples are included in [50.103-2](#). Even if all of the factors in any of the examples are present, other considerations may warrant denying a contractor's request for contract adjustment. The examples are not intended to exclude other cases in which the approving authority determines that the circumstances warrant action.

#### **50.103-2 Types of contract adjustment.**

(a) *Amendments without consideration.* (1) When an actual or threatened loss under a defense contract, however caused, will impair the productive ability of a contractor whose continued performance on any defense contract or whose continued operation as a source of supply is found to be essential to the national defense, the contract may be amended without consideration, but only to the extent necessary to avoid such impairment to the contractor's productive ability.

(2) When a contractor suffers a loss (not merely a decrease in anticipated profits) under a defense contract because of Government action, the character of the action will generally determine whether any adjustment in the contract will be made, and its extent. When the Government directs its action primarily at the contractor and acts in its capacity as the other contracting party, the contract may be adjusted in the interest of fairness. Thus, when Government action, while not creating any liability on the Government's part, increases performance cost and results in a loss to the contractor, fairness may make some adjustment appropriate.

(b) *Correcting mistakes.* (1) A contract may be amended or modified to correct or mitigate the effect of a mistake. The following are examples of mistakes that may make such action appropriate:

(i) A mistake or ambiguity consisting of the failure to express, or express clearly, in a written contract, the agreement as both parties understood it.

(ii) A contractor's mistake so obvious that it was or should have been apparent to the contracting officer.

(iii) A mutual mistake as to a material fact.

(2) Amending contracts to correct mistakes with the least possible delay normally will facilitate the national defense by expediting the contracting program and assuring contractors that mistakes will be corrected expeditiously and fairly.

(c) *Formalizing informal commitments.* Under certain circumstances, informal commitments may be formalized to permit payment to persons who have taken action without a formal contract; for example, when a person, responding to an agency official's written or oral instructions and relying in good faith upon the official's apparent authority to issue them, has furnished or arranged to furnish supplies or services to the agency, or to a defense contractor or subcontractor, without formal contractual coverage. Formalizing commitments

under such circumstances normally will facilitate the national defense by assuring such persons that they will be treated fairly and paid expeditiously.

#### **50.103-3 Contract adjustment.**

(a) *Contractor requests.* A contractor seeking a contract adjustment shall submit a request in duplicate to the contracting officer or an authorized representative. The request, normally a letter, shall state as a minimum—

(1) The precise adjustment requested;

(2) The essential facts, summarized chronologically in narrative form;

(3) The contractor's conclusions based on these facts, showing, in terms of the considerations set forth in [50.103-1](#) and [50.103-2](#), when the contractor considers itself entitled to the adjustment; and

(4) Whether or not—

(i) All obligations under the contracts involved have been discharged;

(ii) Final payment under the contracts involved has been made;

(iii) Any proceeds from the request will be subject to assignment or other transfer, and to whom; and

(iv) The contractor has sought the same, or a similar or related, adjustment from the Government Accountability Office or any other part of the Government, or anticipates doing so.

(b) *Contractor certification.* A contractor seeking a contract adjustment that exceeds the simplified acquisition threshold shall, at the time the request is submitted, submit a certification by a person authorized to certify the request on behalf of the contractor that—

(1) The request is made in good faith; and

(2) The supporting data are accurate and complete to the best of that person's knowledge and belief.

#### **50.103-4 Facts and evidence.**

(a) *General.* When it is appropriate, the contracting officer or other agency official shall request the contractor to support any request made under [50.103-3\(a\)](#) with any of the following information:

(1) A brief description of the contracts involved, the dates of execution and amendments, the items being acquired, the price or prices, the delivery schedules, and any special contract provisions relevant to the request.

(2) A history of performance indicating when work under the contracts or commitments began, the progress made to date, an exact statement of the contractor's remaining obligations, and the contractor's expectations regarding completion.

(3) A statement of payments received, due, and yet to be received or to become due, including advance and progress payments; amounts withheld by the Government; and infor-

mation as to any obligations of the Government yet to be performed under the contracts.

(4) A detailed analysis of the request's monetary elements, including precisely how the actual or estimated dollar amount was determined and the effect of approval or denial on the contractor's profits before Federal income taxes.

(5) A statement of the contractor's understanding of why the request's subject matter cannot now, and could not at the time it arose, be disposed of under the contract terms.

(6) The best supporting evidence available to the contractor, including contemporaneous memorandums, correspondence, and affidavits.

(7) Relevant financial statements, cost analyses, or other such data, preferably certified by a certified public accountant, as necessary to support the request's monetary elements.

(8) A list of persons connected with the contracts who have factual knowledge of the subject matter, including, when possible, their names, offices or titles, addresses, and telephone numbers.

(9) A statement and evidence of steps taken to reduce losses and claims to a minimum.

(10) Any other relevant statements or evidence that may be required.

(b) *Amendments without consideration-essentiality a factor.* When a request involves possible amendment without consideration, and essentiality to the national defense is a factor (50.103-2(a)(1)), the contractor may be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this subsection, any of the following information:

(1) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances, and profit.

(2) A statement and evidence of the contractor's present estimate of total costs under the contracts involved if it is enabled to complete them, broken down between costs accrued to date and completion costs, and between costs paid and those owed.

(3) A statement and evidence of the contractor's estimate of the final price of the contracts, taking into account all known or contemplated escalation, changes, extras, and the like.

(4) A statement of any claims known or contemplated by the contractor against the Government involving the contracts, other than those stated in response to paragraph (b)(3) of this subsection.

(5) An estimate of the contractor's total profit or loss under the contracts if it is enabled to complete them at the estimated final contract price, broken down between profit or loss to date and completion profit or loss.

(6) An estimate of the contractor's total profit or loss from other Government business and all other sources, from

the date of the first contract involved to the estimated completion date of the last contract involved.

(7) A statement of the amount of any tax refunds to date, and an estimate of those anticipated, for the period from the date of the first contract involved to the estimated completion date of the last contract involved.

(8) A detailed statement of efforts the contractor has made to obtain funds from commercial sources to enable contract completion.

(9) A statement of the minimum amount the contractor needs as an amendment without consideration to enable contract completion, and the detailed basis for that amount.

(10) An estimate of the time required to complete each contract if the request is granted.

(11) A statement of the factors causing the loss under the contracts involved.

(12) A statement of the course of events anticipated if the request is denied.

(13) Balance sheets, preferably certified by a certified public accountant, (i) for the contractor's fiscal year immediately preceding the date of the first contract, (ii) for each subsequent fiscal year, (iii) as of the request date, and (iv) projected as of the completion date of all the contracts involved (assuming the contractor is enabled to complete them at the estimated final prices), together with income statements for annual periods subsequent to the date of the first balance sheet. Balance sheets and income statements should be both consolidated and broken down by affiliates. They should show all transactions between the contractor and its affiliates, stockholders, and partners, including loans to the contractor guaranteed by any stockholder or partner.

(14) A list of all salaries, bonuses, and other compensation paid or furnished to the principal officers or partners, and of all dividends and other withdrawals, and of all payments to stockholders in any form since the date of the first contract involved.

(c) *Amendments without consideration-essentiality not a factor.* When a request involves possible amendment without consideration because of Government action, and essentiality to the national defense is not a factor (50.103-2(a)(2)), the contractor may be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this subsection, any of the following information:

(1) A clear statement of the precise Government action that the contractor considers to have caused a loss under the contract, with evidence to support each essential fact.

(2) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances, and profit.

(3) The estimated total loss under the contract, with detailed supporting analysis.

(4) The estimated loss resulting specifically from the Government action, with detailed supporting analysis.

(d) *Correcting mistakes.* When a request involves possible correction of a mistake (50.103-2(b)), the contractor may be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this subsection, any of the following information:

(1) A statement and evidence of the precise error made, ambiguity existing, or misunderstanding arising, showing what it consists of, how it occurred, and the intention of the parties.

(2) A statement explaining when the mistake was discovered, when the contracting officer was given notice of it, and whether this notice was given before completion of work under, or the effective termination date of, the contract.

(3) An estimate of profit or loss under the contract, with detailed supporting analysis.

(4) An estimate of the increase in cost to the Government resulting from the adjustment requested, with detailed supporting analysis.

(e) *Formalizing informal commitments.* When a request involves possible formalizing of an informal commitment (50.103-2(c)), the contractor may be asked to furnish, in addition to the facts and evidence listed in paragraph (a) of this subsection, any of the following information:

(1) Copies of any written instructions or assurances (or a sworn statement of any oral instructions or assurances) given the contractor, and identification of the Government official who gave them.

(2) A statement as to when the contractor furnished or arranged to furnish the supplies or services involved, and to whom.

(3) Evidence that the contractor relied upon the instructions or assurances, with a full description of the circumstances that led to this reliance.

(4) Evidence that, when performing the work, the contractor expected to be compensated directly for it by the Government and did not anticipate recovering the costs in some other way.

(5) A cost breakdown supporting the amount claimed as fair compensation for the work performed.

(6) A statement and evidence of the impracticability of providing, in an appropriate contractual instrument, for the work performed.

#### 50.103-5 Processing cases.

(a) In response to a contractor request made in accordance with 50.103-3(a), the contracting officer or an authorized representative shall make a thorough investigation to establish the facts necessary to decide a given case. Facts and evidence, including signed statements of material facts within the knowledge of individuals when documentary evidence is lacking, and audits if considered necessary to establish financial or cost facts, shall be obtained from contractor and Government personnel.

(b) When a case involves matters of interest to more than one Government agency, the interested agencies should maintain liaison with each other to determine whether joint action should be taken.

(c) When additional funds are required from another agency, the contracting agency may not approve adjustment requests before receiving advice that the funds will be available. The request for this advice shall give the contractor's name, the contract number, the amount of proposed relief, a brief description of the contract, and the accounting classification or fund citation. If the other agency makes additional funds available, the agency considering the adjustment request shall be solely responsible for any action taken on the request.

(d) When essentiality to the national defense is an issue (50.103-2(a)(1)), agencies considering requests for amendment without consideration involving another agency shall obtain advice on the issue from the other agency before making the final decision. When this advice is received, the agency considering the request for amendment without consideration shall be responsible for taking whatever action is appropriate.

#### 50.103-6 Disposition.

When approving or denying a contractor's request made in accordance with 50.103-3(a), the approving authority shall sign and date a Memorandum of Decision containing—

(a) The contractor's name and address, the contract identification, and the nature of the request;

(b) A concise description of the supplies or services involved;

(c) The decision reached and the actual cost or estimated potential cost involved, if any;

(d) A statement of the circumstances justifying the decision;

(e) Identification of any of the foregoing information classified "Confidential" or higher (instead of being included in the memorandum, such information may be set forth in a separate classified document referenced in the memorandum); and

(f) If some adjustment is approved, a statement in substantially the following form: "I find that the action authorized herein will facilitate the national defense." The case files supporting this statement will show the derivation and rationale for the dollar amount of the award. When the dollar amount exceeds the amounts supported by audit or other independent reviews, the approving authority will further document the rationale for deviating from the recommendation.

#### 50.103-7 Contract requirements.

(a) Pub. L. 85-804 and E.O. 10789 require that every contract entered into, amended, or modified under this [subpart 50.1](#) shall contain—

- (1) A citation of Pub. L. 85-804 and E.O. 10789;
- (2) A brief statement of the circumstances justifying the action; and
- (3) A recital of the finding that the action will facilitate the national defense.

(b) The authority in [50.101-1](#)(a) shall not be used to omit from contracts, when otherwise required, the clauses at [52.203-5](#), Covenant Against Contingent Fees; [52.215-2](#), Audit and Records-Negotiation; [52.222-4](#), Contract Work Hours and Safety Standards-Overtime Compensation; [52.222-6](#), Construction Wage Rate Requirements; [52.222-10](#), Compliance With Copeland Act Requirements; [52.222-20](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000; [52.222-26](#), Equal Opportunity; and [52.232-23](#), Assignment of Claims.

#### 50.104 Residual powers.

This section prescribes standards and procedures for exercising residual powers under Pub. L. 85-804. The term “residual powers” includes all authority under Pub. L. 85-804 except—

- (a) That covered by section [50.103](#); and
- (b) The authority to make advance payments (see [subpart 32.4](#)).

#### 50.104-1 Standards for use.

Subject to the limitations in [50.102-3](#), residual powers may be used in accordance with the policies in [50.101-2](#) when necessary and appropriate, all circumstances considered. In authorizing the inclusion of the clause at [52.250-1](#), Indemnification Under Public Law 85-804, in a contract or subcontract, an agency head may require the indemnified contractor to provide and maintain financial protection of the type and amount determined appropriate. In deciding whether to approve use of the indemnification clause, and in determining the type and amount of financial protection the indemnified contractor is to provide and maintain, an agency head shall consider such factors as self-insurance, other proof of financial responsibility, workers’ compensation insurance, and the availability, cost, and terms of private insurance. The approval and determination shall be final.

#### 50.104-2 General.

(a) When approving or denying a proposal for the exercise of residual powers, the approving authority shall sign and date a Memorandum of Decision containing substantially the same information called for by [50.103-6](#).

(b) Every contract entered into, amended, or modified under residual powers shall comply with the requirements of [50.103-7](#).

#### 50.104-3 Special procedures for unusually hazardous or nuclear risks.

(a) *Indemnification requests.* (1) Contractor requests for the indemnification clause to cover unusually hazardous or nuclear risks should be submitted to the contracting officer and shall include the following information:

(i) Identification of the contract for which the indemnification clause is requested.

(ii) Identification and definition of the unusually hazardous or nuclear risks for which indemnification is requested, with a statement indicating how the contractor would be exposed to them.

(iii) A statement, executed by a corporate official with binding contractual authority, of all insurance coverage applicable to the risks to be defined in the contract as unusually hazardous or nuclear, including—

(A) Names of insurance companies, policy numbers, and expiration dates;

(B) A description of the types of insurance provided (including the extent to which the contractor is self-insured or intends to self-insure), with emphasis on identifying the risks insured against and the coverage extended to persons or property, or both;

(C) Dollar limits per occurrence and annually, and any other limitation, for relevant segments of the total insurance coverage;

(D) Deductibles, if any, applicable to losses under the policies;

(E) Any exclusions from coverage under such policies for unusually hazardous or nuclear risks; and

(F) Applicable workers’ compensation insurance coverage.

(iv) The controlling or limiting factors for determining the amount of financial protection the contractor is to provide and maintain, with information regarding the availability, cost, and terms of additional insurance or other forms of financial protection.

(v) Whether the contractor’s insurance program has been approved or accepted by any Government agency; and whether the contractor has an indemnification agreement covering similar risks under any other Government program, and, if so, a brief description of any limitations.

(vi) If the contractor is a division or subsidiary of a parent corporation—

(A) A statement of any insurance coverage of the parent corporation that bears on the risks for which the contractor seeks indemnification; and

(B) A description of the precise legal relationship between parent and subsidiary or division.

(2) If the dollar value of the contractor’s insurance coverage varies by 10 percent or more from that stated in an indemnification request submitted in accordance with paragraph (a)(1) of this subsection, or if other significant changes



**51.000 Scope of part.**

This part prescribes policies and procedures for the use by contractors of Government supply sources and interagency fleet management system (IFMS) vehicles and related services.

### **Subpart 51.1—Contractor Use of Government Supply Sources**

**51.100 Scope of subpart.**

This subpart prescribes policies and procedures for the use of Government supply sources (see [51.102\(c\)](#)) by contractors. In this subpart, the terms “contractors” and “contracts” include “subcontractors” and “subcontracts.”

**51.101 Policy.**

(a) If it is in the Government’s interest, and if supplies or services required in the performance of a Government contract are available from Government supply sources, contracting officers may authorize contractors to use these sources in performing—

- (1) Government cost-reimbursement contracts;
- (2) Other types of negotiated contracts when the agency determines that a substantial dollar portion of the contractor’s contracts are of a Government cost-reimbursement nature; or
- (3) A contract under [41 U.S.C. chapter 85](#), Committee for Purchase from People Who Are Blind or Severely Disabled, if—

(i) The nonprofit agency requesting use of the supplies and services is providing a commodity or service to the Federal Government; and

(ii) The supplies or services received are directly used in making or providing a commodity or service, approved by the Committee for Purchase From People Who Are Blind or Severely Disabled, to the Federal Government (see [Subpart 8.7](#)).

(b) Contractors with fixed-price Government contracts that require protection of security classified information may acquire security equipment through GSA sources (see 41 CFR 101-26.507).

(c) Contracting officers shall authorize contractors purchasing supply items for Government use that are available from the Committee for Purchase from People Who Are Blind or Severely Disabled (see [Subpart 8.7](#)) to purchase such items from the Defense Logistics Agency (DLA), the General Services Administration (GSA), and the Department of Veterans Affairs (VA) if they are available from these agencies through their distribution facilities. Mandatory supplies that are not available from DLA/GSA/VA shall be ordered through the appropriate central nonprofit agency (see [52.208-9\(c\)](#)).

**51.102 Authorization to use Government supply sources.**

(a) Before issuing an authorization to a contractor to use Government supply sources in accordance with [51.101\(a\)](#) or

(b), the contracting officer shall place in the contract file a written finding supporting issuance of the authorization. A written finding is not required when authorizing use of Government supply sources in accordance with [51.101\(c\)](#). Except for findings under [51.101\(a\)\(3\)](#), the determination shall be based on, but not limited to, considerations of the following factors:

- (1) The administrative cost of placing orders with Government supply sources and the program impact of delay factors, if any.
- (2) The lower cost of items available through Government supply sources.
- (3) Suitability of items available through Government supply sources.
- (4) Delivery factors such as cost and time.
- (5) Recommendations of the contractor.

(b) Authorizations to subcontractors shall be issued through, and with the approval of, the contractor.

(c) Upon deciding to authorize a contractor to use Government supply sources, the contracting officer shall request, in writing, as applicable—

(1) A FEDSTRIP activity address code, through the agency’s central contact point for matters involving activity address codes, from the:

General Services Administration  
FXS  
Washington DC 20406

(2) A MILSTRIP activity address code from the appropriate Department of Defense (DoD) service point listed in Section 1 of the Introduction to the DoD Activity Address Directory;

(3) Approval for the contractor to use Department of Veterans Affairs (VA) supply sources from the:

Deputy Assistant Secretary for Acquisition and Materiel Management (Code 90)  
Office of Acquisition and Materiel Management  
Department of Veterans Affairs  
810 Vermont Avenue NW  
Washington DC 20420

(4) Approval for the contractor to acquire helium from the:

Department of the Interior  
Bureau of Land Management  
Helium Field Operations  
801 S. Fillmore Street  
Amarillo TX 79101-3545

or

(5) Approval from the appropriate agency for the contractor to use a Government supply source other than those identified in paragraphs (c)(1) through (c)(4) of this section.

(d) Each request made under paragraph (c) of this section shall contain—

(1) The complete address(es) to which the contractor's mail, freight, and billing documents are to be directed;

(2) A copy of the contracting officer's letter of authorization to the contractor;

(3) The prime contract number(s); and

(4) The effective date and duration of each contract.

(e) In each authorization to the contractor, the contracting officer—

(1) Shall cite the contract number(s) involved;

(2) Shall, when practicable, limit the period of the authorization;

(3) Shall specify, as appropriate, that—

(i) When requisitioning from GSA or DoD, the contractor shall use FEDSTRIP or MILSTRIP, as appropriate, and include the activity address code assigned by GSA or DoD;

(ii) When requisitioning from the VA, the contractor should use FEDSTRIP or MILSTRIP, as appropriate, [Optional Form 347](#), Order for Supplies or Services (see 53.302-347), or an agency-approved form; and

(iii) When placing orders for helium with the Bureau of Land Management, the contractor shall reference the Federal contract number on the purchase order;

(4) May include any other limitations or conditions deemed necessary. For example, the contracting officer may—

(i) Authorize purchases from Government supply sources of any overhead supplies, but no production supplies;

(ii) Limit any authorization requirement to use Government sources to a specific dollar amount, thereby leaving the contractor free to make smaller purchases from other sources if so desired;

(iii) Restrict the authorization to certain facilities or to specific contracts; or

(iv) Provide specifically if vesting of title is to differ from other property acquired or otherwise furnished by the contractor for use under the contract; and

(5) Shall instruct the contractor to comply with the applicable policies and procedures prescribed in this subpart.

(f) After issuing the authorization, the authorizing agency shall be responsible for—

(1) Ensuring that contractors comply with the terms of their authorizations and that supplies and services obtained from Government supply sources are properly accounted for and properly used;

(2) Any indebtedness incurred for supplies or services and not satisfied by the contractor; and

(3) Submitting, in writing, to the appropriate Government sources, address changes of the contractor and deletions when contracts are completed or terminated.

### 51.103 Ordering from Government supply sources.

(a) Contractors placing orders under Federal Supply Schedules shall follow the terms of the applicable schedule and authorization and include with each order—

(1) A copy of the authorization (unless a copy was previously furnished to the Federal Supply Schedule contractor); and

(2) The following statement: This order is placed under written authorization from \_\_\_\_\_ dated \_\_\_\_\_. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

(b) Contractors placing orders for Government stock shall—

(1) Comply with the requirements of the contracting officer's authorization, using FEDSTRIP or MILSTRIP procedures, as appropriate;

(2) Use only the Government activity address code obtained by the contracting officer in accordance with [51.102\(e\)](#) along with the contractor's assigned access code, when ordering from GSA Customer Supply Centers.

(3) Order only those items required in the performance of their contracts.

### 51.104 Furnishing assistance to contractors.

After receiving an activity address code, the contracting officer will notify the appropriate GSA regional office or military activity, which will contact the contractor and—

(a) Provide initial copies of ordering information and instructions; and

(b) When necessary, assist the contractor in preparing and submitting, as appropriate—

(1) The initial FEDSTRIP or MILSTRIP requisitions, the [Optional Form 347](#), or the agency-approved forms;

(2) A completed GSA Form 457, FSS Publications Mailing List Application, so that the contractor will automatically receive current copies of required publications; or

(3) A completed GSA Form 3525, Application for Customer Supply Center Services and (Address Change).

### 51.105 Payment for shipments.

GSA, DoD, and VA will not forward bills to contractors for supplies ordered from Government stock until after the supplies have been shipped. Receipt of billing is sufficient evidence to establish contractor liability and to provide a basis for payment. Contracting officers should direct their contractors to make payment promptly upon receipt of billings.

### 51.106 Title.

(a) Title to all property acquired by the contractor under the contracting officer's authorization shall vest in the parties as provided in the contract, unless specifically provided for otherwise.

52.215-20	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.	52.217-4	Evaluation of Options Exercised at Time of Contract Award.
52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.	52.217-5	Evaluation of Options.
52.215-22	Limitations on Pass-Through Charges—Identification of Subcontract Effort.	52.217-6	Option for Increased Quantity.
52.215-23	Limitations on Pass-Through Charges.	52.217-7	Option for Increased Quantity—Separately Priced Line Item.
52.216-1	Type of Contract.	52.217-8	Option to Extend Services.
52.216-2	Economic Price Adjustment—Standard Supplies.	52.217-9	Option to Extend the Term of the Contract.
52.216-3	Economic Price Adjustment—Semistandard Supplies.	52.218	[Reserved]
52.216-4	Economic Price Adjustment—Labor and Material.	52.219-1	Small Business Program Representations.
52.216-5	Price Redetermination—Prospective.	52.219-2	Equal Low Bids.
52.216-6	Price Redetermination—Retroactive.	52.219-3	Notice of HUBZone Set-Aside or Sole Source Award.
52.216-7	Allowable Cost and Payment.	52.219-4	Notice of Price Evaluation Preference for HUBZone Small Business Concerns.
52.216-8	Fixed Fee.	52.219-5	[Reserved]
52.216-9	Fixed Fee—Construction.	52.219-6	Notice of Total Small Business Set-Aside.
52.216-10	Incentive Fee.	52.219-7	Notice of Partial Small Business Set-Aside.
52.216-11	Cost Contract—No Fee.	52.219-8	Utilization of Small Business Concerns.
52.216-12	Cost-Sharing Contract—No Fee.	52.219-9	Small Business Subcontracting Plan.
52.216-13	[Reserved]	52.219-10	Incentive Subcontracting Program.
52.216-14	[Reserved]	52.219-11	Special 8(a) Contract Conditions.
52.216-15	Predetermined Indirect Cost Rates.	52.219-12	Special 8(a) Subcontract Conditions.
52.216-16	Incentive Price Revision—Firm Target.	52.219-13	Notice of Set-Aside of Orders.
52.216-17	Incentive Price Revision—Successive Targets.	52.219-14	Limitations on Subcontracting.
52.216-18	Ordering.	52.219-15	[Reserved]
52.216-19	Order Limitations.	52.219-16	Liquidated Damages—Subcontracting Plan.
52.216-20	Definite Quantity.	52.219-17	Section 8(a) Award.
52.216-21	Requirements.	52.219-18	Notification of Competition Limited to Eligible 8(a) Concerns.
52.216-22	Indefinite Quantity.	52.219-19	[Reserved]
52.216-23	Execution and Commencement of Work.	52.219-20	[Reserved]
52.216-24	Limitation of Government Liability.	52.219-21	[Reserved]
52.216-25	Contract Definitization.	52.219-22	Small Disadvantaged Business Status.
52.216-26	Payments of Allowable Costs Before Definitization.	52.219-23	Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.
52.216-27	Single or Multiple Awards.	52.219-24	Small Disadvantaged Business Participation Program—Targets.
52.216-28	Multiple Awards for Advisory and Assistance Services.	52.219-25	Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.
52.216-29	Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition With Adequate Price Competition.	52.219-26	Small Disadvantaged Business Participation Program—Incentive Subcontracting.
52.216-30	Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition Without Adequate Price Competition.	52.219-27	Notice of Service-Disabled Veteran-Owned Small Business Set-Aside.
52.216-31	Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition.	52.219-28	Post-Award Small Business Program Rerepresentation.
52.217-1	[Reserved]	52.219-29	Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns.
52.217-2	Cancellation Under Multi-year Contracts.	52.219-30	Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.
52.217-3	Evaluation Exclusive of Options.	52.220	[Reserved]

- 52.221 [Reserved]
- 52.222-1 Notice to the Government of Labor Disputes.
- 52.222-2 Payment for Overtime Premiums.
- 52.222-3 Convict Labor.
- 52.222-4 Contract Work Hours and Safety Standards — Overtime Compensation.
- 52.222-5 Construction Wage Rate Requirements— Secondary Site of the Work.
- 52.222-6 Construction Wage Rate Requirements.
- 52.222-7 Withholding of Funds.
- 52.222-8 Payrolls and Basic Records.
- 52.222-9 Apprentices and Trainees.
- 52.222-10 Compliance with Copeland Act Requirements.
- 52.222-11 Subcontracts (Labor Standards).
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- 52.300 Scope of subpart.
  - 52.301 Solicitation provisions and contract clauses (Matrix).

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## Subpart 52.2—Text of Provisions and Clauses

### 52.200 Scope of subpart.

This subpart sets forth the text of all FAR provisions and clauses (see [52.101\(b\)\(1\)](#)) and gives a cross-reference to the location in the FAR that prescribes the provision or clause.

### 52.201 [Reserved]

#### 52.202-1 Definitions.

As prescribed in [2.201](#), insert the following clause:

#### DEFINITIONS (NOV 2013)

When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR [2.101](#) in effect at the time the solicitation was issued, unless—

- (a) The solicitation, or amended solicitation, provides a different definition;
- (b) The contracting parties agree to a different definition;
- (c) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
- (d) The word or term is defined in FAR [Part 31](#), for use in the cost principles and procedures.

(End of clause)

### 52.203-1 [Reserved]

#### 52.203-2 Certificate of Independent Price Determination.

As prescribed in [3.103-1](#), insert the following provision. If the solicitation is a Request for Quotations, the terms “Quotation” and “Quoter” may be substituted for “Offer” and “Offeror.”

#### CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)

- (a) The offeror certifies that—
  - (1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to—
    - (i) Those prices;
    - (ii) The intention to submit an offer; or
    - (iii) The methods or factors used to calculate the prices offered.
  - (2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case

of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory—

(1) Is the person in the offeror’s organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or

(2)(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision \_\_\_\_\_ [insert full name of person(s) in the offeror’s organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror’s organization];

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision.

(c) If the offeror deletes or modifies paragraph (a)(2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(End of provision)

#### 52.203-3 Gratuities.

As prescribed in [3.202](#), insert the following clause:

#### GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative—

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled—

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This paragraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

**52.203-4 [Reserved]**

**52.203-5 Covenant Against Contingent Fees.**

As prescribed in [3.404](#), insert the following clause:

COVENANT AGAINST CONTINGENT FEES (MAY 2014)

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) “Bona fide agency,” as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

“Bona fide employee,” as used in this clause, means a person, employed by a contractor and subject to the contractor’s supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

“Contingent fee,” as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

“Improper influence,” as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding

a Government contract on any basis other than the merits of the matter.

(End of clause)

**52.203-6 Restrictions on Subcontractor Sales to the Government.**

As prescribed in [3.503-2](#), insert the following clause:

RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEPT 2006)

(a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold.

(END OF CLAUSE)

*Alternate I (Oct 1995).* As prescribed in [3.503-2](#), substitute the following paragraph in place of paragraph (b) of the basic clause:

(b) The prohibition in paragraph (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial items, the prohibition in paragraph (a) applies only to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial item(s).

**52.203-7 Anti-Kickback Procedures.**

As prescribed in [3.502-3](#), insert the following clause:

ANTI-KICKBACK PROCEDURES (MAY 2014)

(a) *Definitions.*

“Kickback,” as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

“Person,” as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

“Prime contract,” as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

“Prime Contractor” as used in this clause, means a person who has entered into a prime contract with the United States.

“Prime Contractor employee,” as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

“Subcontract,” as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

“Subcontractor,” as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

“Subcontractor employee,” as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) [41 U.S.C. chapter 87](#), Kickbacks, prohibits any person from—

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Con-

tractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including paragraph (c)(5) but excepting paragraph (c)(1), in all subcontracts under this contract which exceed \$150,000.

(End of clause)

**52.203-8 Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity.**

As prescribed in [3.104-9\(a\)](#), insert the following clause:

CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)

(a) If the Government receives information that a contractor or a person has violated [41 U.S.C. 2102-2104](#), Restrictions on Obtaining and Disclosing Certain Information, the Government may—

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which—

(i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct violates [41 U.S.C. 2102](#) for the purpose of either—

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct punishable under [41 U.S.C. 2105\(a\)](#).

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

(End of clause)

**52.203-9 [Reserved]**

**52.203-10 Price or Fee Adjustment for Illegal or Improper Activity.**

As prescribed in [3.104-9](#)(b), insert the following clause:

PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER  
ACTIVITY (MAY 2014)

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of [41 U.S.C. 2102](#) or 2103, as implemented in section [3.104](#) of the Federal Acquisition Regulation.

(b) The price or fee reduction referred to in paragraph (a) of this clause shall be—

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or “fee floor” specified in the contract;

(3) For cost-plus-award-fee contracts—

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may—

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(c) The Government may, at its election, reduce a prime contractor’s price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the statute by its subcontractors by an amount not to exceed the amount of

profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

**52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.**

As prescribed in [3.808](#)(a), insert the following provision:

CERTIFICATION AND DISCLOSURE REGARDING  
PAYMENTS TO INFLUENCE CERTAIN FEDERAL  
TRANSACTIONS (SEPT 2007)

(a) *Definitions.* As used in this provision—“Lobbying contact” has the meaning provided at [2 U.S.C. 1602\(8\)](#). The terms “agency,” “influencing or attempting to influence,” “officer or employee of an agency,” “person,” “reasonable compensation,” and “regularly employed” are defined in the FAR clause of this solicitation entitled “Limitation on Payments to Influence Certain Federal Transactions” ([52.203-12](#)).

(b) *Prohibition.* The prohibition and exceptions contained in the FAR clause of this solicitation entitled “Limitation on Payments to Influence Certain Federal Transactions” ([52.203-12](#)) are hereby incorporated by reference in this provision.

(c) *Certification.* The offeror, by signing its offer, hereby certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on its behalf in connection with the awarding of this contract.

(d) *Disclosure.* If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(e) *Penalty.* Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by [31 U.S.C. 1352](#). Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure required to be filed or amended by this

commerce methods to submit information or data to the Government.

(End of clause)

#### **52.204-5 Women-Owned Business (Other Than Small Business).**

As prescribed in [4.607\(a\)](#), insert the following provision:

##### WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (MAY 1999)

(a) *Definition.* “Women-owned business concern,” as used in this provision, means a concern 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 its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) *Representation.* [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (b)(1) of FAR [52.219-1](#), *Small Business Program Representations, of this solicitation.*] The offeror represents that it  is a women-owned business concern.

(End of provision)

#### **52.204-6 Data Universal Numbering System Number.**

As prescribed in [4.607\(b\)](#), insert the following provision:

##### DATA UNIVERSAL NUMBERING SYSTEM NUMBER (JUL 2013)

(a) *Definition.* “Data Universal Numbering System (DUNS) number”, as used in this provision, means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities, which is used as the identification number for Federal Contractors.

(b) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS+4” followed by the DUNS number or “DUNS+4” that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet, Inc. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional System for Award Management records for identifying alternative Electronic Funds Transfer (EFT) accounts (see [subpart 32.11](#)) for the same concern.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) Via the Internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business name.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company physical street address, city, state and ZIP Code.

(iv) Company mailing address, city, state and ZIP Code (if separate from physical).

(v) Company telephone number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(End of provision)

#### **52.204-7 System for Award Management.**

As prescribed in [4.1105\(a\)\(1\)](#), use the following provision:

##### SYSTEM FOR AWARD MANAGEMENT (JUL 2013)

(a) Definitions. As used in this provision—

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

“Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional System for Award Management records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at [subpart 32.11](#)) for the same concern.

“Registered in the System for Award Management (SAM) database” means that—

(1) The offeror has entered all mandatory information, including the DUNS number or the DUNS+4 number, the Contractor and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see [subpart 4.14](#)) into the SAM database;

(2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in the SAM database;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification

Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record “Active”.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS +4” followed by the DUNS or DUNS +4 number that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number will be used by the Contracting Officer to verify that the offeror is registered in the SAM database.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

(i) Via the Internet at <http://fedgov.dnb.com/webform> or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company Physical Street Address, City, State, and ZIP Code.

(iv) Company Mailing Address, City, State and ZIP Code (if separate from physical).

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(d) If the Offeror does not become registered in the SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.

(e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.

(f) Offerors may obtain information on registration at <https://www.acquisition.gov>.

(End of clause)

*Alternate I (Jul 2013).* As prescribed in [4.1105\(a\)\(2\)](#), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the System for Award Management prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation. If registration prior to award is not possible, the awardee shall be registered in the System for Award Management within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first.

**52.204-8 Annual Representations and Certifications.**

As prescribed in [4.1202](#), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS (MAY 2014)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is \_\_\_\_\_  
[insert NAICS code].

(2) The small business size standard is \_\_\_\_\_  
[insert size standard].

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b)(1) If the provision at [52.204-7](#), System for Award Management, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the provision at [52.204-7](#) is not included in this solicitation, and the offeror is currently registered in the System for Award Management (SAM), and has completed the Representations and Certifications section of SAM electronically, the offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The offeror shall indicate which option applies by checking one of the following boxes:

(i) Paragraph (d) applies.

(ii) Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c)(1) The following representations or certifications in SAM are applicable to this solicitation as indicated:

(i) [52.203-2](#), Certificate of Independent Price Determination. This provision applies to solicitations when a firm-



fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(A) The acquisition is to be made under the simplified acquisition procedures in [Part 13](#);

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$150,000.

(iii) [52.204-3](#), Taxpayer Identification. This provision applies to solicitations that do not include the provision at [52.204-7](#), System for Award Management.

(iv) [52.204-5](#), Women-Owned Business (Other Than Small Business). This provision applies to solicitations that—

(A) Are not set aside for small business concerns;

(B) Exceed the simplified acquisition threshold;

and

(C) Are for contracts that will be performed in the United States or its outlying areas.

(v) [52.209-2](#), Prohibition on Contracting with Inverted Domestic Corporations—Representation. This provision applies to solicitations using funds appropriated in fiscal years 2008, 2009, 2010, or 2012.

(vi) [52.209-5](#), Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(vii) [52.214-14](#), Place of Performance—Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(viii) [52.215-6](#), Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(ix) [52.219-1](#), Small Business Program Representations (Basic & Alternate I). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(x) [52.219-2](#), Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.

(xi) [52.222-22](#), Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at [52.222-26](#), Equal Opportunity.

(xii) [52.222-25](#), Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at [52.222-26](#), Equal Opportunity.

(xiii) [52.222-38](#), Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

(xiv) [52.223-1](#), Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA–designated items; or include the clause at [52.223-2](#), Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

(xv) [52.223-4](#), Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA–designated items.

(xvi) [52.225-2](#), Buy American Certificate. This provision applies to solicitations containing the clause at [52.225-1](#).

(xvii) [52.225-4](#), Buy American—Free Trade Agreements—Israeli Trade Act Certificate. (Basic, Alternates I, II, and III.) This provision applies to solicitations containing the clause at [52.225-3](#).

(A) If the acquisition value is less than \$25,000, the basic provision applies.

(B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.

(C) If the acquisition value is \$50,000 or more but is less than \$79,507, the provision with its Alternate II applies.

(D) If the acquisition value is \$79,507 or more but is less than \$100,000, the provision with its Alternate III applies.

(xviii) [52.225-6](#), Trade Agreements Certificate. This provision applies to solicitations containing the clause at [52.225-5](#).

(xix) [52.225-20](#), Prohibition on Conducting Restricted Business Operations in Sudan—Certification. This provision applies to all solicitations.

(xx) [52.225-25](#), Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-Representation and Certifications. This provision applies to all solicitations.

(xxi) [52.226-2](#), Historically Black College or University and Minority Institution Representation. This provision applies to—

(A) Solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions; and

(B) For DoD, NASA, and Coast Guard acquisitions, solicitations that contain the clause at [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

(2) The following certifications are applicable as indicated by the Contracting Officer:

[Contracting Officer check as appropriate.]

\_\_ (i) [52.219-22](#), Small Disadvantaged Business Status.

- \_\_ (A) Basic.
- \_\_ (B) Alternate I.

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

\_\_ (iii) [52.222-48](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment- Certification.

\_\_ (iv) [52.222-52](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Certification.

\_\_ (v) [52.223-9](#), with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (Alternate I only).

\_\_ (vi) [52.227-6](#), Royalty Information.

- \_\_ (A) Basic.
- \_\_ (B) Alternate I.

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

(d) The offeror has completed the annual representations and certifications electronically via the SAM website accessed through <https://www.acquisition.gov>. After reviewing the SAM database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within 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 the changes identified below [offeror to insert changes, identifying change by clause number, title, date]. 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.

FAR CLAUSE #	TITLE	DATE	CHANGE
_____	_____	_____	_____

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 SAM.

(End of provision)

**52.204-9 Personal Identity Verification of Contractor Personnel.**

As prescribed in [4.1303](#), insert the following clause:

PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)

(a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

(b) The Contractor shall account for all forms of Government-provided identification issued to the Contractor employees in connection with performance under this contract. The Contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government:

- (1) When no longer needed for contract performance.
- (2) Upon completion of the Contractor employee's employment.
- (3) Upon contract completion or termination.

(c) The Contracting Officer may delay final payment under a contract if the Contractor fails to comply with these requirements.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts when the subcontractor's employees are required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. It shall be the responsibility of the prime Contractor to return such identification to the issuing agency in accordance with the terms set forth in paragraph (b) of this section, unless otherwise approved in writing by the Contracting Officer.

(End of clause)

**52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards.**

As prescribed in [4.1403](#)(a), insert the following clause:

REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUL 2013)

(a) *Definitions.* As used in this clause:

“Executive” means officers, managing partners, or any other employees in management positions.

“First-tier subcontract” means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.

“Months of award” means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier subcontract is signed by the Contractor.

(d) The accumulated purchase option credits available to determine the purchase conversion cost will also include any credits accrued during a period of lease or rental of the equipment under any previous Government contract if the equipment has been on continuous lease or rental. The movement of equipment from one site to another site shall be “continuous rental.”

**52.208-1 [Reserved]**

**52.208-2 [Reserved]**

**52.208-3 [Reserved]**

**52.208-4 Vehicle Lease Payments.**

As prescribed in [8.1104\(a\)](#), insert the following clause in solicitations and contracts for leasing motor vehicles, unless the motor vehicles are leased in foreign countries:

VEHICLE LEASE PAYMENTS (APR 1984)

(a) Upon the submission of proper invoices or vouchers, the Government shall pay rent for each vehicle at the rate(s) specified in this contract.

(b) Rent shall accrue from the beginning of this contract, or from the date each vehicle is delivered to the Government, whichever is later, and shall continue until the expiration of the contract term or the termination of this contract. However, rent shall accrue only for the period that each vehicle is in the possession of the Government.

(c) Rent shall not accrue for any vehicle that the Contracting Officer determines does not comply with the Condition of Leased Vehicles clause of this contract or otherwise does not comply with the requirements of this contract, until the vehicle is replaced or the defects are corrected.

(d) Rent shall not accrue for any vehicle during any period when the vehicle is unavailable or unusable as a result of the Contractor’s failure to render services for the operation and maintenance of the vehicle as prescribed by this contract.

(e) Rent stated in monthly terms shall be prorated on the basis of 1/30th of the monthly rate for each day the vehicle is in the Government’s possession. If this contract contains a mileage provision, the Government shall pay rent as provided in the Schedule.

(End of clause)

**52.208-5 Condition of Leased Vehicles.**

As prescribed in [8.1104\(b\)](#), insert the following clause in solicitations and contracts for leasing motor vehicles, unless the motor vehicles are leased in foreign countries:

CONDITION OF LEASED VEHICLES (APR 1984)

Each vehicle furnished under this contract shall be of good quality and in safe operating condition, and shall comply with

the Federal Motor Vehicle Safety Standards (49 CFR 571) and State safety regulations applicable to the vehicle. The Government shall accept or reject the vehicles promptly after receipt. If the Contracting Officer determines that any vehicle furnished is not in compliance with this contract, the Contracting Officer shall promptly inform the Contractor in writing. If the Contractor fails to replace the vehicle or correct the defects as required by the Contracting Officer, the Government may—

(a) By contract or otherwise, correct the defect or arrange for the lease of a similar vehicle and shall charge or set off against the Contractor any excess costs occasioned thereby; or

(b) Terminate the contract under the Default clause of this contract.

(End of clause)

**52.208-6 Marking of Leased Vehicles.**

As prescribed in [8.1104\(c\)](#), insert the following clause in solicitations and contracts for leasing motor vehicles, unless the motor vehicles are leased in foreign countries:

MARKING OF LEASED VEHICLES (APR 1984)

(a) The Government may place nonpermanent markings or decals, identifying the using agency, on each side, and on the front and rear bumpers, of any motor vehicle leased under this contract. The Government shall use markings or decals that are removable without damage to the vehicle.

(b) The Contractor may use placards for temporary identification of vehicles except that the placards may not contain any references to the Contractor that may be construed as advertising or endorsement by the Government of the Contractor.

(End of clause)

**52.208-7 Tagging of Leased Vehicles.**

As prescribed in [8.1104\(d\)](#), insert a clause substantially as follows:

TAGGING OF LEASED VEHICLES (MAY 1986)

While it is the intent that vehicles leased under this contract will operate on Federal tags, the Government reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the Contractor shall furnish the Government documentation necessary to allow acquisition of such tags. Federal tags are the responsibility of the Government.

(End of clause)

**52.208-8 Required Sources for Helium and Helium Usage Data.**

As prescribed in [8.505](#), insert the following clause:

REQUIRED SOURCES FOR HELIUM AND HELIUM USAGE DATA (APR 2014)

(a) *Definitions.*

“Bureau of Land Management,” as used in this clause, means the Department of the Interior, Bureau of Land Management, Amarillo Field Office, Helium Operations, located at 801 South Fillmore Street, Suite 500, Amarillo, TX 79101-3545.

“Federal helium supplier” means a private helium vendor that has an in-kind crude helium sales contract with the Bureau of Land Management (BLM) and that is on the BLM Amarillo Field Office’s Authorized List of Federal Helium Suppliers available via the Internet at [http://www.blm.gov/nm/st/en/fo/Amarillo\\_Field\\_Office.html](http://www.blm.gov/nm/st/en/fo/Amarillo_Field_Office.html).

“Major helium requirement” means an estimated refined helium requirement greater than 200,000 standard cubic feet (scf) (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature) of gaseous helium or 7510 liters of liquid helium delivered to a helium use location per year.

(b) *Requirements*—(1) Contractors must purchase major helium requirements from Federal helium suppliers, to the extent that supplies are available.

(2) The Contractor shall provide to the Contracting Officer the following data within 10 days after the Contractor or subcontractor receives a delivery of helium from a Federal helium supplier—

- (i) The name of the supplier;
- (ii) The amount of helium purchased;
- (iii) The delivery date(s); and
- (iv) The location where the helium was used.

(c) *Subcontracts.* The Contractor shall insert this clause, including this paragraph (c), in any subcontract or order that involves a major helium requirement.

(End of clause)

**52.208-9 Contractor Use of Mandatory Sources of Supply or Services.**

As prescribed in [8.005](#), insert the following clause:

CONTRACTOR USE OF MANDATORY SOURCES OF SUPPLY OR SERVICES (MAY 2014)

(a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from nonprofit agencies participating in the program operated by the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under [41 U.S.C. 8504](#). Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies or services to be provided for Government use

under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies or services by the time required, or if the quality of supplies or services provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies or services from other sources until the Contracting Officer has notified the Contractor that the Committee or an Ability-One central nonprofit agency has authorized purchase from other sources.

(c) Price and delivery information for the mandatory supplies is available from the Contracting Officer for the supplies obtained through the DLA/GSA/VA distribution facilities. For mandatory supplies or services that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. Payments shall be made directly to the source making delivery. Points of contact for AbilityOne central nonprofit agencies are:

- (1) National Industries for the Blind  
1310 Braddock Place  
Alexandria, VA 22314-1691  
(703) 310-0500; and
- (2) NISH  
8401 Old Courthouse Road  
Vienna, VA 22182  
(571) 226-4660.

(End of clause)

**52.209-1 Qualification Requirements.**

As prescribed in [9.206-2](#), insert the following clause:

QUALIFICATION REQUIREMENTS (FEB 1995)

(a) *Definition.* “Qualification requirement,” as used in this clause, means a Government requirement for testing or other quality assurance demonstration that must be completed before award.

(b) One or more qualification requirements apply to the supplies or services covered by this contract. For those supplies or services requiring qualification, whether the covered product or service is an end item under this contract or simply a component of an end item, the product, manufacturer, or source must have demonstrated that it meets the standards prescribed for qualification before award of this contract. The product, manufacturer, or source must be qualified at the time of award whether or not the name of the product, manufacturer, or source is actually included on a qualified products list, qualified manufacturers list, or qualified bidders list. Offerors should contact the agency activity designated below to obtain all requirements that they or their products or services, or their subcontractors or their products or services, must satisfy to become qualified and to arrange for an opportunity to

(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:

\_\_\_\_\_

\_\_\_\_\_

*[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 (MAY 2014)

An offeror shall complete only paragraph (b) of this provision if the offeror has completed the annual representations and certifications electronically via <http://www.acquisition.gov>. If an offeror has not completed the annual representations and certifications electronically at the System for Award Management (SAM) website, the offeror shall complete only paragraphs (c) through (o) of this provision.

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

“Economically disadvantaged women-owned small business (EDWOSB) concern” means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business eligible under the WOSB Program.

“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”, 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\(c\)](#). An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at [26 U.S.C. 7874](#).

“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 (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) 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.

“Sensitive technology”—

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—

- (i) To restrict the free flow of unbiased information in Iran; or
  - (ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and
- (2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act ([50 U.S.C. 1702\(b\)\(3\)](#)).

“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.

“Subsidiary” means an entity in which more than 50 percent of the entity is owned—

- (1) Directly by a parent corporation; or
- (2) Through another subsidiary of a parent corporation.

“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 man-

to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) *Buy American Certificate.* (Applies only if the clause at Federal Acquisition Regulation (FAR) [52.225-1](#), Buy American—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.” The terms “commercially available off-the-shelf (COTS) item” “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American—Supplies.”

(2) Foreign End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR [Part 25](#).

(g)(1) *Buy American—Free Trade Agreements—Israeli Trade Act Certificate.* (Applies only if the clause at FAR [52.225-3](#), Buy American—Free Trade Agreements—Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product,” “commercially avail-

able off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act.”

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”:

Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act.” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.”

Other Foreign End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR [Part 25](#).

(2) *Buy American—Free Trade Agreements—Israeli Trade Act Certificate, Alternate I.* If Alternate I to the clause at FAR [52.225-3](#) is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”:

Canadian End Products:

**Line Item No.**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

[List as necessary]

(3) *Buy American—Free Trade Agreements—Israeli Trade Act Certificate, Alternate II.* If Alternate II to the clause at FAR [52.225-3](#) is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”:

Canadian or Israeli End Products:

**Line Item No. Country of Origin**

_____	_____
_____	_____
_____	_____

[List as necessary]

(4) *Buy American—Free Trade Agreements—Israeli Trade Act Certificate, Alternate III.* If Alternate III to the clause at [52.225-3](#) is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American-Free Trade Agreements-Israeli Trade Act”:

Free Trade Agreement Country End Products (Other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

**Line Item No. Country of Origin**

_____	_____
_____	_____
_____	_____

[List as necessary]

(5) *Trade Agreements Certificate.* (Applies only if the clause at FAR [52.225-5](#), Trade Agreements, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(5)(ii) of this provision, is a U.S.-

made or designated country end product, as defined in the clause of this solicitation entitled “Trade Agreements.”

(ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products.

Other End Products:

**Line Item No. Country of Origin**

_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR [Part 25](#). For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American statute. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) *Certification Regarding Responsibility Matters (Executive Order 12689).* (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals—

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

(2)  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 Federal, state or local government contract or subcontract; 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;

(3)  Are,  are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

(4)  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.

(i) Taxes are considered delinquent if both of the following criteria apply:

(A) *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.

(B) *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.

(ii) *Examples.* (A) 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.

(B) 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 taxpayer 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.

(C) 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.

(D) 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).

(i) Certification Regarding Knowledge of Child Labor for *Listed End Products (Executive Order 13126)*. [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]

(1) *Listed end products.*

Listed End Product	Listed Countries of Origin
_____	_____
_____	_____

(2) *Certification.* [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

[ ] (i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

[ ] (ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(j) *Place of manufacture.* (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—

(1)  In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2)  Outside the United States.

(k) *Certificates regarding exemptions from the application of the Service Contract Labor Standards*(Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.) [The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.]

[ ] (1) Maintenance, calibration, or repair of certain equipment as described in FAR 22.1003-4(c)(1). The offeror  does  does not certify that—

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR 22.1003-4(c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and

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

[ ] (2) Certain services as described in FAR 22.1003-4(d)(1). The offeror  does  does not certify that—

(i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(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 Labor Standards 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.

(1) *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 the SAM 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 the offeror does not conduct any restricted business operations in Sudan.

(n) *Prohibition on Contracting with Inverted Domestic Corporations*. (1) *Relation to Internal Revenue Code*. An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code 25 U.S.C. 7874.

(2) *Representation*. By submission of its offer, the offeror represents that—

- (i) It is not an inverted domestic corporation; and
- (ii) It is not a subsidiary of an inverted domestic corporation.

(o) *Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran*. (1) The offeror shall e-mail questions concerning sensitive technology to the Department of State at [CISADA106@state.gov](mailto:CISADA106@state.gov).

(2) *Representation and Certifications*. Unless a waiver is granted or an exception applies as provided in paragraph (o)(3) of this provision, by submission of its offer, the offeror—

(i) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(ii) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act; and

(iii) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds \$3,000 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List at <http://www.treasury.gov/ofac/downloads/t11sdn.pdf>).

(3) The representation and certification requirements of paragraph (o)(2) of this provision do not apply if—

(i) This solicitation includes a trade agreements certification (e.g., [52.212-3\(g\)](#)) or a comparable agency provision); and

(ii) The offeror has certified that all the offered products to be supplied are designated country end products.

(End of provision)

*Alternate I (May 2014).* As prescribed in [12.301\(b\)\(2\)](#), add the following paragraph (c)(12) to the basic provision:

(12) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(4) or (c)(10) 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, 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 (Jan 2012).* As prescribed in [12.301\(b\)\(2\)](#), add the following paragraph (c)(10)(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.acquisition.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 (MAY 2014)

(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 [41 U.S.C. chapter 71](#), Contract Disputes. 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 occur-

rence 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.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., [52.232-33](#), Payment by Electronic Funds Transfer—System for Award Management, or [52.232-34](#), Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.*—(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act

([31 U.S.C. 3903](#)) and prompt payment regulations at 5 CFR Part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.* (i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by [33.211](#) if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see [32.607-2](#)).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in [32.608-2](#) of the Federal Acquisition Regulation in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of

future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with [31 U.S.C. 1352](#) relating to limitations on the use of appropriated funds to influence certain Federal contracts; [18 U.S.C. 431](#) relating to officials not to benefit; [40 U.S.C. chapter 37](#), Contract Work Hours and Safety Standards; [41 U.S.C. chapter 87](#), Kickbacks; [41 U.S.C. 4712](#) and [10 U.S.C. 2409](#) relating to whistleblower protections; [49 U.S.C. 40118](#), Fly American; and [41 U.S.C. chapter 21](#) relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;

(3) The clause at [52.212-5](#).

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The [Standard Form 1449](#).

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) *System for Award Management (SAM).* (1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the SAM database to ensure

it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)(i) If a Contractor has legally changed its business name, “doing business as” name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR [Subpart 42.12](#), the Contractor shall provide the responsible Contracting Officer a minimum of one business day’s written notification of its intention to (A) change the name in the SAM database; (B) comply with the requirements of [Subpart 42.12](#); and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the “Suspension of Payment” paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims (see [Subpart 32.8](#), Assignment of Claims). Assignees shall be separately registered in the SAM database. Information provided to the Contractor’s SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the “Suspension of payment” paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via SAM accessed through <https://www.acquisition.gov>.

(u) *Unauthorized Obligations* (1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar

legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(End of clause)

*Alternate I (MAY 2014).* When a time-and-materials or labor-hour contract is contemplated, substitute the following paragraphs (a), (e), (i), (l), and (m) for those in the basic clause.

(a) *Inspection/Acceptance.* (1) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government will perform inspections and tests in a manner that will not unduly delay the work.

(2) If the Government performs inspection or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(3) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(4) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction shall be determined under paragraph (i) of this clause, but the “hourly rate” for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the “hourly rate” attributable to profit shall be 10 percent. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken. [*Insert portion of labor rate attributable to profit.*]

(D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.

(iii) For material and subcontract costs that are reimbursed on the basis of actual cost—

(A) Any invoices or subcontract agreements substantiating material costs; and

(B) Any documents supporting payment of those invoices.

(5) *Overpayments/Underpayments.* Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. The Contractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government within 30 days will pay any such increases, unless the parties agree otherwise. The Contractor's payment will be made by check. If the Contractor becomes aware of a duplicate invoice payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6)(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury, as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six month period as established by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final Decisions.* The Contracting Officer will issue a final decision as required by [33.211](#) if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see FAR [32.607-2](#)).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in [32.608-2](#) of the Federal Acquisition Regulation in effect on the date of this contract.

(viii) Upon receipt and approval of the invoice designated by the Contractor as the “completion invoice” and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(7) *Release of claims.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions.

(i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.

(ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the

Government is prepared to make final payment, whichever is earlier.

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(8) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and prompt payment regulations at 5 CFR part 1315.

(9) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(10) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

**52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.**

As prescribed in [12.301\(b\)\(4\)](#), insert the following clause:

**CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (MAY 2014)**

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

Alternate I (AUG 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).

(2) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(3) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004)"(Public Laws 108-77 and 108-78 ([19 U.S.C. 3805 note](#))).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implementation provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

(1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (SEPT 2006), with Alternate I (OCT 1995) ([41 U.S.C. 4704](#) and [10 U.S.C. 2402](#)).

(2) [52.203-13](#), Contractor Code of Business Ethics and Conduct (APR 2010) ([41 U.S.C. 3509](#))).

(3) [52.203-15](#), Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (JUNE 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

(4) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2013) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).

(5) [52.204-11](#), American Recovery and Reinvestment Act—Reporting Requirements (JUL 2010) (Pub. L. 111-5).

(6) [52.204-14](#), Service Contract Reporting Requirements (JAN 2014) (PUB. L. 111-117, section 743 OF DIV. C).

(7) [52.204-15](#), Service Contract Reporting Requirements for Indefinite-Delivery Contracts (JAN 2014) (PUB. L. 111-117, section 743 OF DIV. C).

(8) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (AUG 2013) ([31 U.S.C. 6101 note](#)).

(9) [52.209-9](#), Updates of Publicly Available Information Regarding Responsibility Matters (JUL 2013) ([41 U.S.C. 2313](#)).

(10) [52.209-10](#), Prohibition on Contracting with Inverted Domestic Corporations (MAY 2012) (section 738 of Division C of Pub. L. 112-74, section 740 of Division C of



Pub. L. 111-117, section 743 of Division D of Pub. L. 111-8, and section 745 of Division D of Pub. L. 110-161).

— (11) [52.219-3](#), Notice of HUBZone Set-Aside or Sole-Source Award (NOV 2011) ([15 U.S.C. 657a](#)).

— (12) [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JAN 2011) (if the offeror elects to waive the preference, it shall so indicate in its offer) ([15 U.S.C. 657a](#)).

— (13) [Reserved]

— (14)(i) [52.219-6](#), Notice of Total Small Business Set-Aside (NOV 2011) ([15 U.S.C. 644](#)).

— (ii) Alternate I (NOV 2011).

— (iii) Alternate II (NOV 2011).

— (15)(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (JUNE 2003) ([15 U.S.C. 644](#)).

— (ii) Alternate I (OCT 1995) of [52.219-7](#).

— (iii) Alternate II (MAR 2004) of [52.219-7](#).

— (16) [52.219-8](#), Utilization of Small Business Concerns (MAY 2014) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).

— (17)(i) [52.219-9](#), Small Business Subcontracting Plan (JUL 2013) ([15 U.S.C. 637\(d\)\(4\)](#)).

— (ii) Alternate I (OCT 2001) of [52.219-9](#).

— (iii) Alternate II (OCT 2001) of [52.219-9](#).

— (iv) Alternate III (JUL 2010) of [52.219-9](#).

— (18) [52.219-13](#), Notice of Set-Aside of Orders (NOV 2011) ([15 U.S.C. 644\(r\)](#)).

— (19) [52.219-14](#), Limitations on Subcontracting (NOV 2011) ([15 U.S.C. 637\(a\)\(14\)](#)).

— (20) [52.219-16](#), Liquidated Damages—Subcontracting Plan (JAN 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(i\)](#)).

— (21)(i) [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) ([10 U.S.C. 2323](#)) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

— (ii) Alternate I (JUNE 2003) of [52.219-23](#).

— (22) [52.219-25](#), Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (JUL 2013) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

— (23) [52.219-26](#), Small Disadvantaged Business Participation Program—Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and [10 U.S.C. 2323](#)).

— (24) [52.219-27](#), Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (NOV 2011) ([15 U.S.C. 657 f](#)).

— (25) [52.219-28](#), Post Award Small Business Program Rerepresentation (JUL 2013) ([15 U.S.C. 632\(a\)\(2\)](#)).

— (26) [52.219-29](#), Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (JUL 2013) ([15 U.S.C. 637\(m\)](#)).

— (27) [52.219-30](#), Notice of Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the WOSB Program (JUL 2013) ([15 U.S.C. 637\(m\)](#)).

— (28) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).

— (29) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (JAN 2014) (E.O. 13126).

— (30) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999).

— (31) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

— (32) [52.222-35](#), Equal Opportunity for Veterans (SEP 2010) ([38 U.S.C. 4212](#)).

— (33) [52.222-36](#), Affirmative Action for Workers with Disabilities (OCT 2010) ([29 U.S.C. 793](#)).

— (34) [52.222-37](#), Employment Reports on Veterans (SEP 2010) ([38 U.S.C. 4212](#)).

— (35) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496).

— (36) [52.222-54](#), Employment Eligibility Verification (AUG 2013). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)

— (37)(i) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Items (MAY 2008) ([42 U.S.C. 6962\(c\)\(3\)\(A\)\(ii\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

— (ii) Alternate I (MAY 2008) of [52.223-9](#) ([42 U.S.C. 6962\(i\)\(2\)\(C\)](#)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

— (38) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)).

— (39)(i) [52.223-16](#), IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products (DEC 2007) (E.O. 13423).

— (ii) Alternate I (DEC 2007) of [52.223-16](#).

— (40) [52.223-18](#), Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011) (E.O. 13513).

— (41) [52.225-1](#), Buy American—Supplies (MAY 2014) ([41 U.S.C. chapter 83](#)).

— (42)(i) [52.225-3](#), Buy American—Free Trade Agreements—Israeli Trade Act (MAY 2014) ([41 U.S.C. chapter 83](#), [19 U.S.C. 3301](#) note, [19 U.S.C. 2112](#) note, [19 U.S.C. 3805](#) note, [19 U.S.C. 4001](#) note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).

— (ii) Alternate I (MAY 2014) of [52.225-3](#).

— (iii) Alternate II (MAY 2014) of [52.225-3](#).

— (iv) Alternate III (MAY 2014) of [52.225-3](#).

— (43) [52.225-5](#), Trade Agreements (NOV 2013) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

— (44) [52.225-13](#), Restrictions on Certain Foreign Purchases (JUNE 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

— (45) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (JUL 2013) (Sec-

tion 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302 Note](#)).

— (46) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (NOV 2007) ([42 U.S.C. 5150](#)).

— (47) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) ([42 U.S.C. 5150](#)).

— (48) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (FEB 2002) ([41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).

— (49) [52.232-30](#), Installment Payments for Commercial Items (OCT 1995) ([41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).

— (50) [52.232-33](#), Payment by Electronic Funds Transfer—System for Award Management (JUL 2013) ([31 U.S.C. 3332](#)).

— (51) [52.232-34](#), Payment by Electronic Funds Transfer—Other than System for Award Management (JUL 2013) ([31 U.S.C. 3332](#)).

— (52) [52.232-36](#), Payment by Third Party (MAY 2014) ([31 U.S.C. 3332](#)).

— (53) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ([5 U.S.C. 552a](#)).

— (54)(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

— (ii) Alternate I (Apr 2003) of [52.247-64](#).

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: [*Contracting Officer check as appropriate.*]

— (1) [52.222-41](#), Service Contract Labor Standards (MAY 2014) ([41 U.S.C. chapter 67](#)).

— (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (MAY 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

— (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (MAY 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

— (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (MAY 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

— (5) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (MAY 2014) ([41 U.S.C. chapter 67](#)).

— (6) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements (MAY 2014) ([41 U.S.C. chapter 67](#)).

— (7) [52.222-17](#), Nondisplacement of Qualified Workers (MAY 2014) (E.O. 13495).

— (8) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAY 2014) ([42 U.S.C. 1792](#)).

— (9) [52.237-11](#), Accepting and Dispensing of \$1 Coin (SEPT 2008) ([31 U.S.C. 5112\(p\)\(1\)](#)).

(d) *Comptroller General Examination of Record*. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at [52.215-2](#), Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR [Subpart 4.7](#), Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (APR 2010) ([41 U.S.C. 3509](#)).

(ii) [52.219-8](#), Utilization of Small Business Concerns (MAY 2014) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(iii) [52.222-17](#), Nondisplacement of Qualified Workers (MAY 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause [52.222-17](#).

(iv) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(v) [52.222-35](#), Equal Opportunity for Veterans (SEP 2010) ([38 U.S.C. 4212](#)).

(vi) [52.222-36](#), Affirmative Action for Workers with Disabilities (OCT 2010) ([29 U.S.C. 793](#)).

(vii) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O.

13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).

(viii) [52.222-41](#), Service Contract Labor Standards (MAY 2014) ([41 U.S.C. chapter 67](#)).

(ix) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

\_\_\_\_ Alternate I (AUG 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).

(x) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (MAY 2014) ([41 U.S.C. chapter 67](#)).

(xi) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements (MAY 2014) ([41 U.S.C. chapter 67](#)).

(xii) [52.222-54](#), Employment Eligibility Verification (AUG 2013).

(xiii) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (JUL 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302 Note](#)).

(xiv) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAY 2014) ([42 U.S.C. 1792](#)). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(xv) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

*Alternate I (Feb 2000)*. As prescribed in [12.301\(b\)\(4\)\(i\)](#), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated paragraph (d) to read “paragraphs (a), (b), and (c) of this clause.”

*Alternate II (May 2014)*. As prescribed in [12.301\(b\)\(4\)\(ii\)](#), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

(d)(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 ([5 U.S.C. App.](#)), or an authorized representative of either of the foregoing officials shall have access to and right to—

(i) Examine any of the Contractor’s or any subcontractors’ records that pertain to, and involve transactions relating to, this contract; and

(ii) Interview any officer or employee regarding such transactions.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c), of this clause, the Contractor is not required to flow down any FAR clause in a subcontract for commercial items, other than—

(i) *Paragraph (d) of this clause*. This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (d)(1)(ii) does not flow down; and

(ii) *Those clauses listed in this paragraph (e)(1)*. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(A) [52.203-13](#), Contractor Code of Business Ethics and Conduct (Apr 2010) ([41 U.S.C. 3509](#)).

(B) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5).

(C) [52.219-8](#), Utilization of Small Business Concerns (MAY 2014) ([15 U.S.C. 637\(d\)\(2\) and \(3\)](#)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(D) [52.222-26](#), Equal Opportunity (Mar 2007) (E.O. 11246).

(E) [52.222-35](#), Equal Opportunity for Veterans (Sep 2010) ([38 U.S.C. 4212](#)).

(F) [52.222-36](#), Affirmative Action for Workers with Disabilities (Oct 2010) ([29 U.S.C. 793](#)).

(G) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).

(H) [52.222-41](#), Service Contract Labor Standards (MAY 2014) ([41 U.S.C. chapter 67](#)).

(I) [52.222-50](#), Combating Trafficking in Persons (Feb 2009) ([22 U.S.C. 7104\(g\)](#)).

(J) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (MAY 2014) ([41 U.S.C. chapter 67](#)).

(K) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements (MAY 2014) ([41 U.S.C. chapter 67](#)).

(L) [52.222-54](#), Employment Eligibility Verification (Aug 2013).

(M) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations. (MAY 2014) ([42 U.S.C. 1792](#)). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](#).

(N) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx.](#)

[1241\(b\)](#) and [10 U.S.C. 2631](#)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](#).

### 52.213-1 Fast Payment Procedure.

As prescribed in [13.404](#), insert the following clause:

#### FAST PAYMENT PROCEDURE (MAY 2006)

(a) *General.* The Government will pay invoices based on the Contractor's delivery to a post office or common carrier (or, if shipped by other means, to the point of first receipt by the Government).

(b) *Responsibility for supplies.*(1) Title to the supplies passes to the Government upon delivery to—

(i) A post office or common carrier for shipment to the specific destination; or

(ii) The point of first receipt by the Government, if shipment is by means other than Postal Service or common carrier.

(2) Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall—

(i) Assume all responsibility and risk of loss for supplies not received at destination, damaged in transit, or not conforming to purchase requirements; and

(ii) Replace, repair, or correct those supplies promptly at the Contractor's expense, if instructed to do so by the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

(c) *Preparation of invoice.*(1) Upon delivery to a post office or common carrier (or, if shipped by other means, the point of first receipt by the Government), the Contractor shall—

(i) Prepare an invoice as provided in this contract, order, or blanket purchase agreement; and

(ii) Display prominently on the invoice "FAST PAY." Invoices not prominently marked "FAST PAY" via manual or electronic means may be accepted by the payment office for fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The Contractor shall not include the cost of parcel post insurance. If transportation charges are stated separately on the invoice, the Contractor shall retain related paid freight bills or other transportation billings paid separately for a period of 3 years and shall furnish the bills to the Government upon request.

(3) If this contract, order, or blanket purchase agreement requires the preparation of a receiving report, the Contractor shall either—

(i) Submit the receiving report on the prescribed form with the invoice; or

(ii) Include the following information on the invoice:

(A) Shipment number.

(B) Mode of shipment.

(C) At line item level—

(1) National stock number and/or manufacturer's part number;

(2) Unit of measure;

(3) Ship-To Point;

(4) Mark-For Point, if in the contract; and

(5) FEDSTRIP/MILSTRIP document number, if in the contract.

(4) If this contract, order, or blanket purchase agreement does not require preparation of a receiving report on a prescribed form, the Contractor shall include on the invoice the following information at the line item level, in addition to that required in paragraph (c)(1) of this clause:

(i) Ship-To Point.

(ii) Mark-For Point.

(iii) FEDSTRIP/MILSTRIP document number, if in the contract.

(5) Where a receiving report is not required, the Contractor shall include a copy of the invoice in each shipment.

(d) *Certification of invoice.* The Contractor certifies by submitting an invoice to the Government that the supplies being billed to the Government have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated by the contract, order, or blanket purchase agreement.

(e) *FAST PAY container identification.* The Contractor shall mark all outer shipping containers "FAST PAY" When outer shipping containers are not marked "FAST PAY," the payment office may make fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(End of clause)

### 52.213-2 Invoices.

As prescribed in [13.302-5\(b\)](#), insert the following clause:

#### INVOICES (APR 1984)

The Contractor's invoices must be submitted before payment can be made. The Contractor will be paid on the basis of the invoice, which must state—

(a) The starting and ending dates of the subscription delivery; and

(b) Either that orders have been placed in effect for the addressees required, or that the orders will be placed in effect upon receipt of payment.

(End of clause)

**52.213-3 Notice to Supplier.**

As prescribed in [13.302-5\(c\)](#), insert the following clause:

NOTICE TO SUPPLIER (APR 1984)

This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Contracting Officer. If you cannot perform in exact accordance with this order, WITHHOLD PERFORMANCE, and notify the Contracting Officer immediately, giving your quotation.

(End of clause)

**52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).**

As prescribed in [13.302-5\(d\)](#), insert the following clause:

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS  
(OTHER THAN COMMERCIAL ITEMS) (MAY 2014)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

(i) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).

(ii) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999) (E.O. 11246).

(iii) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(iv) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

(v) [52.225-13](#), Restrictions on Certain Foreign Purchases (JUNE 2008) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(vi) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(vii) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78 ([19 U.S.C. 3805 note](#))).

(2) Listed below are additional clauses that apply:

(i) [52.232-1](#), Payments (APR 1984).

(ii) [52.232-8](#), Discounts for Prompt Payment (FEB 2002).

(iii) [52.232-11](#), Extras (APR 1984).

(iv) [52.232-25](#), Prompt Payment (JUL 2013).

(v) [52.232-39](#), Unenforceability of Unauthorized Obligations (JUN 2013).

(vi) [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors (DEC 2013)

(vii) [52.233-1](#), Disputes (MAY 2014).

(viii) [52.244-6](#), Subcontracts for Commercial Items (MAY 2014).

(ix) [52.253-1](#), Computer Generated Forms (JAN 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2013) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)) (Applies to contracts valued at \$25,000 or more).

(ii) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (JAN 2014) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

(iii) [52.222-20](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (MAY 2014) ([41 U.S.C. chapter 65](#)) (Applies to supply contracts over \$15,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

(iv) [52.222-35](#), Equal Opportunity for Veterans (SEP 2010) ([38 U.S.C. 4212](#)) (applies to contracts of \$100,000 or more).

(v) [52.222-36](#), Affirmative Action for Workers with Disabilities (OCT 2010) ([29 U.S.C. 793](#)). (Applies to contracts over \$15,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, *United States* includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

(vi) [52.222-37](#), Employment Reports on Veterans (SEP 2010) ([38 U.S.C. 4212](#)) (applies to contracts of \$100,000 or more).

(vii) [52.222-41](#), Service Contract Labor Standards (MAY 2014) ([41 U.S.C. chapter 67](#)) (Applies to service contracts over \$2,500 that are subject to the Service Contract Labor Standards statute and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer Continental Shelf.)

(viii) [52.223-5](#), Pollution Prevention and Right-to-Know Information (MAY 2011) (E.O. 13423) (Applies to services performed on Federal facilities).

(ix) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)) (Unless exempt pursuant to [23.204](#), applies to contracts when energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP) will be—

(A) Delivered;

(B) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(C) Furnished by the Contractor for use by the Government; or

(D) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.)

(x) [52.225-1](#), Buy American—Supplies (MAY 2014) ([41 U.S.C. chapter 67](#)) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition—

(A) Is set aside for small business concerns; or

(B) Cannot be set aside for small business concerns (see [19.502-2](#)), and does not exceed \$25,000).

(xi) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAY 2014) ([42 U.S.C. 1792](#)) (Applies to contracts greater than \$25,000 that provide for the provision, the service, or the sale of food in the United States.)

(xii) [52.232-33](#), Payment by Electronic Funds Transfer—System for Award Management (JUL 2013). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the System for Award Management (SAM) database as its source of EFT information.)

(xiii) [52.232-34](#), Payment by Electronic Funds Transfer—Other than System for Award Management (JUL 2013). (Applies when the payment will be made by EFT and the payment office does not use the SAM database as its source of EFT information.)

(xiv) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. App. 1241](#)). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at [47.504\(d\)](#).)

(2) Listed below are additional clauses that may apply:

(i) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (AUG 2013) (Applies to contracts over \$30,000).

(ii) [52.211-17](#), Delivery of Excess Quantities (SEPT 1989) (Applies to fixed-price supplies).

(iii) [52.247-29](#), F.o.b. Origin (FEB 2006) (Applies to supplies if delivery is f.o.b. origin).

(iv) [52.247-34](#), F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) *FAR [52.252-2](#), Clauses Incorporated by Reference (FEB 1998)*. This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

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[Insert one or more Internet addresses]

(d) *Inspection/Acceptance*. The Contractor shall tender for acceptance only 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. The Government must exercise its postacceptance rights—

(1) Within a reasonable period of 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.

(e) *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.

(f) *Termination for the Government's convenience*. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work per-

formed or costs incurred that reasonably could have been avoided.

(g) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any

amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(h) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

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SMALL BUSINESS PROGRAM REPRESENTATIONS  
(APR 2012)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is \_\_\_\_\_ [insert NAICS code].

(2) The small business size standard is \_\_\_\_\_ [insert size standard].

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

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

(2) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, for general statistical purposes, that it  is,  is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

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

(4) Women-owned small business (WOSB) concern eligible under the WOSB Program. [Complete only if the offeror represented itself as a women-owned small business concern in paragraph (b)(3) of this provision.] The offeror represents as part of its offer that—

(i) It  is,  is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (b)(4)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. [The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: \_\_\_\_\_.] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(5) Economically disadvantaged women-owned small business (EDWOSB) concern. [Complete only if the offeror represented itself as a women-owned small business concern eligible under the WOSB Program in (b)(4) of this provision.] The offeror represents as part of its offer that—

(i) It  is,  is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (b)(5)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. [The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: \_\_\_\_\_.] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

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

(7) [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(6) of this provision.] The offeror represents as part of its offer that it  is,  is not a service-disabled veteran-owned small business concern.

(8) [Complete only if the offeror represented itself as a small business concern in paragraph (b)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It  is,  is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR Part 126; and

(ii) It  is,  is not a HUBZone joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (b)(8)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: \_\_\_\_\_.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

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

“Economically disadvantaged women-owned small business (EDWOSB) concern” means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business concern eligible under the WOSB Program.

“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 the size standard in paragraph (a) of this provision.

“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 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.

“Women-owned small business (WOSB) concern eligible under the WOSB Program” (in accordance with 13 CFR part 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

(d) *Notice.* (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under [15 U.S.C. 645\(d\)](#), any person who misrepresents a firm’s status as a business concern that is small, HUB-Zone small, small disadvantaged, service-disabled veteran-owned small, economically disadvantaged women-owned small, or women-owned small eligible under the WOSB Program in order to obtain a contract to be awarded under the preference programs established pursuant to section 8, 9, 15, 31, and 36 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall—

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(End of provision)

*Alternate I* (MAY 2014). As prescribed in [19.309\(a\)\(2\)](#), add the following paragraph (b)(9) to the basic provision:

(9) [*Complete if offeror represented itself as disadvantaged in paragraph (b)(2) 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, 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.

**52.219-2 Equal Low Bids.**

As prescribed in [19.309\(c\)](#), insert the following provision:

EQUAL LOW BIDS (OCT 1995)

(a) This provision applies to small business concerns only.

(b) The bidder’s status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

(c) Failure to identify the labor surplus areas as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

(End of provision)

(3) General construction, at least 15 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees.

#### 52.219-5 [Reserved]

#### 52.219-6 Notice of Total Small Business Set-Aside.

As prescribed in [19.508](#)(c), insert the following clause:

##### NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (NOV 2011)

(a) *Definition.* “Small business concern,” as used in this clause, 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 size standards in this solicitation.

(b) *Applicability.* This clause applies only to—

(1) Contracts that have been totally set aside or reserved for small business concerns; and

(2) Orders set aside for small business concerns under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F).

(c) *General.* (1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(d) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

*Alternate I (Nov 2011).* When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with [19.502-2](#)(c), delete paragraph (d).

*Alternate II (Nov 2011).* As prescribed in [19.508](#)(c), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *General.* (1) Offers are solicited only from small business concerns and Federal Prison Industries, Inc. (FPI). Offers

received from concerns that are not small business concerns or FPI shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to either a small business concern or FPI.

#### 52.219-7 Notice of Partial Small Business Set-Aside.

As prescribed in [19.508](#)(d), insert the following clause:

##### NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (JUNE 2003)

(a) *Definitions.* “Small business concern,” as used in this clause, 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 size standards in this solicitation.

(b) *General.*(1) A portion of this requirement, identified elsewhere in this solicitation, has been set aside for award to one or more small business concerns.

(2) Offers on the non-set-aside portion will be evaluated first and award will be made on that portion in accordance with the provisions of this solicitation.

(3) The set-aside portion will be awarded at the highest unit price(s) in the contract(s) for the non-set-aside portion, adjusted to reflect transportation and other costs appropriate for the selected contractor(s).

(4) The contractor(s) for the set-aside portion will be selected from among the small business concerns that submitted responsive offers on the non-set-aside portion. Negotiations will be conducted with the concern that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue until a contract or contracts are awarded for the entire set-aside portion.

(5) The Government reserves the right to not consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

(c) *Agreement.* For the set-aside portion of the acquisition, a small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

*Alternate I (Oct 1995).* When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or

processors in the Federal market in accordance with [19.502-2\(c\)](#), delete paragraph (c).

*Alternate II (Mar 2004)*. As prescribed in [19.508\(d\)](#), add the following paragraph (d) to the basic clause:

(d) Notwithstanding paragraph (b) of this clause, offers from Federal Prison Industries, Inc., will be solicited and considered for both the set-aside and non-set-aside portion of this requirement.

#### 52.219-8 Utilization of Small Business Concerns.

As prescribed in [19.708\(a\)](#), insert the following clause:

##### UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2014)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts awarded by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) *Definitions*. As used in this contract—

“HUBZone small business concern” means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

“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 small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

“Small disadvantaged business concern” means a small business concern that represents, as part of its offer that—

(1)(i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;

(ii) No material change in disadvantaged ownership and control has occurred since its certification;

(iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the Dynamic Small Business Search database maintained by the Small Business Administration, or

(2) It represents in writing that it qualifies as a small disadvantaged business (SDB) for any Federal subcontracting program, and believes in good faith that it is owned and controlled by one or more socially and economically disadvantaged individuals and meets the SDB eligibility criteria of 13 CFR 124.1002.

“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 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.

(d)(1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include—

**52.222-1 Notice to the Government of Labor Disputes.**

As prescribed in [22.103-5\(a\)](#), insert the following clause:

NOTICE TO THE GOVERNMENT OF LABOR DISPUTES  
(FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(End of clause)

**52.222-2 Payment for Overtime Premiums.**

As prescribed in [22.103-5\(b\)](#), insert the following clause:

PAYMENT FOR OVERTIME PREMIUMS (JULY 1990)

(a) The use of overtime is authorized under this contract if the overtime premium does not exceed \* \_\_\_\_\_ or the overtime premium is paid for work—

(1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) That will result in lower overall costs to the Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall—

(1) Identify the work unit; *e.g.*, department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;

(2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;

(3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and

(4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

\* Insert either “zero” or the dollar amount agreed to during negotiations. The inserted figure does not apply to the exceptions in paragraph (a)(1) through (a)(4) of the clause.

(End of clause)

**52.222-3 Convict Labor.**

As prescribed in [22.202](#), insert the following clause:

CONVICT LABOR (JUNE 2003)

(a) Except as provided in paragraph (b) of this clause, the Contractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.

(b) The Contractor is not prohibited from employing persons—

(1) On parole or probation to work at paid employment during the term of their sentence;

(2) Who have been pardoned or who have served their terms; or

(3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

(i) The worker is paid or is in an approved work training program on a voluntary basis;

(ii) Representatives of local union central bodies or similar labor union organizations have been consulted;

(iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;

(iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and

(v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

(End of clause)

**52.222-4 Contract Work Hours and Safety Standards — Overtime Compensation.**

As prescribed in [22.305](#), insert the following clause:

CONTRACT WORK HOURS AND SAFETY STANDARDS—  
OVERTIME COMPENSATION (MAY 2014)

(a) *Overtime requirements.* No Contractor or subcontractor employing laborers or mechanics (see Federal Acquisition Regulation [22.300](#)) shall require or permit them to work over 40 hours in any workweek unless they are paid at least 1 and 1/2 times the basic rate of pay for each hour worked over 40 hours.

(b) *Violation; liability for unpaid wages; liquidated damages.* The responsible Contractor and subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the Contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will assess liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the Contract Work Hours and Safety Standards statute (found at [40 U.S.C. chapter 37](#)).

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer will withhold from payments due under the contract sufficient funds required to satisfy any Contractor or subcontractor liabilities for unpaid wages and liquidated damages. If amounts withheld under the contract are insufficient to satisfy Contractor or subcontractor liabilities, the Contracting Officer will withhold payments from other Federal or federally assisted contracts held by the same Contractor that are subject to the Contract Work Hours and Safety Standards statute

(d) *Payrolls and basic records.* (1) The Contractor and its subcontractors shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available to the Government until 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records need not duplicate those required for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Construction Wage Rate Requirements statute.

(2) The Contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this clause. The Contractor or subcontractor also shall allow authorized representatives of the Contracting Officer or Department of Labor to interview employees in the workplace during working hours.

(e) *Subcontracts.* The Contractor shall insert the provisions set forth in paragraphs (a) through (d) of this clause in subcontracts that may require or involve the employment of laborers and mechanics and require subcontractors to include these provisions in any such lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

(End of clause)

#### 52.222-5 Construction Wage Rate Requirements— Secondary Site of the Work.

As prescribed in [22.407](#)(h), insert the following provision:

##### CONSTRUCTION WAGE RATE REQUIREMENTS— SECONDARY SITE OF THE WORK (MAY 2014)

(a)(1) The offeror shall notify the Government if the offeror intends to perform work at any secondary site of the work, as defined in paragraph (a)(1)(ii) of the FAR clause at [52.222-6](#), Construction Wage Rate Requirements, of this solicitation.

(2) If the offeror is unsure if a planned work site satisfies the criteria for a secondary site of the work, the offeror shall request a determination from the Contracting Officer.

(b)(1) If the wage determination provided by the Government for work at the primary site of the work is not applicable to the secondary site of the work, the offeror shall request a wage determination from the Contracting Officer.

(2) The due date for receipt of offers will not be extended as a result of an offeror's request for a wage determination for a secondary site of the work.

(End of provision)

#### 52.222-6 Construction Wage Rate Requirements.

As prescribed in [22.407](#)(a), insert the following clause:

##### CONSTRUCTION WAGE RATE REQUIREMENTS (MAY 2014)

(a) *Definition.*—"Site of the work"— (1) Means—

(i) *The primary site of the work.* The physical place or places where the construction called for in the contract will remain when work on it is completed; and

(ii) *The secondary site of the work, if any.* Any other site where a significant portion of the building or work is constructed, provided that such site is—

(A) Located in the United States; and

(B) Established specifically for the performance of the contract or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided—

(i) They are dedicated exclusively, or nearly so, to performance of the contract or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal contract or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the “site of the work.” Such permanent, previously established facilities are not a part of the “site of the work” even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a contract.

(b)(1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the contract was performed at that site and shall be incorporated without any adjustment in contract price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Construction Wage Rate Requirements statute on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classifica-

tion for the time actually worked therein; provided that the employer’s payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this clause) and the Construction Wage Rate Requirements (Davis-Bacon Act) poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers.

(c)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division  
Employment Standards Administration  
U.S. Department of Labor  
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days

of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to paragraphs (c)(2) and (c)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Construction Wage Rate Requirements statute have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

#### 52.222-7 Withholding of Funds.

As prescribed in [22.407](#)(a), insert the following clause:

##### WITHHOLDING OF FUNDS (MAY 2014)

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other federally assisted contract subject to prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of clause)

#### 52.222-8 Payrolls and Basic Records.

As prescribed in [22.407](#)(a), insert the following clause:

##### PAYROLLS AND BASIC RECORDS (MAY 2014)

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in [40 U.S.C. 3141\(2\)\(B\)](#) (Construction Wage Rate Requirement statute)), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Construction Wage Rate Requirements, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in [40 U.S.C. 3141\(2\)\(B\)](#), the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause, except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional [Form WH-347](#) is available for this purpose and may be obtained from the U.S. Department of Labor Wage and Hour Division website at <http://www.dol.gov/whd/forms/wh347.pdf>. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Contracting Officer, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a Prime Contractor to require a subcontractor to provide addresses and social security numbers to the Prime Contractor for its own records, without weekly submission to the Contracting Officer.



(2) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional [Form WH-347](#) shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of clause)

### 52.222-9 Apprentices and Trainees.

As prescribed in [22.407\(a\)](#), insert the following clause:

#### APPRENTICES AND TRAINEES (JULY 2005)

(a) *Apprentices.*(1) An apprentice will be permitted to work at less than the predetermined rate for the work performed when employed—

(i) Pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Depart-

ment of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS) or with a State Apprenticeship Agency recognized by the OATELS; or

(ii) In the first 90 days of probationary employment as an apprentice in such an apprenticeship program, even though not individually registered in the program, if certified by the OATELS or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program.

(3) Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in paragraph (a)(1) of this clause, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(4) Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman’s hourly rate) specified in the Contractor’s or subcontractor’s registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice’s level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination.

(5) Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(6) In the event OATELS, or a State Apprenticeship Agency recognized by OATELS, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees.*(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer, and Labor Services (OATELS). The ratio of train-

ees to journeymen on the job site shall not be greater than permitted under the plan approved by OATELS.

(2) Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the OATELS shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed.

(3) In the event OATELS withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(End of clause)

#### 52.222-10 Compliance with Copeland Act Requirements.

As prescribed in [22.407\(a\)](#), insert the following clause:

COMPLIANCE WITH COPELAND ACT REQUIREMENTS  
(FEB 1988)

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

(End of clause)

#### 52.222-11 Subcontracts (Labor Standards).

As prescribed in [22.407\(a\)](#), insert the following clause:

SUBCONTRACTS (LABOR STANDARDS) (MAY 2014)

(a) *Definition.* "Construction, alteration or repair," as used in this clause, means all types of work done by laborers and mechanics employed by the construction Contractor or construction subcontractor on a particular building or work at the site thereof, including without limitation—

(1) Altering, remodeling, installation (if appropriate) on the site of the work of items fabricated off-site;

(2) Painting and decorating;

(3) Manufacturing or furnishing of materials, articles, supplies, or equipment on the site of the building or work;

(4) Transportation of materials and supplies between the site of the work within the meaning of paragraphs (a)(1)(i) and (ii) of the "site of the work" as defined in the FAR clause at [52.222-6](#), Construction Wage Rate Requirements of this contract, and a facility which is dedicated to the construction of the building or work and is deemed part of the site of the work within the meaning of paragraph (2) of the "site of the work" definition; and

(5) Transportation of portions of the building or work between a secondary site where a significant portion of the building or work is constructed, which is part of the "site of the work" definition in paragraph (a)(1)(ii) of the FAR clause at [52.222-6](#), Construction Wage Rate Requirements, and the physical place or places where the building or work will remain (paragraph (a)(1)(i) of the FAR clause at [52.222-6](#), in the "site of the work" definition).

(b) The Contractor shall insert in any subcontracts for construction, alterations and repairs within the United States the clauses entitled—

(1) Construction Wage Rate Requirements;

(2) Contract Work Hours and Safety Standards—Overtime Compensation (if the clause is included in this contract);

(3) Apprentices and Trainees;

(4) Payrolls and Basic Records;

(5) Compliance with Copeland Act Requirements;

(6) Withholding of Funds;

(7) Subcontracts (Labor Standards);

(8) Contract Termination—Debarment;

(9) Disputes Concerning Labor Standards;

(10) Compliance with Construction Wage Rate Requirements and Related Regulations; and

(11) Certification of Eligibility.

(c) The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor performing construction within the United States with all the contract clauses cited in paragraph (b).

(d)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed [Standard Form \(SF\) 1413](#), Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (b) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed [SF 1413](#) for such additional subcontract.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e) in all subcontracts for construction within the United States.

(End of clause)

**52.222-12 Contract Termination—Debarment.**

As prescribed in [22.407\(a\)](#), insert the following clause:

CONTRACT TERMINATION—DEBARMENT (MAY 2014)

A breach of the contract clauses entitled Construction Wage Rate Requirements, Contract Work Hours and Safety Standards-Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Construction Wage Rate Requirements and Related Regulations, or Certification of Eligibility may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

(End of clause)

**52.222-13 Compliance with Construction Wage Rate Requirements and Related Regulations.**

As prescribed in [22.407\(a\)](#), insert the following clause:

COMPLIANCE WITH CONSTRUCTION WAGE RATE REQUIREMENTS AND RELATED REGULATIONS (MAY 2014)

All rulings and interpretations of the Construction Wage Rate Requirements and related statutes contained in 29 CFR parts 1, 3, and 5 are hereby incorporated by reference in this contract.

(End of clause)

**52.222-14 Disputes Concerning Labor Standards.**

As prescribed in [22.407\(a\)](#), insert the following clause:

DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)

The United States Department of Labor has set forth in 29 CFR parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

**52.222-15 Certification of Eligibility.**

As prescribed in [22.407\(a\)](#), insert the following clause:

CERTIFICATION OF ELIGIBILITY (MAY 2014)

(a) By entering into this contract, the Contractor certifies that neither it nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of [40 U.S.C. 3144\(b\)\(2\)](#) or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of [40 U.S.C. 3144\(b\)\(2\)](#) or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, [18 U.S.C. 1001](#).

(End of clause)

**52.222-16 Approval of Wage Rates.**

As prescribed in [22.407\(b\)](#), insert the following clause:

APPROVAL OF WAGE RATES (MAY 2014)

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Construction Wage Rate Requirements minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

(End of clause)

**52.222-17 Nondisplacement of Qualified Workers.**

As prescribed in [22.1207](#), insert the following clause:

NONDISPLACEMENT OF QUALIFIED WORKERS (MAY 2014)

(a) "Service employee", as used in this clause, means any person engaged in the performance of a service contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in [29 CFR part 541](#). The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(b) The Contractor and its subcontractors shall, except as otherwise provided herein, in good faith offer those service employees employed under the predecessor contract whose employment will be terminated as a result of award of this contract or the expiration of the contract under which the service employees were hired, a right of first refusal of employment under this contract in positions for which the service employees are qualified.

(1) The Contractor and its subcontractors shall determine the number of service employees necessary for efficient performance of this contract and may elect to employ fewer

employees than the predecessor Contractor employed in connection with performance of the work.

(2) Except as provided in paragraph (c) of this clause, there shall be no employment opening under this contract, and the Contractor and any subcontractors shall not offer employment under this contract, to any person prior to having complied fully with this obligation.

(i) The successor Contractor and its subcontractors shall make a bona fide express offer of employment to each service employee as provided herein and shall state the time within which the service employee must accept such offer, but in no case shall the period within which the service employee must accept the offer of employment be less than 10 days.

(ii) The successor Contractor and its subcontractors shall decide any question concerning a service employee's qualifications based upon the individual's education and employment history, with particular emphasis on the employee's experience on the predecessor contract, and the Contractor may utilize employment screening processes only when such processes are provided for by the contracting agency, are conditions of the service contract, and are consistent with Executive Order 13495.

(iii) Where the successor Contractor does not initially offer employment to all the predecessor contract service employees, the obligation to offer employment shall continue for 90 days after the successor contractor's first date of performance on the contract.

(iv) An offer of employment will be presumed to be bona fide even if it is not for a position similar to the one the employee previously held, but is one for which the employee is qualified, and even if it is subject to different employment terms and conditions, including changes to pay or benefits. (See 29 CFR 9.12 for a detailed description of a bonafide offer of employment).

(c)(1) Notwithstanding the obligation under paragraph (b) of this clause, the successor Contractor and any subcontractors (i) may employ under this contract any service employee who has worked for the contractor or subcontractor for at least three months immediately preceding the commencement of this contract and who would otherwise face lay-off or discharge, (ii) are not required to offer a right of first refusal to any service employee(s) of the predecessor contractor who are not service employees within the meaning of the Service Contract Labor Standards statute, [41 U.S.C. 6701\(3\)](#), and (iii) are not required to offer a right of first refusal to any service employee(s) of the predecessor contractor whom the Contractor or any of its subcontractors reasonably believes, based on the particular service employee's past performance, has failed to perform suitably on the job (see 29 CFR 9.12 (c)(4) for additional information). The successor Contractor bears the responsibility of demonstrating the appropriateness of claiming any of these exceptions.

(2) In addition, any Contractor or subcontractor that has been certified by the U.S. Small Business Administration as a HUBZone small business concern must ensure that it complies with the statutory and regulatory requirements of the HUBZone Program (e.g., it must ensure that at least 35 percent of all of its employees reside within a HUBZone). The HUBZone small business Contractor or subcontractor must consider whether it can meet the requirements of this clause and Executive Order 13495 while also ensuring it meets the HUBZone Program's requirements.

(3) Nothing in this clause shall be construed to permit a Contractor or subcontractor to fail to comply with any provision of any other Executive order or law. For example, the requirements of the HUBZone Program (see FAR subpart [19.13](#)), Executive Order 11246 (Equal Employment Opportunity), and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 may conflict, in certain circumstances, with the requirements of Executive Order 13495. All applicable laws and Executive orders must be satisfied in tandem with, and if necessary prior to, the requirements of Executive Order 13495, 29 CFR part 9, and this clause.

(d)(1) The Contractor shall, not less than 30 days before completion of the Contractor's performance of services on the contract, furnish the Contracting Officer with a certified list of the names of all service employees working under this contract and its subcontracts at the time the list is submitted. The list shall also contain anniversary dates of employment of each service employee under this contract and its predecessor contracts with either the current or predecessor contractors or their subcontractors. Where changes to the workforce are made after the submission of the certified list described in this paragraph, the Contractor shall, in accordance with paragraph (e) of this clause, not less than 10 days before completion of the services on this contract, furnish the Contracting Officer with an updated certified list of the names of all service employees employed within the last month of contract performance. The updated list shall also contain anniversary dates of employment, and, where applicable, dates of separation of each service employee under the contract and its predecessor contracts with either the current or predecessor Contractors or their subcontractors.

(2) Immediately upon receipt of the certified service employee list but not before contract award, the contracting officer shall provide the certified service employee list to the successor contractor, and, if requested, to employees of the predecessor contractor or subcontractors or their authorized representatives.

(3) The Contracting Officer will direct the predecessor Contractor to provide written notice (Appendix B to 29 CFR chapter 9) to service employees of their possible right to an offer of employment with the successor contractor. Where a significant portion of the predecessor Contractor's workforce is not fluent in English, the notice shall be provided in English

and the language(s) with which service employees are more familiar. The written notice shall be—

- (i) Posted in a conspicuous place at the worksite; or
- (ii) Delivered to the service employees individually.

If such delivery is via e-mail, the notification must result in an electronic delivery receipt or some other reliable confirmation that the intended recipient received the notice.

(e)(1) If required in accordance with [52.222-41\(n\)](#), the predecessor Contractor shall, not less than 10 days before completion of this contract, furnish the Contracting Officer a certified list of the names of all service employees working under this contract and its subcontracts during the last month of contract performance. The list shall also contain anniversary dates of employment of each service employee under this contract and its predecessor contracts either with the current or predecessor Contractors or their subcontractors. If there are no changes to the workforce before the predecessor contract is completed, then the predecessor Contractor is not required to submit a revised list 10 days prior to completion of performance and the requirements of [52.222-41\(n\)](#) are met. When there are changes to the workforce after submission of the 30-day list, the predecessor Contractor shall submit a revised certified list not less than 10 days prior to performance completion.

(2) Immediately upon receipt of the certified service employee list but not before contract award, the contracting officer shall provide the certified service employee list to the successor contractor, and, if requested, to employees of the predecessor contractor or subcontractors or their authorized representatives.

(f) The Contractor and subcontractor shall maintain the following records (regardless of format, *e.g.*, paper or electronic) of its compliance with this clause for not less than a period of three years from the date the records were created.

(1) Copies of any written offers of employment or a contemporaneous written record of any oral offers of employment, including the date, location, and attendance roster of any service employee meeting(s) at which the offers were extended, a summary of each meeting, a copy of any written notice that may have been distributed, and the names of the service employees from the predecessor contract to whom an offer was made.

(2) A copy of any record that forms the basis for any exemption claimed under this part.

(3) A copy of the service employee list provided to or received from the contracting agency.

(4) An entry on the pay records of the amount of any retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division to each service employee, the period covered by such payment, and the date of payment, and a copy of any receipt form provided by or authorized by the Wage and Hour Division. The Contractor shall also deliver a copy of the receipt to the ser-

vice employee and file the original, as evidence of payment by the Contractor and receipt by the service employee, with the Administrator or an authorized representative within 10 days after payment is made.

(g) Disputes concerning the requirements of this clause shall not be subject to the general disputes clause ([52.223-1](#)) of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 9. Disputes within the meaning of this clause include disputes between or among any of the following: The Contractor, the contracting agency, the U.S. Department of Labor, and the service employees under the contract or its predecessor contract. The Contracting Officer will refer any service employee who wishes to file a complaint, or ask questions concerning this contract clause, to the: Branch of Government Contracts Enforcement, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. Contact e-mail: [displaced@dol.gov](mailto:displaced@dol.gov).

(h) The Contractor shall cooperate in any review or investigation by the Department of Labor into possible violations of the provisions of this clause and shall make such records requested by such official(s) available for inspection, copying, or transcription upon request.

(i) If it is determined, pursuant to regulations issued by the Secretary of Labor (Secretary), that the Contractor or its subcontractors are not in compliance with the requirements of this clause or any regulation or order of the Secretary, appropriate sanctions may be imposed and remedies invoked against the Contractor or its subcontractors, as provided in Executive Order 13495, the regulations, and relevant orders of the Secretary, or as otherwise provided by law.

(j) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance. However, if the Contractor, as a result of such direction, becomes involved in litigation with a subcontractor, or is threatened with such involvement, the Contractor may request that the United States, through the Secretary, enter into such litigation to protect the interests of the United States.

(k) The Contracting Officer will withhold, or cause to be withheld, from the prime Contractor under this or any other Government contract with the same prime Contractor, such sums as an authorized official of the Department of Labor requests, upon a determination by the Administrator, the Administrative Law Judge, or the Administrative Review Board, that there has been a failure to comply with the terms of this clause and that wages lost as a result of the violations are due to service employees or that other monetary relief is appropriate. If the Contracting Officer or the Administrator, upon final order of the Secretary, finds that the Contractor has failed to provide a list of the names of service employees

working under the contract, the Contracting Officer may, in his or her discretion, or upon request by the Administrator, take such action as may be necessary to cause the suspension of the payment of contract funds until such time as the list is provided to the Contracting Officer.

(l) *Subcontracts.* In every subcontract over the simplified acquisition threshold entered into in order to perform services under this contract, the Contractor shall include a provision that ensures—

(1) That each subcontractor will honor the requirements of paragraphs (b) through (c) of this clause with respect to the service employees of a predecessor subcontractor or subcontractors working under this contract, as well as of a predecessor Contractor and its subcontractors;

(2) That the subcontractor will provide the Contractor with the information about the service employees of the subcontractor needed by the Contractor to comply with paragraphs (d) and (e) of this clause; and

(3) The recordkeeping requirements of paragraph (f) of this clause.

(End of clause)

**52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.**

As prescribed in [22.1505\(a\)](#), insert the following provision:

CERTIFICATION REGARDING KNOWLEDGE OF CHILD LABOR FOR LISTED END PRODUCTS (FEB 2001)

(a) *Definition.*

“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.

(b) *Listed end products.* The following end product(s) being acquired under this solicitation is (are) included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, identified by their country of origin. There is a reasonable basis to believe that listed end products from the listed countries of origin may have been mined, produced, or manufactured by forced or indentured child labor.

Listed End Product	Listed Countries of Origin
_____	_____
_____	_____

(c) *Certification.* The Government will not make award to an offeror unless the offeror, by checking the appropriate

block, certifies to either paragraph (c)(1) or paragraph (c)(2) of this provision.

[ ] (1) The offeror will not supply any end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in a corresponding country as listed for that end product.

[ ] (2) The offeror may supply an end product listed in paragraph (b) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture such end product. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(End of provision)

**52.222-19 Child Labor—Cooperation with Authorities and Remedies.**

As prescribed in [22.1505\(b\)](#), insert the following clause:

CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES (JAN 2014)

(a) *Applicability.* This clause does not apply to the extent that the Contractor is supplying end products mined, produced, or manufactured in—

(1) Canada, and the anticipated value of the acquisition is \$25,000 or more;

(2) Israel, and the anticipated value of the acquisition is \$50,000 or more;

(3) Mexico, and the anticipated value of the acquisition is \$79,507 or more; or

(4) Armenia, Aruba, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or the United Kingdom and the anticipated value of the acquisition is \$204,000 or more.

(b) *Cooperation with Authorities.* To enforce the laws prohibiting the manufacture or importation of products mined, produced, or manufactured by forced or indentured child labor, authorized officials may need to conduct investigations to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under this contract. If the solicitation includes the provision [52.222-18](#), Certification Regarding Knowledge of Child Labor for Listed End Products, or the equivalent at [52.212-3\(i\)](#), the Contractor agrees to cooperate fully with authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice by providing reasonable access to records, documents, persons, or premises upon reasonable request by the authorized officials.

(c) *Violations.* The Government may impose remedies set forth in paragraph (d) for the following violations:

(1) The Contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor for listed end products.

(2) The Contractor has failed to cooperate, if required, in accordance with paragraph (b) of this clause, with an investigation of the use of forced or indentured child labor by an Inspector General, Attorney General, or the Secretary of the Treasury.

(3) The Contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.

(4) The Contractor has furnished under the contract end products or components that have been mined, produced, or manufactured wholly or in part by forced or indentured child labor. (The Government will not pursue remedies at paragraph (d)(2) or paragraph (d)(3) of this clause unless sufficient evidence indicates that the Contractor knew of the violation.)

(d) *Remedies.* (1) The Contracting Officer may terminate the contract.

(2) The suspending official may suspend the Contractor in accordance with procedures in FAR [Subpart 9.4](#).

(3) The debarring official may debar the Contractor for a period not to exceed 3 years in accordance with the procedures in FAR [Subpart 9.4](#).

(End of clause)

**52.222-20 Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000.**

As prescribed in [22.610](#), insert the following clause in solicitations and contracts:

CONTRACTS FOR MATERIALS, SUPPLIES, ARTICLES, AND EQUIPMENT EXCEEDING \$15,000 (MAY 2014)

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$15,000, and is subject to [41 U.S.C. chapter 65](#), the following terms and conditions apply:

(a) All stipulations required by [41 U.S.C. chapter 65](#) and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and workers with disabilities may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such

employment is permitted under section 14 of the Fair Labor Standards Act ([41 U.S.C. 6508](#)).

(End of clause)

**52.222-21 Prohibition of Segregated Facilities.**

As prescribed in [22.810\(a\)\(1\)](#), insert the following clause:

PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

(a) “Segregated facilities,” as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

(b) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.

(c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

(End of clause)

**52.222-22 Previous Contracts and Compliance Reports.**

As prescribed in [22.810\(a\)\(2\)](#), insert the following provision:

PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (FEB 1999)

The offeror represents that—

It  has,  has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation;

It  has,  has not filed all required compliance reports; and

Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(End of provision)

**52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction.**

As prescribed in [22.810\(b\)](#), insert the following provision:

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO  
ENSURE EQUAL EMPLOYMENT OPPORTUNITY FOR  
CONSTRUCTION (FEB 1999)

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.



failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) of this clause, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Deputy Assistant Secretary shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to—

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (*e.g.*, mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; *however*, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the

hiring of local or other area residents (*e.g.*, those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(End of clause)

**52.222-28 [Reserved]**

**52.222-29 Notification of Visa Denial.**

As prescribed in [22.810\(g\)](#), insert the following clause:

NOTIFICATION OF VISA DENIAL (JUNE 2003)

It is a violation of Executive Order 11246 for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, or Wake Island, on the basis that the individual's race, color, religion, sex, or national origin is not compatible with the policies of the country where or for whom the work will be performed (41 CFR 60-1.10). The Contractor shall notify the U.S. Department of State, Assistant Secretary, Bureau of Political-Military Affairs (PM), 2201 C Street NW, Room 6212, Washington, DC 20520, and the U.S. Department of Labor, Deputy Assistant Secretary for Federal Contract Compliance, when it has knowledge of any employee or potential employee being denied an entry visa to a country where this contract will be performed, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

(End of clause)

**52.222-30 Construction Wage Rate Requirements—  
Price Adjustment (None or Separately Specified Method).**

As prescribed in [22.407\(e\)](#), insert the following clause:

CONSTRUCTION WAGE RATE REQUIREMENTS-PRICE  
ADJUSTMENT (NONE OR SEPARATELY SPECIFIED  
METHOD) (MAY 2014)

(a) The wage determination issued under the Construction Wage Rate Requirements statute by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b) The Contracting Officer will make no adjustment in contract price, other than provided for elsewhere in this contract, to cover any increases or decreases in wages and benefits as a result of—

(1) Incorporation of the Department of Labor's wage determination applicable at the exercise of the option to extend the term of the contract;

(2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or

(3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Construction Wage Rate Requirements statute.

(End of clause)

**52.222-31 Construction Wage Rate Requirements—  
Price Adjustment (Percentage Method).**

As prescribed in [22.407\(f\)](#), insert the following clause:

CONSTRUCTION WAGE RATE REQUIREMENTS-PRICE  
ADJUSTMENT (PERCENTAGE METHOD) (MAY 2014)

(a) The wage determination issued under the Construction Wage Rate Requirements statute by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b) The Contracting Officer will adjust the portion of the contract price or contract unit price(s) containing the labor costs subject to the Construction Wage Rate Requirements statute to provide for an increase in wages and fringe benefits at the exercise of each option to extend the term of the contract in accordance with the following procedures:

(1) The Contracting Officer has determined that the portion of the contract price or contract unit price(s) containing labor costs subject to the Construction Wage Rate Requirements statute is \_\_\_\_\_ [*Contracting Officer insert percentage rate*] percent.

(2) The Contracting Officer will increase the portion of the contract price or contract unit price(s) containing the labor costs subject to the Construction Wage Rate Requirements statute by the percentage rate published in \_\_\_\_\_ [*Contracting Officer insert publication*].

(c) The Contracting Officer will make the price adjustment at the exercise of each option to extend the term of the contract. This adjustment is the only adjustment that the Contracting Officer will make to cover any increases in wages and benefits as a result of—

(1) Incorporation of the Department of Labor's wage determination applicable at the exercise of the option to extend the term of the contract;

(2) Incorporation of a wage determination otherwise applied to the contract by operation of law; or

(3) An increase in wages and benefits resulting from any other requirement applicable to workers subject to the Construction Wage Rate Requirements statute.

(End of clause)

**52.222-32 Construction Wage Rate Requirements—  
Price Adjustment (Actual Method).**

As prescribed in [22.407\(g\)](#), insert the following clause:

CONSTRUCTION WAGE RATE REQUIREMENTS—PRICE  
ADJUSTMENT (ACTUAL METHOD) (MAY 2014)

(a) The wage determination issued under the Construction Wage Rate Requirements statute by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, that is effective for an option to extend the term of the contract, will apply to that option period.

(b)(1) The Contractor states that if the prices in this contract contain an allowance for wage or benefit increases, such allowance will not be included in any request for contract price adjustment submitted under this clause.

(2) The Contractor shall provide with each request for contract price adjustment under this clause a statement that the prices in the contract do not include any allowance for any increased cost for which adjustment is being requested.

(c) The Contracting Officer will adjust the contract price or contract unit price labor rates to reflect the Contractor's actual increase or decrease in wages and fringe benefits to the extent that the increase is made to comply with, or the decrease is voluntarily made by the Contractor as a result of—

(1) Incorporation of the Department of Labor's Construction Wage Rate Requirements wage determination applicable at the exercise of an option to extend the term of the contract; or

(2) Incorporation of a Construction Wage Rate Requirements wage determination otherwise applied to the contract by operation of law.

(d) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a revised wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall notify the Contracting Officer promptly of any decrease under this clause, but nothing in this clause precludes the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records that the Contracting Officer may reasonably require. Upon agreement of the parties, the Contracting Officer will modify the contract price or contract unit price in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) Contract price adjustment computations shall be computed as follows:

(1) *Computation for contract unit price per single craft hour for schedule of indefinite-quantity work.* For each labor classification, the difference between the actual wage and benefit rates (combined) paid and the wage and benefit rates (combined) required by the new wage determination shall be added to the original contract unit price if the difference

(ii) The rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (*e.g.*, the Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

(End of clause)

*Alternate I (June 1998).* As prescribed in [22.1408\(b\)](#), add the following as a preamble to the clause:

**NOTICE:** The following term(s) of this clause are waived for this contract: \_\_\_\_\_ [*List term(s)*].

### 52.222-37 Employment Reports on Veterans.

As prescribed in [22.1310\(b\)](#), insert the following clause:

#### EMPLOYMENT REPORTS ON VETERANS (SEP 2010)

(a) *Definitions.* As used in this clause, “Armed Forces service medal veteran,” “disabled veteran,” “other protected veteran,” and “recently separated veteran,” have the meanings given in the Equal Opportunity for Veterans clause [52.222-35](#).

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The total number of employees in the contractor’s workforce, by job category and hiring location, who are disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans.

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of disabled veterans, other protected veterans, Armed Forces service medal veterans, and recently separated veterans; and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by completing the Form VETS-100A, entitled “Federal Contractor Veterans’ Employment Report (VETS-100A Report).”

(d) The Contractor shall submit VETS-100A Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12-month period preceding the ending date selected for the report. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-100A. The contractor’s knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under [38 U.S.C. 4212](#).

(g) The Contractor shall insert the terms of this clause in subcontracts of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

(End of clause)

### 52.222-38 Compliance with Veterans’ Employment Reporting Requirements.

As prescribed in [22.1310\(c\)](#), insert the following provision:

#### COMPLIANCE WITH VETERANS’ EMPLOYMENT REPORTING REQUIREMENTS (SEP 2010)

By submission of its offer, the offeror represents that, if it is subject to the reporting requirements of [38 U.S.C. 4212\(d\)](#) (*i.e.*, if it has any contract containing Federal Acquisition Regulation clause [52.222-37](#), Employment Reports on Veterans), it has submitted the most recent VETS-100A Report required by that clause.

(End of provision)

**52.222-39 [Reserved]****52.222-40 Notification of Employee Rights Under the National Labor Relations Act.**

As prescribed in [22.1605](#), insert the following clause:

NOTIFICATION OF EMPLOYEE RIGHTS UNDER THE  
NATIONAL LABOR RELATIONS ACT (DEC 2010)

(a) During the term of this contract, the Contractor shall post an employee notice, of such size and in such form, and containing such content as prescribed by the Secretary of Labor, in conspicuous places in and about its plants and offices where employees covered by the National Labor Relations Act engage in activities relating to the performance of the contract, including all places where notices to employees are customarily posted both physically and electronically, in the languages employees speak, in accordance with 29 CFR 471.2 (d) and (f).

(1) Physical posting of the employee notice shall be in conspicuous places in and about the Contractor's plants and offices so that the notice is prominent and readily seen by employees who are covered by the National Labor Relations Act and engage in activities related to the performance of the contract.

(2) If the Contractor customarily posts notices to employees electronically, then the Contractor shall also post the required notice electronically by displaying prominently, on any website that is maintained by the Contractor and is customarily used for notices to employees about terms and conditions of employment, a link to the Department of Labor's website that contains the full text of the poster. The link to the Department's website, as referenced in (b)(3) of this section, must read, "Important Notice about Employee Rights to Organize and Bargain Collectively with Their Employers."

(b) This required employee notice, printed by the Department of Labor, may be—

(1) Obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N-5609, Washington, DC 20210, (202) 693-0123, or from any field office of the Office of Labor-Management Standards or Office of Federal Contract Compliance Programs;

(2) Provided by the Federal contracting agency if requested;

(3) Downloaded from the Office of Labor-Management Standards Web site at [www.dol.gov/olms/regs/compliance/EO13496.htm](http://www.dol.gov/olms/regs/compliance/EO13496.htm); or

(4) Reproduced and used as exact duplicate copies of the Department of Labor's official poster.

(c) The required text of the employee notice referred to in this clause is located at Appendix A, Subpart A, 29 CFR Part 471.

(d) The Contractor shall comply with all provisions of the employee notice and related rules, regulations, and orders of the Secretary of Labor.

(e) In the event that the Contractor does not comply with the requirements set forth in paragraphs (a) through (d) of this clause, this contract may be terminated or suspended in whole or in part, and the Contractor may be suspended or debarred in accordance with 29 CFR 471.14 and subpart [9.4](#). Such other sanctions or remedies may be imposed as are provided by 29 CFR part 471, which implements Executive Order 13496 or as otherwise provided by law.

(f) *Subcontracts.* (1) The Contractor shall include the substance of this clause, including this paragraph (f), in every subcontract that exceeds \$10,000 and will be performed wholly or partially in the United States, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13496 of January 30, 2009, so that such provisions will be binding upon each subcontractor.

(2) The Contractor shall not procure supplies or services in a way designed to avoid the applicability of Executive Order 13496 or this clause.

(3) The Contractor shall take such action with respect to any such subcontract as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance.

(4) However, if the Contractor becomes involved in litigation with a subcontractor, or is threatened with such involvement, as a result of such direction, the Contractor may request the United States, through the Secretary of Labor, to enter into such litigation to protect the interests of the United States.

(End of clause)

**52.222-41 Service Contract Labor Standards.**

As prescribed in [22.1006\(a\)](#), insert the following clause:

SERVICE CONTRACT LABOR STANDARDS (MAY 2014)

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

"Contractor," when this clause is used in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government Prime Contractor."

"Service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, *Code of Federal Regulations*, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of [41 U.S.C. chapter 67](#), Service Contract Labor Standards, and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by [41 U.S.C. 6702](#), as interpreted in Subpart C of 29 CFR Part 4.

(c) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (*i.e.*, the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (*i.e.*, appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit [Standard Form \(SF\) 1444](#), Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed [SF 1444](#) (which must include information regarding the agreement or disagreement of the employees' authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single for-

mula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (*i.e.*, adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this paragraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Service Contract Labor Standards statute and this contract.

(vi) Upon discovery of failure to comply with paragraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) *Adjustment of compensation.* If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to

adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to furnish fringe benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under paragraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) *Minimum wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor contracts.* If this contract succeeds a contract subject to the Service Contract Labor Standards statute under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length

negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of [41 U.S.C. 6703](#) and of this contract.

(h) *Safe and sanitary working conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records.* (1) The Contractor and each subcontractor performing work subject to the Service Contract Labor Standards statute shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Service Contract Labor Standards statute—

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report

required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay periods.* The Contractor shall unconditionally pay to each employee subject to the Service Contract Labor Standards statute all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this statute may not be of any duration longer than semi-monthly.

(k) *Withholding of payments and termination of contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Service Contract Labor Standards statute all or part of the wages or fringe benefits due under the Service Contract Labor Standards statute, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Service Contract Labor Standards statute.

(m) *Collective bargaining agreements applicable to service employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or

will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority list.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings and interpretations.* Rulings and interpretations of the Service Contract Labor Standards statute are contained in Regulations, 29 CFR Part 4.

(p) *Contractor's certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under [41 U.S.C. 6706](#).

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under [41 U.S.C. 6706](#).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, [18 U.S.C. 1001](#).

(q) *Variations, tolerances, and exemptions involving employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to [41 U.S.C. 6707](#) prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by [41 U.S.C. 6703\(1\)](#)

without diminishing any fringe benefits or cash payments in lieu thereof required under [41 U.S.C. 6703\(2\)](#), in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, persons with disabilities, and disabled clients of work centers under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the statute for the employment of apprentices, student-learners, persons with disabilities, or disabled clients of work centers not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two statutes, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by [41 U.S.C. 6703\(1\)](#), in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision—

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Labor Standards minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of [41 U.S.C. 6707\(c\)](#).

(t) *Disputes concerning labor standards.* The U.S. Department of Labor has set forth in 29 CFR parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

**52.222-42 Statement of Equivalent Rates for Federal Hires.**

As prescribed in [22.1006\(b\)](#), insert the following clause:

STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES  
(MAY 2014)

In compliance with the Service Contract Labor Standards statute and the regulations of the Secretary of Labor (29 CFR part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of [5 U.S.C. 5341](#) or [5332](#).

*This Statement is for Information Only:  
It is not a Wage Determination*

Employee Class	Monetary Wage—Fringe Benefits
_____	_____
_____	_____
_____	_____
_____	_____

(End of clause)

**52.222-43 Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts).**

As prescribed in [22.1006\(c\)\(1\)](#), insert the following clause:

FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT  
LABOR STANDARDS—PRICE ADJUSTMENT (MULTIPLE  
YEAR AND OPTION CONTRACTS) (MAY 2014)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.



(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Labor Standards statute, ([41 U.S.C. chapter 67](#)), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, ([29 U.S.C. 206](#)) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

(d) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (d) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract), and any relevant supporting data, including payroll records, that the

Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

(End of clause)

#### **52.222-44 Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment.**

As prescribed in [22.1006\(c\)\(2\)](#), insert the following clause:

##### FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS—PRICE ADJUSTMENT (MAY 2014)

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to Contractor collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect increases or decreases by the Contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with—

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract) claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract

price, contract unit price labor rates, or fixed hourly rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

#### 52.222-45 [Reserved]

#### 52.222-46 Evaluation of Compensation for Professional Employees.

As prescribed in [22.1103](#), insert the following provision:

##### EVALUATION OF COMPENSATION FOR PROFESSIONAL EMPLOYEES (FEB 1993)

(a) Recompetition of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees. This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the Government's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As part of their proposals, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.

(b) The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges must take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, proposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may

indicate lack of sound management judgment and lack of understanding of the requirement.

(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.

(End of provision)

#### 52.222-47 [Reserved]

#### 52.222-48 Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Certification.

As prescribed in [22.1006\(e\)\(1\)](#), insert the following provision:

##### EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT-CERTIFICATION (MAY 2014)

(a) The offeror shall check the following certification:

##### CERTIFICATION

The offeror  does  does not certify that—

(1) The items of equipment to be serviced under this contract are used regularly for other than Government purposes, and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontractor) in substantial quantities to the general public in the course of normal business operations;

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

(i) An "established catalog price" is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the offeror, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.

(ii) An "established market price" is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or offeror; and

(3) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract are the same as that used for these employees and equivalent

employees servicing the same equipment of commercial customers.

(b) Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services. If the offeror certifies to the conditions in paragraph (a) of this provision, and the Contracting Officer determines in accordance with FAR 22.1003-4(c)(3) that the Service Contract Labor Standards statute—

(1) Will not apply to this offeror, then the Service Contract Labor Standards clause in this solicitation will not be included in any resultant contract to this offeror; or

(2) Will apply to this offeror, then the clause at 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements, in this solicitation will not be included in any resultant contract awarded to this offeror, and the offeror may be provided an opportunity to submit a new offer on that basis.

(c) If the offeror does not certify to the conditions in paragraph (a) of this provision—

(1) The clause in this solicitation at 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements, will not be included in any resultant contract awarded to this offeror; and

(2) The offeror shall notify the Contracting Officer as soon as possible, if the Contracting Officer did not attach a Service Contract Labor Standards wage determination to the solicitation.

(d) The Contracting Officer may not make an award to the offeror, if the offeror fails to execute the certification in paragraph (a) of this provision or to contact the Contracting Officer as required in paragraph (c) of this provision.

(End of provision)

**52.222-49 Service Contract Labor Standards—Place of Performance Unknown.**

As prescribed in 22.1006(f), insert the following clause:

SERVICE CONTRACT LABOR STANDARDS—PLACE OF PERFORMANCE UNKNOWN (MAY 2014)

(a) This contract is subject to the Service Contract Labor Standards statute, and the place of performance was unknown when the solicitation was issued. In addition to places or areas identified in wage determinations, if any, attached to the solicitation, wage determinations have also been requested for the following: \_\_\_\_\_ [insert places or areas]. The Contracting Officer will request wage determinations for additional places or areas of performance if asked to do so in writing by \_\_\_\_\_ [insert time and date].

(b) Offerors who intend to perform in a place or area of performance for which a wage determination has not been attached or requested may nevertheless submit bids or proposals. However, a wage determination shall be requested and

incorporated in the resultant contract retroactive to the date of contract award, and there shall be no adjustment in the contract price.

(End of clause)

**52.222-50 Combating Trafficking in Persons.**

As prescribed in 22.1705(a), insert the following clause:

COMBATING TRAFFICKING IN PERSONS (FEB 2009)

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

“Coercion” means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Forced Labor” means knowingly providing or obtaining the labor or services of a person—

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

“Involuntary servitude” includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the

use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) *Policy.* The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—

- (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
- (2) Procure commercial sex acts during the period of performance of the contract; or
- (3) Use forced labor in the performance of the contract.

(c) *Contractor requirements.* The Contractor shall—

- (1) Notify its employees of—
  - (i) The United States Government’s zero tolerance policy described in paragraph (b) of this clause; and
  - (ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and
- (2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.* The Contractor shall inform the Contracting Officer immediately of—

- (1) Any information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and
- (2) Any actions taken against Contractor employees, subcontractors, or subcontractor employees pursuant to this clause.

(e) *Remedies.* In addition to other remedies available to the Government, the Contractor’s failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may result in—

- (1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;
- (2) Requiring the Contractor to terminate a subcontract;
- (3) Suspension of contract payments;
- (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;
- (5) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
- (6) Suspension or debarment.

(f) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts.

(g) *Mitigating Factor.* The Contracting Officer may consider whether the Contractor had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information about Trafficking in Persons and examples of awareness pro-

grams can be found at the website for the Department of State’s Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/g/tip>.

(End of clause)

*Alternate I (Aug 2007).* As prescribed in 22.1705(b), substitute the following paragraph in place of paragraph (c)(1)(i) of the basic clause:

(i)(A) The United States Government’s zero tolerance policy described in paragraph (b) of this clause; and

(B) The following directive(s) or notice(s) applicable to employees performing work at the contract place(s) of performance as indicated below:

Document Title	Document may be obtained from:	Applies performance to in/at:
_____	_____	_____
_____	_____	_____

[Contracting Officer shall insert title of directive/notice; indicate the document is attached or provide source (such as website link) for obtaining document; and, indicate the contract performance location outside the U.S. to which the document applies.]

**52.222-51 Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.**

As prescribed in 22.1006(e)(2), insert the following clause:

EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR MAINTENANCE, CALIBRATION, OR REPAIR OF CERTAIN EQUIPMENT—REQUIREMENTS (MAY 2014)

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

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

(1) An “established catalog price” is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the Contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public.

(2) An “established market price” is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or Contractor.

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

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

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

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

(End of clause)

**52.222-52 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Certification.**

As prescribed in [22.1006](#)(e)(3), insert the following provision:

EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR CERTAIN SERVICES—CERTIFICATION (MAY 2014)

(a) The offeror shall check the following certification:

CERTIFICATION

The offeror  does  does not certify that—

(1) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(2) The contract services are furnished at prices that are, or are based on, established catalog or market prices. An “established catalog price” is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the offeror, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An “established market price” is a current price, established in the usual course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or offeror;

(3) 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

(4) The offeror uses the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the offeror uses for these employees and for equivalent employees servicing commercial customers.

(b) Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services. If the offeror certifies to the conditions in paragraph (a) of this provision, and the Contracting Officer determines in accordance with FAR [22.1003-4](#)(d)(3) that the Service Contract Labor Standards statute—

(1) Will not apply to this offeror, then the Service Contract Labor Standards clause in this solicitation will not be included in any resultant contract to this offeror; or

(2) Will apply to this offeror, then the clause at FAR [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements, in this solicitation will not be included in any resultant contract awarded to this offer, and the offeror may be provided an opportunity to submit a new offer on that basis.

(c) If the offeror does not certify to the conditions in paragraph (a) of this provision—

(1) The clause of this solicitation at [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements, will not be included in any resultant contract to this offeror; and

(2) The offeror shall notify the Contracting Officer as soon as possible if the Contracting Officer did not attach a Service Contract Labor Standards wage determination to the solicitation.

(d) The Contracting Officer may not make an award to the offeror, if the offeror fails to execute the certification in paragraph (a) of this provision or to contact the Contracting Officer as required in paragraph (c) of this provision.

(End of provision)

**52.222-53 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements.**

As prescribed in [22.1006](#)(e)(4), insert the following clause:

EXEMPTION FROM APPLICATION OF THE SERVICE CONTRACT LABOR STANDARDS TO CONTRACTS FOR CERTAIN SERVICES—REQUIREMENTS (MAY 2014)

(a) The services under this contract are offered and sold regularly to non-Governmental customers, and are provided by the Contractor to the general public in substantial quantities in the course of normal business operations.

(b) The contract services are furnished at prices that are, or are based on, established catalog or market prices. An “established catalog price” is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the Contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An “established market price” is a current price, established in the usual course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or Contractor.

(c) 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.

(d) The Contractor uses the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the Contractor uses for these employees and for equivalent employees servicing commercial customers.

(e) (1) Except for services identified in FAR [22.1003-4\(d\)\(1\)\(iv\)](#), the subcontractor for exempt services shall be selected for award based on other factors in addition to price or cost with the combination of other factors at least as important as price or cost; or

(2) A subcontract for exempt services shall be awarded on a sole source basis.

(f) The Contractor is responsible for compliance with all the conditions of this exemption by its subcontractors. The Contractor shall determine in advance, based on the nature of the subcontract requirements and knowledge of the practices of likely subcontractors, that all or nearly all likely subcontractors will meet the conditions in paragraphs (a) through (d) of this clause. If the services are currently being performed under a subcontract, the Contractor shall consider the practices of the existing subcontractor in making a determination regarding the conditions in paragraphs (a) through (d) of this clause. If the Contractor has reason to doubt the validity of the certification, the requirements of the Service Contract Labor Standards statute shall be included in the subcontract.

(g) If the Department of Labor determines that any conditions for exemption at paragraphs (a) through (e) of this clause have not been met, the exemption shall be deemed inapplicable, and the contract shall become subject to the Service Contract Labor Standards statute. In such case, the procedures in at 29 CFR 4.123(e)(2)(iii) and 29 CFR 4.5(c) will be followed.

(h) The Contractor shall include the substance of this clause, including this paragraph (h), in subcontracts for exempt services under this contract.

(End of clause)

#### 52.222-54 Employment Eligibility Verification.

As prescribed in [22.1803](#), Insert the following clause:

EMPLOYMENT ELIGIBILITY VERIFICATION (AUG 2013)

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

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition at [2.101](#));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products. Per 46 CFR 525.1 (c)(2), “bulk cargo” means cargo that is loaded and carried in bulk onboard ship without mark or count, in a loose unpackaged form, having homogenous characteristics. Bulk cargo loaded into intermodal equipment, except LASH or Seabee barges, is subject to mark and count and, therefore, ceases to be bulk cargo.

“Employee assigned to the contract” means an employee who was hired after November 6, 1986 (after November 27, 2009 in the Commonwealth of the Northern Mariana Islands), who is directly performing work, in the United States, under a contract that is required to include the clause prescribed at [22.1803](#). An employee is not considered to be directly performing work under a contract if the employee—

(1) Normally performs support work, such as indirect or overhead functions; and

(2) Does not perform any substantial duties applicable to the contract.

“Subcontract” means any contract, as defined in [2.101](#), entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime Contractor or another subcontractor.

“United States”, as defined in [8 U.S.C. 1101\(a\)\(38\)](#), means the 50 States, the District of Columbia, Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands.

(b) *Enrollment and verification requirements.* (1) If the Contractor is not enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall—

(i) *Enroll.* Enroll as a Federal Contractor in the E-Verify program within 30 calendar days of contract award;

(ii) *Verify all new employees.* Within 90 calendar days of enrollment in the E-Verify program, begin to use E-Verify to initiate verification of employment eligibility of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 busi-

ness days after the date of hire (but see paragraph (b)(3) of this section); and

(iii) *Verify employees assigned to the contract.* For each employee assigned to the contract, initiate verification within 90 calendar days after date of enrollment or within 30 calendar days of the employee's assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(2) If the Contractor is enrolled as a Federal Contractor in E-Verify at time of contract award, the Contractor shall use E-Verify to initiate verification of employment eligibility of—

(i) *All new employees.* (A) *Enrolled 90 calendar days or more.* The Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(B) *Enrolled less than 90 calendar days.* Within 90 calendar days after enrollment as a Federal Contractor in E-Verify, the Contractor shall initiate verification of all new hires of the Contractor, who are working in the United States, whether or not assigned to the contract, within 3 business days after the date of hire (but see paragraph (b)(3) of this section); or

(ii) *Employees assigned to the contract.* For each employee assigned to the contract, the Contractor shall initiate verification within 90 calendar days after date of contract award or within 30 days after assignment to the contract, whichever date is later (but see paragraph (b)(4) of this section).

(3) If the Contractor is an institution of higher education (as defined at [20 U.S.C. 1001\(a\)](#)); a State or local government or the government of a Federally recognized Indian tribe; or a surety performing under a takeover agreement entered into with a Federal agency pursuant to a performance bond, the Contractor may choose to verify only employees assigned to the contract, whether existing employees or new hires. The Contractor shall follow the applicable verification requirements at (b)(1) or (b)(2) respectively, except that any requirement for verification of new employees applies only to new employees assigned to the contract.

(4) *Option to verify employment eligibility of all employees.* The Contractor may elect to verify all existing employees hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), rather than just those employees assigned to the contract. The Contractor shall initiate verification for each existing employee working in the United States who was hired after November 6, 1986 (after November 27, 2009, in the Commonwealth of the Northern Mariana Islands), within 180 calendar days of—

(i) Enrollment in the E-Verify program; or

(ii) Notification to E-Verify Operations of the Contractor's decision to exercise this option, using the contact information provided in the E-Verify program Memorandum of Understanding (MOU).

(5) The Contractor shall comply, for the period of performance of this contract, with the requirements of the E-Verify program MOU.

(i) The Department of Homeland Security (DHS) or the Social Security Administration (SSA) may terminate the Contractor's MOU and deny access to the E-Verify system in accordance with the terms of the MOU. In such case, the Contractor will be referred to a suspension or debarment official.

(ii) During the period between termination of the MOU and a decision by the suspension or debarment official whether to suspend or debar, the Contractor is excused from its obligations under paragraph (b) of this clause. If the suspension or debarment official determines not to suspend or debar the Contractor, then the Contractor must reenroll in E-Verify.

(c) *Web site.* Information on registration for and use of the E-Verify program can be obtained via the Internet at the Department of Homeland Security Web site: <http://www.dhs.gov/E-Verify>.

(d) *Individuals previously verified.* The Contractor is not required by this clause to perform additional employment verification using E-Verify for any employee—

(1) Whose employment eligibility was previously verified by the Contractor through the E-Verify program;

(2) Who has been granted and holds an active U.S. Government security clearance for access to confidential, secret, or top secret information in accordance with the National Industrial Security Program Operating Manual; or

(3) Who has undergone a completed background investigation and been issued credentials pursuant to Homeland Security Presidential Directive (HSPD)-12, Policy for a Common Identification Standard for Federal Employees and Contractors.

(e) *Subcontracts.* The Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for identification of the parties), in each subcontract that—

(1) *Is for—* (i) Commercial or noncommercial services (except for commercial services that are part of the purchase of a COTS item (or an item that would be a COTS item, but for minor modifications), performed by the COTS provider, and are normally provided for that COTS item); or

(ii) Construction;

(2) Has a value of more than \$3,000; and

(3) Includes work performed in the United States.

(End of clause)

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relative to the goals of the Environmental Management Systems.

(End of clause)

**52.224-1 Privacy Act Notification.**

As prescribed in [24.104](#), insert the following clause in solicitations and contracts, when the design, development, or operation of a system of records on individuals is required to accomplish an agency function:

PRIVACY ACT NOTIFICATION (APR 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 ([5 U.S.C. 552a](#)) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

(End of clause)

**52.224-2 Privacy Act.**

As prescribed in [24.104](#), insert the following clause in solicitations and contracts, when the design, development, or operation of a system of records on individuals is required to accomplish an agency function:

PRIVACY ACT (APR 1984)

(a) The Contractor agrees to—

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies—

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this paragraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of

records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c)(1) “Operation of a system of records,” as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) “Record,” as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person’s name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) “System of records on individuals,” as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(End of clause)

**52.225-1 Buy American—Supplies**

As prescribed in [25.1101](#)(a)(1), insert the following clause:

BUY AMERICAN—SUPPLIES (MAY 2014)

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

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition at FAR [2.101](#));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into an end product.

“Cost of components” means—

(3) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(4) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Domestic end product” means—

(1) An unmanufactured end product mined or produced in the United States;

(2) An end product manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(ii) The end product is a COTS item.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Foreign end product” means an end product other than a domestic end product.

“United States” means the 50 States, the District of Columbia, and outlying areas.

(b) [41 U.S.C. chapter 83](#), Buy American, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with [41 U.S.C. 1907](#), the component test of the Buy American statute is waived for an end product that is a COTS item (See [12.505\(a\)\(1\)](#)).

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled “Buy American Certificate.”

(End of clause)

**52.225-2 Buy American Certificate.**

As prescribed in [25.1101\(a\)\(2\)](#), insert the following provision:

BUY AMERICAN CERTIFICATE (MAY 2014)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.” The terms “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American—Supplies.”

(b) Foreign End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

[List as necessary]

(c) The Government will evaluate offers in accordance with the policies and procedures of [Part 25](#) of the Federal Acquisition Regulation.

(End of provision)

**52.225-3 Buy American—Free Trade Agreements-Israeli Trade Act.**

As prescribed in [25.1101\(b\)\(1\)\(i\)](#), insert the following clause:

BUY AMERICAN—FREE TRADE AGREEMENTS-ISRAELI TRADE ACT (MAY 2014)

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

“Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product” means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain, Morocco, Oman, Panama, or Peru; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Morocco, Oman, Panama, or Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition at FAR [2.101](#));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into an end product.

“Cost of components” means—

(3) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(4) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Domestic end product” means—

(1) An unmanufactured end product mined or produced in the United States;

(2) An end product manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic; or

(ii) The end product is a COTS item.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Foreign end product” means an end product other than a domestic end product.

“Free Trade Agreement country” means Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore.

“Free Trade Agreement country end product” means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Free Trade Agreement country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Israeli end product” means an article that—

(1) Is wholly the growth, product, or manufacture of Israel; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Israel into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

“United States” means the 50 States, the District of Columbia, and outlying areas.

(b) *Components of foreign origin.* Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(c) *Delivery of end products.* [41 U.S.C. chapter 83](#), Buy American statute, provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with [41 U.S.C. 1907](#), the component test of the Buy American statute is waived for an end product that is a COTS item (See [12.505\(a\)\(1\)](#)). In addition, the Contracting Officer has determined that FTAs (except the Bahrain, Morocco, Oman, Panama, and Peru FTAs) and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American—Free Trade Agreements—Israeli Trade Act Certificate.” If the Contractor specified in its offer that the Contractor would supply a Free Trade Agreement country end product (other than a Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product) or an Israeli end product, then the Contractor shall supply a Free Trade Agreement country end product (other than a Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product), an Israeli end product or, at the Contractor’s option, a domestic end product.

*Alternate I (May 2014).* As prescribed in [25.1101\(b\)\(1\)\(ii\)](#), add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (c) for paragraph (c) of the basic clause:

“Canadian end product” means an article that—

(1) Is wholly the growth, product, or manufacture of Canada; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(c) *Delivery of end products.* [41 U.S.C. chapter 83](#) provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with [41 U.S.C. 1907](#), the component test of the Buy American statute is waived for an end product that is a COTS item (See [12.505\(a\)\(1\)](#)). In addition, the Contracting Officer has determined that NAFTA applies to this acquisition. Unless otherwise specified, NAFTA applies to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American—Free Trade Agreements—Israeli Trade Act Certificate.” If the Contractor specified in its offer that the Contractor would supply a Canadian end product, then the Contractor shall supply a Canadian end product or, at the Contractor's option, a domestic end product.

*Alternate II (May 2014).* As prescribed in [25.1101\(b\)\(1\)\(iii\)](#), add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (c) for paragraph (c) of the basic clause:

“Canadian end product” means an article that—

(1) Is wholly the growth, product, or manufacture of Canada; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(c) *Delivery of end products.* [41 U.S.C. chapter 83](#) provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with [41 U.S.C. 1907](#), the component test of the Buy American statute is waived for an end product that is a COTS item (See [12.505\(a\)\(1\)](#)). In addition, the Contracting Officer has determined that NAFTA and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, these trade agreements apply

to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American—Free Trade Agreements—Israeli Trade Act Certificate.” If the Contractor specified in its offer that the Contractor would supply a Canadian end product or an Israeli end product, then the Contractor shall supply a Canadian end product, an Israeli end product or, at the Contractor's option, a domestic end product.

*Alternate III (May 2014).* As prescribed in [25.1101\(b\)\(1\)\(iv\)](#), delete the definition of “Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product” and add in its place the following definition of “Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end product” in paragraph (a) of the basic clause; and substitute the following paragraph (c) for paragraph (c) of the basic clause:

*Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end product* means an article that—

(1) Is wholly the growth, product, or manufacture of Bahrain, Korea (Republic of), Morocco, Oman, Panama, or Peru; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Korea (Republic of), Morocco, Oman, Panama, or Peru into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(c) *Delivery of end products.* [41 U.S.C. chapter 83](#) provides a preference for domestic end products for supplies acquired for use in the United States. In accordance with [41 U.S.C. 1907](#), the component test of the Buy American statute is waived for an end product that is a COTS item (See [12.505\(a\)\(1\)](#)). In addition, the Contracting Officer has determined that FTAs (except the Bahrain, Korea (Republic of), Morocco, Oman, Panama, and Peru FTAs) and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American—Free Trade Agreements—Israeli Trade Act Certificate.” If the Contractor specified in its offer that the Contractor would supply a Free Trade Agreement country end product (other than a Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end product) or an Israeli end product, then the Contractor shall supply a Free Trade Agreement country end product (other than a Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end product), an Israeli end product or, at the Contractor's option, a domestic end product.

**52.225-4 Buy American—Free Trade Agreements-Israeli Trade Act Certificate.**

As prescribed in [25.1101\(b\)\(2\)\(i\)](#), insert the following provision:

**BUY AMERICAN—FREE TRADE AGREEMENTS-ISRAELI TRADE ACT CERTIFICATE (MAY 2014)**

(a) The offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product,” “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act.”

(b) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”:

Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

[List as necessary]

(c) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (b) of this provision) as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act.” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.”

Other Foreign End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

[List as necessary]

(d) The Government will evaluate offers in accordance with the policies and procedures of [Part 25](#) of the Federal Acquisition Regulation.

(End of provision)

*Alternate I (May 2014).* As prescribed in [25.1101\(b\)\(2\)\(ii\)](#), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”:

Canadian End Products:

**LINE ITEM NO.**

_____
_____
_____

[List as necessary]

*Alternate II (May 2014).* As prescribed in [25.1101\(b\)\(2\)\(iii\)](#), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”:

CANADIAN OR ISRAELI END PRODUCTS:

**LINE ITEM NO.**                      **COUNTRY OF ORIGIN**

_____	_____
_____	_____
_____	_____

[List as necessary]

*Alternate III (May 2014).* As prescribed in [25.1101\(b\)\(2\)\(iv\)](#), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American—Free Trade Agreements—Israeli Trade Act”:

Free Trade Agreement Country End Products (Other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

[List as necessary]

### 52.225-5 Trade Agreements.

As prescribed in [25.1101\(c\)\(1\)](#), insert the following clause:

#### TRADE AGREEMENTS (NOV 2013)

(a) *Definitions.* As used in this clause—  
“Caribbean Basin country end product”—

(1) Means an article that—

(i)(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under [19 U.S.C. 2703\(b\)](#).

(A) For this reason, the following articles are not Caribbean Basin country end products:

(1) Tuna, prepared or preserved in any manner in airtight containers;

(2) Petroleum, or any product derived from petroleum;

(3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (*i.e.*, Afghanistan, Cuba, Laos, North Korea, and Vietnam); and

(4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;

(B) Access to the HTSUS to determine duty-free status of articles of these types is available at <http://www.usitc.gov/tata/hts/>. In particular, see the following:

(1) General Note 3(c), Products Eligible for Special Tariff treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act; and

(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)”), or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

“Designated country end product” means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Free Trade Agreement country end product” means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Least developed country end product” means an article that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself. “United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-made end product” means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

“WTO GPA country end product” means an article that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(b) *Delivery of end products.* The Contracting Officer has determined that the WTO GPA and FTAs apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made or designated country end products except to the extent that, in its offer, it specified

delivery of other end products in the provision entitled “Trade Agreements Certificate.”

(End of clause)

**52.225-6 Trade Agreements Certificate.**

As prescribed in [25.1101\(c\)\(2\)](#), insert the following provision:

TRADE AGREEMENTS CERTIFICATE (MAY 2014)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled “Trade Agreements.”

(b) The offeror shall list as other end products those supplies that are not U.S.-made or designated country end products.

Other End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

[List as necessary]

(c) The Government will evaluate offers in accordance with the policies and procedures of [Part 25](#) of the Federal Acquisition Regulation. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American statute. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for those products are insufficient to fulfill the requirements of this solicitation.

(End of provision)

**52.225-7 Waiver of Buy American Statute for Civil Aircraft and Related Articles.**

As prescribed in [25.1101\(d\)](#), insert the following provision:

WAIVER OF BUY AMERICAN STATUTE FOR CIVIL AIRCRAFT AND RELATED ARTICLES (MAY 2014)

(a) *Definition.* “Civil aircraft and related articles,” as used in this provision, means—

- (1) All aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard;
- (2) The engines (and parts and components for incorporation into the engines) of these aircraft;
- (3) Any other parts, components, and subassemblies for incorporation into the aircraft; and

(4) Any ground flight simulators, and parts and components of these simulators, for use with respect to the aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft, and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act.

(b) The U.S. Trade Representative has waived the Buy American statute for acquisitions of civil aircraft and related articles from countries that are parties to the Agreement on Trade in Civil Aircraft. Those countries are Albania, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Macao China, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Taiwan (Chinese Taipei), and the United Kingdom.

(c) For the purpose of this waiver, an article is a product of a country only if—

(1) It is wholly the growth, product, or manufacture of that country; or

(2) In the case of an article that consists in whole or in part of materials from another country, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

(d) The waiver is subject to modification or withdrawal by the U.S. Trade Representative.

(End of provision)

#### 52.225-8 Duty-Free Entry.

As prescribed in [25.1101](#)(e), insert the following clause:

##### DUTY-FREE ENTRY (OCT 2010)

(a) *Definition.* “Customs territory of the United States” means the States, the District of Columbia, and Puerto Rico.

(b) Except as otherwise approved by the Contracting Officer, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.

(c) Except as provided in paragraph (d) of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:

(1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$15,000 that are to be imported into the customs territory of the United States for delivery to the Government under this contract, either as end products or for incorporation into end products. The Contractor shall fur-

nish the notice to the Contracting Officer at least 20 calendar days before the importation. The notice shall identify the—

- (i) Foreign supplies;
- (ii) Estimated amount of duty; and
- (iii) Country of origin.

(2) The Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor’s notification.

(3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.

(d) The Contractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if—

(1) The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(e) The Contractor shall claim duty-free entry only for supplies to be delivered to the Government under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to nongovernmental use.

(f) The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.

(g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the—

(1) Delivery address of the Contractor (or contracting agency, if appropriate);

(2) Government prime contract number;

(3) Identification of carrier;

(4) Notation “UNITED STATES GOVERNMENT, \_\_\_\_\_ [agency] \_\_\_\_\_, Duty-free entry to be claimed pursuant to Item No(s) \_\_\_\_\_ [from *Tariff Schedules*] \_\_\_\_\_, Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR Part 142 and notify [*cognizant contract administration office*] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.”;

(5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and

(6) Estimated value in United States dollars.

(h) The Contractor shall instruct the foreign supplier to—



(1) Consign the shipment as specified in paragraph (g) of this clause;

(2) Mark all packages with the words “UNITED STATES GOVERNMENT” and the title of the contracting agency; and

(3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

(i) The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the—

- (1) Foreign supplies;
- (2) Country of origin;
- (3) Contract number; and
- (4) Scheduled delivery date(s).

(j) The Contractor shall include the substance of this clause in any subcontract if—

(1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or

(2) Other foreign supplies in excess of \$15,000 may be imported into the customs territory of the United States.

(End of clause)

**52.225-9 Buy American—Construction Materials.**

As prescribed in [25.1102\(a\)](#), insert the following clause:

BUY AMERICAN—CONSTRUCTION MATERIALS  
(MAY 2014)

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

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition at FAR [2.101](#));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life

safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(3) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(4) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States;

(2) A construction material manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

“Foreign construction material” means a construction material other than a domestic construction material.

“United States” means the 50 States, the District of Columbia, and outlying areas.

(b) *Domestic preference.* (1) This clause implements [41 U.S.C. chapter 83](#), Buy American, by providing a preference for domestic construction material. In accordance with [41 U.S.C. 1907](#), the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR [12.505\(a\)\(2\)](#)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.

(2) This requirement does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”]

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) *Request for determination of inapplicability of the Buy American statute.* (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including—

- (A) A description of the foreign and domestic construction materials;
- (B) Unit of measure;
- (C) Quantity;
- (D) Price;
- (E) Time of delivery or availability;
- (F) Location of the construction project;
- (G) Name and address of the proposed supplier;

and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed

price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON			
<u>Construction Material Description</u>	<u>Unit of Measure</u>	<u>Quantity</u>	<u>Price (Dollars)*</u>
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[\* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

**52.225-10 Notice of Buy American Requirement—Construction Materials.**

As prescribed in [25.1102\(b\)\(1\)](#), insert the following provision:

NOTICE OF BUY AMERICAN REQUIREMENT—  
CONSTRUCTION MATERIALS (MAY 2014)

(a) *Definitions.* “Commercially available off-the-shelf (COTS) item,” “construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American—Construction Materials” (Federal Acquisition Regulation (FAR) clause [52.225-9](#)).

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability

of the Buy American statute should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR [52.225-9](#) in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American statute before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.* (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American statute, based on claimed unreasonable cost of domestic construction material, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(3)(i) of the clause at FAR [52.225-9](#).

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers.* (1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(2) of the clause at FAR [52.225-9](#), the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate [Standard Form 1442](#) for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR [52.225-9](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR [52.225-9](#) does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations.

(End of provision)

*Alternate I (May 2014).* As prescribed in [25.1102\(b\)\(2\)](#), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American statute shall submit the request with its

offer, including the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR [52.225-9](#).

**52.225-11 Buy American—Construction Materials under Trade Agreements.**

As prescribed in [25.1102\(c\)](#), insert the following clause:

BUY AMERICAN—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2014)

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

“Caribbean Basin country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

“Commercially available off-the-shelf (COTS) item”—

(1) Means any item of supply (including construction material) that is—

(i) A commercial item (as defined in paragraph (1) of the definition at FAR [2.101](#));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in [46 U.S.C. 40102\(4\)](#), such as agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not

such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);

(2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States;

(2) A construction material manufactured in the United States, if—

(i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of

the same class or kind for which nonavailability determinations have been made are treated as domestic; or

(ii) The construction material is a COTS item.

“Foreign construction material” means a construction material other than a domestic construction material.

“Free Trade Agreement country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Least developed country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“WTO GPA country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.* (1) This clause implements [41 U.S.C. chapter 83](#), by providing a preference for domestic construction material. In accordance with [41 U.S.C. 1907](#), the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR [12.505\(a\)\(2\)](#)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”]

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American statute. (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

- (A) A description of the foreign and domestic construction materials;
- (B) Unit of measure;
- (C) Quantity;
- (D) Price;
- (E) Time of delivery or availability;
- (F) Location of the construction project;
- (G) Name and address of the proposed supplier;

and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. How-

ever, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

(d) Data. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON

Construction Material Description	Unit of Measure	Quantity	Price (Dollars)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[\* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

(End of clause)

*Alternate I (MAY 2014).* As prescribed in 25.1102(c)(3), add the following definition of “Bahrainian, Mexican, or Omani construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

“Bahrainian, Mexican, or Omani construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of Bahrain, Mexico, or Oman; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Mexico, or Oman into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.* (1) This clause implements 41 U.S.C. chapter 83, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.505(a)(2)).

In addition, the Contracting Officer has determined that the WTO GPA and all the Free Trade Agreements except the Bahrain FTA, NAFTA, and the Oman FTA apply to the this acquisition. Therefore, the Buy American statute restrictions are waived for designated country construction materials other than Bahrainian, Mexican, or Omani construction materials.

(2) The Contractor shall use only domestic or designated country construction material other than Bahrainian, Mexican, or Omani construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

#### **52.225-12 Notice of Buy American Requirement— Construction Materials Under Trade Agreements.**

As prescribed in [25.1102\(d\)\(1\)](#), insert the following provision:

##### NOTICE OF BUY AMERICAN REQUIREMENT— CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2014)

(a) *Definitions.* “Commercially available off-the-shelf (COTS) item,” “construction material,” “designated country construction material,” “domestic construction material,” and “foreign construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American—Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause [52.225-11](#)).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American statute should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause [52.225-11](#) in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American statute before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.* (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American statute, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause [52.225-11](#).

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers.* (1) When an offer includes foreign construction material, other than designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause [52.225-11](#), the offeror also may submit an alternate offer based on use of

equivalent domestic or designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate [Standard Form 1442](#) for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause [52.225-11](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause [52.225-11](#) does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material, and the offeror shall be required to furnish such domestic or designated country construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

*Alternate I (May 2014).* As prescribed in [25.1102\(d\)\(2\)](#), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American statute shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause [52.225-11](#).

*Alternate II (June 2009).* As prescribed in [25.1102\(d\)\(3\)](#), add the definition of “Bahrainian, Mexican, or Omani construction material” to paragraph (a) and substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) *Alternate offers.* (1) When an offer includes foreign construction material, except foreign construction material from a designated country other than Bahrain, Mexico, or Oman that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause [52.225-11](#), the offeror also may submit an alternate offer based on use of equivalent domestic or designated country construction material other than Bahrainian, Mexican, or Omani construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate [Standard Form 1442](#) for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause [52.225-11](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause [52.225-11](#) does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or designated country construction material other than Bahrainian,

Mexican, or Omani construction material. An offer based on use of the foreign construction material for which an exception was requested—

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations.

**52.225-13 Restrictions on Certain Foreign Purchases.**

As prescribed in [25.1103\(a\)](#), insert the following clause:

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES  
(JUNE 2008)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

**52.225-14 Inconsistency between English Version and Translation of Contract.**

As prescribed at [25.1103\(b\)](#), insert the following clause:

INCONSISTENCY BETWEEN ENGLISH VERSION AND  
TRANSLATION OF CONTRACT (FEB 2000)

In the event of inconsistency between any terms of this contract and any translation into another language, the English language meaning shall control.

(End of clause)

**52.225-15 [Reserved]**

**52.225-16 [Reserved]**

**52.225-17 Evaluation of Foreign Currency Offers.**

As prescribed in [25.1103\(c\)](#), insert the following provision:

EVALUATION OF FOREIGN CURRENCY OFFERS (FEB 2000)

If the Government receives offers in more than one currency, the Government will evaluate offers by converting the foreign currency to United States currency using [*Contracting Officer to insert source of rate*] in effect as follows:

- (a) For acquisitions conducted using sealed bidding procedures, on the date of bid opening.
- (b) For acquisitions conducted using negotiation procedures—

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(h) *Contractor personnel.* The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor personnel who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including termination for default or cause.

(i) *Weapons.* (1) If the Contracting Officer, subject to the approval of the Combatant Commander or the Chief of Mission, authorizes the carrying of weapons—

(i) The Contracting Officer may authorize an approved Contractor to issue Contractor-owned weapons and ammunition to specified employees; or

(ii) The \_\_\_\_\_ [*Contracting Officer to specify individual, e.g., Contracting Officer Representative, Regional Security Officer, etc.*] may issue Government-furnished weapons and ammunition to the Contractor for issuance to specified Contractor employees.

(2) The Contractor shall provide to the Contracting Officer a specific list of personnel for whom authorization to carry a weapon is requested.

(3) The Contractor shall ensure that its personnel who are authorized to carry weapons—

(i) Are adequately trained to carry and use them—

(A) Safely;

(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander or the Chief of Mission; and

(C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;

(ii) Are not barred from possession of a firearm by [18 U.S.C. 922](#); and

(iii) Adhere to all guidance and orders issued by the Combatant Commander or the Chief of Mission regarding possession, use, safety, and accountability of weapons and ammunition.

(4) Upon revocation by the Contracting Officer of the Contractor's authorization to possess weapons, the Contractor shall ensure that all Government-furnished weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(5) Whether or not weapons are Government-furnished, all liability for the use of any weapon by Contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.

(j) *Vehicle or equipment licenses.* Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the area of performance.

(k) *Military clothing and protective equipment.* (1) Contractor personnel are prohibited from wearing military cloth-

ing unless specifically authorized by the Combatant Commander. If authorized to wear military clothing, Contractor personnel must wear distinctive patches, armbands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures.

(2) Contractor personnel may wear specific items required for safety and security, such as ballistic, nuclear, biological, or chemical protective equipment.

(l) *Evacuation.* (1) If the Chief of Mission or Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide to United States and third country national Contractor personnel the level of assistance provided to private United States citizens.

(2) In the event of a non-mandatory evacuation order, the Contractor shall maintain personnel on location sufficient to meet contractual obligations unless instructed to evacuate by the Contracting Officer.

(m) *Personnel recovery.* (1) In the case of isolated, missing, detained, captured or abducted Contractor personnel, the Government will assist in personnel recovery actions.

(2) Personnel recovery may occur through military action, action by non-governmental organizations, other Government-approved action, diplomatic initiatives, or through any combination of these options.

(3) The Department of Defense has primary responsibility for recovering DoD contract service employees and, when requested, will provide personnel recovery support to other agencies in accordance with DoD Directive 2310.2, Personnel Recovery.

(n) *Notification and return of personal effects.* (1) The Contractor shall be responsible for notification of the employee-designated next of kin, and notification as soon as possible to the U.S. Consul responsible for the area in which the event occurred, if the employee—

(i) Dies;

(ii) Requires evacuation due to an injury; or

(iii) Is isolated, missing, detained, captured, or abducted.

(2) The Contractor shall also be responsible for the return of all personal effects of deceased or missing Contractor personnel, if appropriate, to next of kin.

(o) *Mortuary affairs.* Mortuary affairs for Contractor personnel who die in the area of performance will be handled as follows:

(1) If this contract was awarded by DoD, the remains of Contractor personnel will be handled in accordance with DoD Directive 1300.22, Mortuary Affairs Policy.

(2)(i) If this contract was awarded by an agency other than DoD, the Contractor is responsible for the return of the remains of Contractor personnel from the point of identification of the remains to the location specified by the employee

or next of kin, as applicable, except as provided in paragraph (o)(2)(ii) of this clause.

(ii) In accordance with [10 U.S.C. 1486](#), the Department of Defense may provide, on a reimbursable basis, mortuary support for the disposition of remains and personal effects of all U.S. citizens upon the request of the Department of State.

(p) *Changes*. In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in place of performance or Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph shall be subject to the provisions of the Changes clause of this contract.

(q) *Subcontracts*. The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts that require subcontractor personnel to perform outside the United States—

- (1) In a designated operational area during—
  - (i) Contingency operations;
  - (ii) Humanitarian or peacekeeping operations; or
  - (iii) Other military operations; or military exercises, when designated by the Combatant Commander; or

(2) When supporting a diplomatic or consular mission—

(i) That has been designated by the Department of State as a danger pay post (see [http://aoprals.state.gov/Web920/danger\\_pay\\_all.asp](http://aoprals.state.gov/Web920/danger_pay_all.asp)); or

(ii) That the Contracting Officer has indicated is subject to this clause.

(End of clause)

**52.225-20 Prohibition on Conducting Restricted Business Operations in Sudan—Certification.**

As prescribed at [25.1103\(d\)](#), insert the following provision:

PROHIBITION ON CONDUCTING RESTRICTED BUSINESS OPERATIONS IN SUDAN—CERTIFICATION (AUG 2009)

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

“Business operations” means engaging in commerce in any form, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

“Marginalized populations of Sudan” means—

(1) Adversely affected groups in regions authorized to receive assistance under section 8(c) of the Darfur Peace and Accountability Act (Pub. L. 109-344) ([50 U.S.C. 1701 note](#)); and

(2) Marginalized areas in Northern Sudan described in section 4(9) of such Act.

“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 (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) 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.

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

(End of provision)

**52.225-21 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials.**

As prescribed in [25.1102\(e\)](#), insert the following clause:

REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS—BUY AMERICAN STATUTE—CONSTRUCTION MATERIALS (MAY 2014)

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

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorpo-

rated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site.

“Domestic construction material” means the following—

(1) An unmanufactured construction material mined or produced in the United States. (The Buy American statute applies.)

(2) A manufactured construction material that is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States. (Section 1605 of the Recovery Act applies.)

“Foreign construction material” means a construction material other than a domestic construction material.

“Manufactured construction material” means any construction material that is not unmanufactured construction material.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“Unmanufactured construction material” means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(b) *Domestic preference.* (1) This clause implements—

(i) Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring, unless an exception applies, that all manufactured construction material in the project is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives); and

(ii) [41 U.S.C chapter 83](#), Buy American, by providing a preference for unmanufactured construction material mined or produced in the United States over unmanufactured construction material mined or produced in a foreign country.

(2) The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraph (b)(3) and (b)(4) of this clause.

(3) This requirement does not apply to the construction material or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”]

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable;

(A) The cost of domestic manufactured construction material, when compared to the cost of comparable foreign manufactured construction material, is unreasonable when the cumulative cost of such material will increase the cost of the contract by more than 25 percent;

(B) The cost of domestic unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of comparable foreign unmanufactured construction material by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

(iii) The application of the restriction of section 1605 of the Recovery Act to a particular manufactured construction material would be inconsistent with the public interest or the application of the Buy American statute to a particular unmanufactured construction material would be impracticable or inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act or the Buy American statute.*

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier;

and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination

and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to section 1605 of the Recovery Act or the Buy American statute applies, use of foreign construction material is non-compliant with section 1605 of the American Recovery and Reinvestment Act or the Buy American statute.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

**Foreign and Domestic Construction Materials Cost Comparison**

Construction Material Description	Unit of Measure	Quantity	Cost (Dollars)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[\* Include all delivery costs to the construction site.]

(End of clause)

**52.225-22 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials.**

As prescribed in [25.1102\(e\)](#), insert the following provision:

NOTICE OF REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS—BUY AMERICAN STATUTE—CONSTRUCTION MATERIALS (MAY 2014)

(a) *Definitions.* “Construction material,” “domestic construction material,” “foreign construction material,” “manufactured construction material,” “steel,” and “unmanufactured construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Required Use of Iron, Steel, and Manufactured Goods—Buy American statute—Construction Materials” (Federal Acquisition Regulation (FAR) clause [52.225-21](#)).

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American statute should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR [52.225-21](#) in the request. If an offeror has not requested a determination regarding the inapplicability of section 1605 of the Recovery Act or the Buy American statute before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.* (1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies in accordance with FAR [25.604](#), the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American statute by adding to the offered price of the contract—

(i) 25 percent of the offered price of the contract, if foreign manufactured construction material is incorporated in the offer based on an exception for unreasonable cost of comparable manufactured domestic construction material; and

(ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on an exception for the unreasonable cost of comparable domestic unmanufactured construction material.

(2) If the solicitation specifies award on the basis of factors in addition to cost or price, the Contracting Officer will apply the evaluation factors as specified in paragraph (c)(1) of this provision and use the evaluated price in determining the offer that represents the best value to the Government.

(3) Unless paragraph (c)(2) of this provision applies, if two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost of comparable domestic construction material.

(d) *Alternate offers.* (1) When an offer includes foreign construction material not listed by the Government in this solicitation in paragraph (b)(3) of the clause at FAR [52.225-21](#), the offeror also may submit an alternate offer based on use of equivalent domestic construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of the clause at FAR [52.225-21](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of the clause at FAR [52.225-21](#) does not apply, the Government will evaluate only those offers based on use of the equivalent domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

*Alternate I (May 2014).* As prescribed in [25.1102\(e\)](#), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American statute shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR [52.225-21](#).

**52.225-23 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials under Trade Agreements.**

As prescribed in [25.1102\(e\)](#), insert the following clause:

REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS—BUY AMERICAN STATUTE—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS  
(MAY 2014)

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

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual

parts or components of those systems are delivered to the construction site.

“Designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means the following:

(1) An unmanufactured construction material mined or produced in the United States. (The Buy American statute applies.)

(2) A manufactured construction material that is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States. (Section 1605 of the Recovery Act applies.)

“Foreign construction material” means a construction material other than a domestic construction material.

“Free trade agreement (FTA) country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of an FTA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Least developed country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“Manufactured construction material” means any construction material that is not unmanufactured construction material.

“Nondesignated country” means a country other than the United States or a designated country.

“Recovery Act designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);

(2) A Free Trade Agreement country (FTA)(Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore); or

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia).

“Recovery Act designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, or a least developed country construction material.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“Unmanufactured construction material” means raw material brought to the construction site for incorporation into the building or work that has not been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

“WTO GPA country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.*(1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) do not apply to Recovery Act designated country manufactured construction material. The restrictions of the Buy American statute do not apply to designated country unmanufactured construction material. Consistent with U.S. obligations under international agreements, this clause implements—

(i) Section 1605 of the Recovery Act by requiring, unless an exception applies, that all manufactured construction material in the project is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives); and

(ii) The Buy American statute by providing a preference for unmanufactured construction material mined or produced in the United States over unmanufactured construction material mined or produced in a nondesignated country.

(2) The Contractor shall use only domestic construction material, Recovery Act designated country manufactured construction material, or designated country unmanufactured construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

[*Contracting Officer to list applicable excepted materials or indicate “none”.*]

(4) The Contracting Officer may add other construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable;

(A) The cost of domestic manufactured construction material is unreasonable when the cumulative cost of such material, when compared to the cost of comparable foreign manufactured construction material, other than Recovery Act designated country construction material, will increase the overall cost of the contract by more than 25 percent;

(B) The cost of domestic unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of comparable foreign unmanufactured construction material, other than designated country construction material, by more than 6 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act to a particular manufactured construction material would be inconsistent with the public interest or the application of the Buy American statute to a particular unmanufactured construction material would be impracticable or inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American statute.*

(1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

- (A) A description of the foreign and domestic construction materials;
- (B) Unit of measure;
- (C) Quantity;
- (D) Cost;
- (E) Time of delivery or availability;
- (F) Location of the construction project;
- (G) Name and address of the proposed

supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to section 1605 of the Recovery Act or the Buy American statute applies, use of foreign construction material other than manufactured construction material from a Recovery Act designated country or unmanufactured construction material from a designated country is noncompliant with the applicable statute.

(d) *Data.* To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign (Nondesignated Country) and Domestic Construction Materials Cost Comparison

Construction Material Description	Unit of Measure	Quantity	Cost (Dollars)*
<i>Item 1:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material	_____	_____	_____
Domestic construction material	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[\* Include all delivery costs to the construction site.]

(End of clause)

*Alternate I (May 2014).* As prescribed in 25.1102(e), add the following definition of “Bahrainian, Mexican, or Omani construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

“Bahrainian, Mexican, or Omani construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of Bahrain, Mexico, or Oman; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Mexico, or Oman into a

new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.* (1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) do not apply to Recovery Act designated country manufactured construction material. The restrictions of the Buy American statute do not apply to designated country unmanufactured construction material. Consistent with U.S. obligations under international agreements, this clause implements—

(i) Section 1605 of the Recovery Act, by requiring, unless an exception applies, that all manufactured construction material in the project is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives); and

(ii) The Buy American statute by providing a preference for unmanufactured construction material mined or produced in the United States over unmanufactured construction material mined or produced in a non-designated country.

(2) The Contractor shall use only domestic construction material, Recovery Act designated country manufactured construction material, or designated country unmanufactured construction material, other than Bahrainian, Mexican, or Omani construction material, in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

**52.225-24 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements.**

As prescribed in [25.1102\(e\)](#), insert the following provision:

NOTICE OF REQUIRED USE OF AMERICAN IRON, STEEL,  
AND MANUFACTURED GOODS—BUY AMERICAN  
STATUTE—CONSTRUCTION MATERIALS UNDER TRADE  
AGREEMENTS (MAY 2014)

(a) *Definitions.* “Construction material,” “domestic construction material,” “foreign construction material,” “manufactured construction material,” “Recovery Act designated country construction material,” “steel,” and “unmanufactured construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Required Use of Iron, Steel, and Manufactured Goods—Buy American statute—Construction Materials Under Trade Agreements” (Federal Acquisition Regulation (FAR) clause [52.225-23](#)).

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American statute should submit the request to the Contracting Officer in time to allow a determination before submission of

offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause [52.225-23](#) in the request. If an offeror has not requested a determination regarding the inapplicability of section 1605 of the Recovery Act or the Buy American statute before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers.* (1) If the Government determines that an exception based on unreasonable cost of domestic construction material applies in accordance with FAR 25.604, the Government will evaluate an offer requesting exception to the requirements of section 1605 of the Recovery Act or the Buy American statute by adding to the offered price of the contract—

(i) 25 percent of the offered price of the contract, if foreign manufactured construction material is included in the offer based on an exception for the unreasonable cost of comparable manufactured domestic construction material; and

(ii) 6 percent of the cost of foreign unmanufactured construction material included in the offer based on an exception for the unreasonable cost of comparable domestic unmanufactured construction material.

(2) If the solicitation specifies award on the basis of factors in addition to cost or price, the Contracting Officer will apply the evaluation factors as specified in paragraph (c)(1) of this provision and use the evaluated cost or price in determining the offer that represents the best value to the Government.

(3) Unless paragraph (c)(2) of this provision applies, if two or more offers are equal in price, the Contracting Officer will give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost.

(d) *Alternate offers.* (1) When an offer includes foreign construction material, other than Recovery Act designated country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause [52.225-23](#), the offeror also may submit an alternate offer based on use of equivalent domestic or Recovery Act designated country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause [52.225-23](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause [52.225-23](#) does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or Recovery Act designated country construction material, and the offeror shall be required to furnish such domestic or Recovery Act designated country construction material. An



offer based on use of the foreign construction material for which an exception was requested—

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations.

(End of provision)

*Alternate I (May 2014).* As prescribed in [25.1102\(e\)](#), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) or the Buy American statute shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause [52.225-23](#).

*Alternate II (Mar 2009).* As prescribed in [25.1102\(e\)](#), add the definition of “Bahrainian, Mexican, or Omani construction material” to paragraph (a) and substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) *Alternate offers.* (1) When an offer includes foreign construction material, except foreign construction material from a Recovery Act designated country other than Bahrain, Mexico, or Oman that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause [52.225-23](#), the offeror also may submit an alternate offer based on use of equivalent domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer and a separate cost comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause [52.225-23](#) for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause [52.225-23](#) does not apply, the Government will evaluate only those offers based on use of the equivalent domestic or Recovery Act designated country construction material other than Bahrainian, Mexican, or Omani construction material. An offer based on use of the foreign construction material for which an exception was requested—

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations.

**52.225-25 Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications.**

As prescribed at [25.1103\(e\)](#), insert the following provision:

PROHIBITION ON CONTRACTING WITH ENTITIES ENGAGING IN CERTAIN ACTIVITIES OR TRANSACTIONS RELATING TO IRAN—REPRESENTATION AND CERTIFICATIONS (DEC 2012)

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

(1) Means—

- (i) A natural person;
- (ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and
- (iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and

(2) Does not include a government or governmental entity that is not operating as a business enterprise.

“Sensitive technology”—

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—

- (i) To restrict the free flow of unbiased information in Iran; or
- (ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act ([50 U.S.C. 1702\(b\)\(3\)](#)).

(b) The offeror shall e-mail questions concerning sensitive technology to the Department of State at [CISADA106@state.gov](mailto:CISADA106@state.gov).

(c) Except as provided in paragraph (d) of this provision or if a waiver has been granted in accordance with [25.703-4](#), by submission of its offer, the offeror—

(1) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(2) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act. These sanctioned activities are in the areas of development of the petroleum resources of Iran, production of refined petroleum products in Iran, sale and provision of refined petroleum products to Iran, and contributing to Iran's ability to acquire or develop certain weapons or technologies; and

(3) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds \$3,000 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (see OFAC's Specially Designated

Nationals and Blocked Persons List at <http://www.treasury.gov/ofac/downloads/t11sbn.pdf>.

(d) *Exception for trade agreements.* The representation requirement of paragraph (c)(1) and the certification requirements of paragraphs (c)(2) and (c)(3) of this provision do not apply if—

(1) This solicitation includes a trade agreements notice or certification (e.g., [52.225-4](#), [52.225-6](#), [52.225-12](#), [52.225-24](#), or comparable agency provision); and

(2) The offeror has certified that all the offered products to be supplied are designated country end products or designated country construction material.

(End of provision)

### **52.225-26 Contractors Performing Private Security Functions Outside the United States.**

As prescribed in [25.302-6](#) insert the following clause:

CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS  
OUTSIDE THE UNITED STATES (JUL 2013)

(a) *Definition.*

“Private security functions” means activities engaged in by a Contractor, as follows:

(1) Guarding of personnel, facilities, designated sites, or property of a Federal agency, the Contractor or subcontractor, or a third party.

(2) Any other activity for which personnel are required to carry weapons in the performance of their duties in accordance with the terms of this contract.

(b) *Applicability.* If this contract is performed both in a designated area and in an area that is not designated, the clause only applies to performance in the designated area.

(1) For DoD contracts, designated areas are areas of—

(i) Contingency operations outside the United States;

(ii) Combat operations, as designated by the Secretary of Defense; or

(iii) Other significant military operations, as designated by the Secretary of Defense, and only upon agreement of the Secretary of Defense and the Secretary of State.

(2) For non-DoD contracts, designated areas are areas of—

(i) Combat operations, as designated by the Secretary of Defense; or

(ii) Other significant military operations, as designated by the Secretary of Defense, and only upon agreement of the Secretary of Defense and the Secretary of State.

(c) *Requirements.* The Contractor is required to—

(1) Ensure that all employees of the Contractor who are responsible for performing private security functions under this contract comply with 32 CFR part 159, and with any orders, directives, and instructions to Contractors performing private security functions that are identified in the contract for—

(i) Registering, processing, accounting for, managing, overseeing, and keeping appropriate records of personnel performing private security functions;

(ii) Authorizing and accounting for weapons to be carried by or available to be used by personnel performing private security functions;

(iii) Registering and identifying armored vehicles, helicopters, and other military vehicles operated by Contractors performing private security functions; and

(iv) Reporting incidents in which—

(A) A weapon is discharged by personnel performing private security functions;

(B) Personnel performing private security functions are attacked, killed, or injured;

(C) Persons are killed or injured or property is destroyed as a result of conduct by Contractor personnel;

(D) A weapon is discharged against personnel performing private security functions or personnel performing such functions believe a weapon was so discharged; or

(E) Active, non-lethal countermeasures (other than the discharge of a weapon) are employed by personnel performing private security functions in response to a perceived immediate threat;

(2) Ensure that the Contractor and all employees of the Contractor who are responsible for performing private security functions under this contract are briefed on and understand their obligation to comply with—

(i) Qualification, training, screening (including, if applicable, thorough background checks), and security requirements established by 32 CFR part 159, Private Security Contractors (PSCs) Operating in Contingency Operations, Combat Operations, or Other Significant Military Operations;

(ii) Applicable laws and regulations of the United States and the host country and applicable treaties and international agreements regarding performance of private security functions;

(iii) Orders, directives, and instructions issued by the applicable commander of a combatant command or relevant Chief of Mission relating to weapons, equipment, force protection, security, health, safety, or relations and interaction with locals; and

(iv) Rules on the use of force issued by the applicable commander of a combatant command or relevant Chief of Mission for personnel performing private security functions; and

(3) Cooperate with any Government-authorized investigation of incidents reported pursuant to paragraph (c)(1)(iv) of this clause and incidents of alleged misconduct by personnel performing private security functions under this contract by providing—

(i) Access to employees performing private security functions; and

NOTICE OF DISASTER OR EMERGENCY AREA SET-ASIDE  
(NOV 2007)

(a) *Set-aside area.* Offers are solicited only from businesses residing or primarily doing business in

[Contracting Officer to fill in with definite geographic boundaries.] Offers received from other businesses shall not be considered.

(b) This set-aside is in addition to any small business set-aside contained in this contract.

(End of clause)

**52.226-5 Restrictions on Subcontracting Outside Disaster or Emergency Area.**

As prescribed in [26.206\(c\)](#), insert the following clause:

RESTRICTIONS ON SUBCONTRACTING OUTSIDE  
DISASTER OR EMERGENCY AREA (NOV 2007)

(a) *Definitions.* The definitions of the following terms used in this clause are found in the Small Business Administration regulations at 13 CFR 125.6(e): cost of the contract, cost of contract performance incurred for personnel, cost of manufacturing, cost of materials, personnel, and subcontracting.

(b) The Contractor agrees that in performance of the contract in the case of a contract for—

(1) *Services (except construction).* At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the Contractor or employees of other businesses residing or primarily doing business in the area designated in the clause at FAR [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside;

(2) *Supplies (other than procurement from a nonmanufacturer of such supplies).* The Contractor or employees of other businesses residing or primarily doing business in the set-aside area shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials;

(3) *General construction.* The Contractor will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the set-aside area; or

(4) *Construction by special trade Contractors.* The Contractor will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees or employees of other businesses residing or primarily doing business in the set-aside area.

(End of clause)

**52.226-6 Promoting Excess Food Donation to Nonprofit Organizations.**

As prescribed in [26.404](#), insert the following clause:

PROMOTING EXCESS FOOD DONATION TO NONPROFIT  
ORGANIZATIONS (MAY 2014)

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

“Apparently wholesome food” means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

“Excess food” means food that—

(1) Is not required to meet the needs of the executive agencies; and

(2) Would otherwise be discarded.

“Food-insecure” means inconsistent access to sufficient, safe, and nutritious food.

“Nonprofit organization” means any organization that is—

(1) Described in section 501(c) of the Internal Revenue Code of 1986; and

(2) Exempt from tax under section 501(a) of that Code.

(b) In accordance with the Federal Food Donation Act of 2008 ([42 U.S.C. 1792](#)), the Contractor is encouraged, to the maximum extent practicable and safe, to donate excess, apparently wholesome food to nonprofit organizations that provide assistance to food-insecure people in the United States.

(c) *Costs.* (1) The Contractor, including any subcontractors, shall assume the responsibility for all the costs and the logistical support to collect, transport, maintain the safety of, or distribute the excess, apparently wholesome food to the nonprofit organization(s) that provides assistance to food-insecure people.

(2) The Contractor will not be reimbursed for any costs incurred or associated with the donation of excess foods. Any costs incurred for excess food donations are unallowable.

(d) *Liability.* The Government and the Contractor, including any subcontractors, shall be exempt from civil and criminal liability to the extent provided under the Bill Emerson Good Samaritan Food Donation Act ([42 U.S.C. 1791](#)). Nothing in this clause shall be construed to supersede State or local health regulations (subsection (f) of [42 U.S.C. 1791](#)).

(e) *Flowdown.* The Contractor shall insert this clause in all contracts, task orders, delivery orders, purchase orders, and other similar instruments greater than \$25,000 with its subcontractors or suppliers, at any tier, who will perform, under this contract, the provision, service, or sale of food in the United States.

(End of clause)

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agreement and an identification of applicable claims of specific patents.

(End of provision)

*Alternate I (Apr 1984).* As prescribed in [27.202-5\(a\)\(2\)](#), substitute the following for the introductory portion of paragraph (a) of the basic provision:

When the response to this solicitation covers charges for special construction or special assembly that contain costs or charges for royalties totaling more than \$250, the following information shall be included in the response relating to each separate item of royalty or license fee:

#### **52.227-7 Patents—Notice of Government Licensee.**

As prescribed at [27.202-5\(b\)](#), insert the following provision:

##### PATENTS—NOTICE OF GOVERNMENT LICENSEE (APR 1984)

The Government is obligated to pay a royalty applicable to the proposed acquisition because of a license agreement between the Government and the patent owner. The patent number is \_\_\_\_ [*Contracting Officer fill in*], and the royalty rate is \_\_\_\_ [*Contracting Officer fill in*]. If the offeror is the owner of, or a licensee under, the patent, indicate below:

Owner  Licensee

If an offeror does not indicate that it is the owner or a licensee of the patent, its offer will be evaluated by adding thereto an amount equal to the royalty.

(End of provision)

#### **52.227-8 [Reserved]**

#### **52.227-9 Refund of Royalties.**

As prescribed in [27.202-5\(c\)](#), insert the following clause:

##### REFUND OF ROYALTIES (APR 1984)

(a) The contract price includes certain amounts for royalties payable by the Contractor or subcontractors or both, which amounts have been reported to the Contracting Officer.

(b) The term “royalties” as used in this clause refers to any costs or charges in the nature of royalties, license fees, patent or license amortization costs, or the like, for the use of or for rights in patents and patent applications in connection with performing this contract or any subcontract hereunder.

(c) The Contractor shall furnish to the Contracting Officer, before final payment under this contract, a statement of royalties paid or required to be paid in connection with performing this contract and subcontracts hereunder together with the reasons.

(d) The Contractor will be compensated for royalties reported under paragraph (c) of this clause, only to the extent

that such royalties were included in the contract price and are determined by the Contracting Officer to be properly chargeable to the Government and allocable to the contract. To the extent that any royalties that are included in the contract price are not in fact paid by the Contractor or are determined by the Contracting Officer not to be properly chargeable to the Government and allocable to the contract, the contract price shall be reduced. Repayment or credit to the Government shall be made as the Contracting Officer directs.

(e) If, at any time within 3 years after final payment under this contract, the Contractor for any reason is relieved in whole or in part from the payment of the royalties included in the final contract price as adjusted pursuant to paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer of that fact and shall reimburse the Government in a corresponding amount.

(f) The substance of this clause, including this paragraph (f), shall be included in any subcontract in which the amount of royalties reported during negotiation of the subcontract exceeds \$250.

(End of clause)

#### **52.227-10 Filing of Patent Applications—Classified Subject Matter.**

As prescribed at [27.203-2](#), insert the following clause:

##### FILING OF PATENT APPLICATIONS—CLASSIFIED SUBJECT MATTER (DEC 2007)

(a) Before filing or causing to be filed a patent application in the United States disclosing any subject matter of this contract classified “Secret” or higher, the Contractor shall, citing the 30-day provision below, transmit the proposed application to the Contracting Officer. The Government shall determine whether, for reasons of national security, the application should be placed under an order of secrecy, sealed in accordance with the provision of [35 U.S.C. 181-188](#), or the issuance of a patent otherwise delayed under pertinent United States statutes or regulations. The Contractor shall observe any instructions of the Contracting Officer regarding the manner of delivery of the patent application to the United States Patent Office, but the Contractor shall not be denied the right to file the application. If the Contracting Officer shall not have given any such instructions within 30 days from the date of mailing or other transmittal of the proposed application, the Contractor may file the application.

(b) Before filing a patent application in the United States disclosing any subject matter of this contract classified “Confidential,” the Contractor shall furnish to the Contracting Officer a copy of the application for Government determination whether, for reasons of national security, the application should be placed under an order of secrecy or the issuance of a patent should be otherwise delayed under pertinent United States statutes or regulations.

(c) Where the subject matter of this contract is classified for reasons of security, the Contractor shall not file, or cause to be filed, in any country other than in the United States as provided in paragraphs (a) and (b) of this clause, an application or registration for a patent containing any of the subject matter of this contract without first obtaining written approval of the Contracting Officer.

(d) When filing any patent application coming within the scope of this clause, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter and shall promptly furnish to the Contracting Officer the serial number, filing date, and name of the country of any such application. When transmitting the application to the United States Patent Office, the Contractor shall by separate letter identify by agency and number the contract or contracts that require security classification markings to be placed on the application.

(e) The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts that cover or are likely to cover classified subject matter.

(End of clause)

#### 52.227-11 Patent Rights—Ownership by the Contractor.

As prescribed in [27.303\(b\)\(1\)](#), insert the following clause:

##### PATENT RIGHTS—OWNERSHIP BY THE CONTRACTOR (MAY 2014)

(a) As used in this clause—

“Invention” means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code, or any variety of plant that is or may be protectable under the Plant Variety Protection Act ([7 U.S.C. 2321](#), *et seq.*)

“Made” means—

(1) When used in relation to any invention other than a plant variety, the conception or first actual reduction to practice of the invention; or

(2) When used in relation to a plant variety, that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

“Nonprofit organization” means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 ([26 U.S.C. 501\(c\)](#)) and exempt from taxation under section 501(a) of the Internal Revenue Code ([26 U.S.C. 501\(a\)](#)), or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

“Practical application” means to manufacture, in the case of a composition of product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to

the extent permitted by law or Government regulations, available to the public on reasonable terms.

“Subject invention” means any invention of the Contractor made in the performance of work under this contract.

(b) *Contractor’s rights.* (1) *Ownership.* The Contractor may retain ownership of each subject invention throughout the world in accordance with the provisions of this clause.

(2) *License.* (i) The Contractor shall retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, unless the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor’s license extends to any domestic subsidiaries and affiliates within the corporate structure of which the Contractor is a part, and includes the right to grant sublicenses to the extent the Contractor was legally obligated to do so at contract award. The license is transferable only with the written approval of the agency, except when transferred to the successor of that part of the Contractor’s business to which the invention pertains.

(ii) The Contractor’s license may be revoked or modified by the agency to the extent necessary to achieve expeditious practical application of the subject invention in a particular country in accordance with the procedures in FAR [27.302\(i\)\(2\)](#) and [27.304-1\(f\)](#).

(c) *Contractor’s obligations.* (1) The Contractor shall disclose in writing each subject invention to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure shall identify the inventor(s) and this contract under which the subject invention was made. It shall be sufficiently complete in technical detail to convey a clear understanding of the subject invention. The disclosure shall also identify any publication, on sale (*i.e.*, sale or offer for sale), or public use of the subject invention, or whether a manuscript describing the subject invention has been submitted for publication and, if so, whether it has been accepted for publication. In addition, after disclosure to the agency, the Contractor shall promptly notify the Contracting Officer of the acceptance of any manuscript describing the subject invention for publication and any on sale or public use.

(2) The Contractor shall elect in writing whether or not to retain ownership of any subject invention by notifying the Contracting Officer within 2 years of disclosure to the agency. However, in any case where publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor shall file either a provisional or a nonprovisional patent application or a Plant Variety Protection Application on an elected subject invention within 1 year

after election. However, in any case where a publication, on sale, or public use has initiated the 1-year statutory period during which valid patent protection can be obtained in the United States, the Contractor shall file the application prior to the end of that statutory period. If the Contractor files a provisional application, it shall file a nonprovisional application within 10 months of the filing of the provisional application. The Contractor shall file patent applications in additional countries or international patent offices within either 10 months of the first filed patent application (whether provisional or nonprovisional) or 6 months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) The Contractor may request extensions of time for disclosure, election, or filing under paragraphs (c)(1), (c)(2), and (c)(3) of this clause.

(d) *Government's rights*—(1) *Ownership*. The Contractor shall assign to the agency, on written request, title to any subject invention—

(i) If the Contractor fails to disclose or elect ownership to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain ownership; provided, that the agency may request title only within 60 days after learning of the Contractor's failure to disclose or elect within the specified times.

(ii) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the agency, the Contractor shall continue to retain ownership in that country.

(iii) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(2) *License*. If the Contractor retains ownership of any subject invention, the Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the subject invention throughout the world.

(e) *Contractor action to protect the Government's interest*. (1) The Contractor shall execute or have executed and promptly deliver to the agency all instruments necessary to—

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions in which the Contractor elects to retain ownership; and

(ii) Assign title to the agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection and plant variety protection for that subject invention in any country.

(2) The Contractor shall require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in the Contractor's format, each subject invention in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor shall notify the Contracting Officer of any decisions not to file a nonprovisional patent application, continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response or filing period required by the relevant patent office.

(4) The Contractor shall include, within the specification of any United States nonprovisional patent or plant variety protection application and any patent or plant variety protection certificate issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by (identify the agency). The Government has certain rights in the invention."

(f) *Reporting on utilization of subject inventions*. The Contractor shall submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining utilization of the subject invention that are being made by the Contractor or its licensees or assignees. The reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and other data and information as the agency may reasonably specify. The Contractor also shall provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (h) of this clause. The Contractor also shall mark any utilization report as confidential/proprietary to help prevent inadvertent release outside the Government. As required by [35 U.S.C. 202\(c\)\(5\)](#), the agency will not disclose that information to persons outside the Government without the Contractor's permission.

(g) *Preference for United States industry*. Notwithstanding any other provision of this clause, neither the Contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject

invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for an agreement may be waived by the agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States, or that under the circumstances domestic manufacture is not commercially feasible.

(h) *March-in rights.* The Contractor acknowledges that, with respect to any subject invention in which it has retained ownership, the agency has the right to require licensing pursuant to [35 U.S.C. 203 and 210\(c\)](#), and in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency in effect on the date of contract award.

(i) Special provisions for contracts with nonprofit organizations. If the Contractor is a nonprofit organization, it shall—

(1) Not assign rights to a subject invention in the United States without the written approval of the agency, except where an assignment is made to an organization that has as one of its primary functions the management of inventions, *provided*, that the assignee shall be subject to the same provisions as the Contractor;

(2) Share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (but through their agency if the agency deems it appropriate) when the subject invention is assigned in accordance with [35 U.S.C. 202\(e\)](#) and 37 CFR 401.10;

(3) Use the balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions for the support of scientific research or education; and

(4) Make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business concerns, and give a preference to a small business concern when licensing a subject invention if the Contractor determines that the small business concern has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business concerns; *provided*, that the Contractor is also satisfied that the small business concern has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor.

(5) Allow the Secretary of Commerce to review the Contractor's licensing program and decisions regarding small business applicants, and negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of paragraph (i)(4) of this clause.

(j) *Communications.* [*Complete according to agency instructions.*]

(k) *Subcontracts.* (1) The Contractor shall include the substance of this clause, including this paragraph (k), in all subcontracts for experimental, developmental, or research work to be performed by a small business concern or nonprofit organization.

(2) The Contractor shall include in all other subcontracts for experimental, developmental, or research work the substance of the patent rights clause required by FAR [Subpart 27.3](#).

(3) At all tiers, the patent rights clause must be modified to identify the parties as follows: references to the Government are not changed, and the subcontractor has all rights and obligations of the Contractor in the clause. The Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(4) In subcontracts, at any tier, the agency, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes statute in connection with proceedings under paragraph (h) of this clause.

(End of clause)

*Alternate I (Jun 1989).* As prescribed in [27.303\(b\)\(3\)](#), add the following sentence at the end of paragraph (d)(2) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments, their nationals and international organizations pursuant to the following treaties or international agreements: \_\_\_\_\_\*  
[\*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

*Alternate II (Dec 2007).* As prescribed in [27.303\(b\)\(4\)](#), add the following sentence at the end of paragraph (d)(2) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into by the Government before or after the effective date of the contract and effectuate those license or other rights that are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under the treaties or international agreements with respect to subject inventions made after the date of the amendment.

*Alternate III (Jun 1989).* As prescribed in [27.303\(b\)\(5\)](#), substitute the following paragraph (i)(3) in place of paragraph (i)(3) of the basic clause:



(ii) A final report, within 3 months after completion of the contracted work, listing all subject inventions or stating that there were none, and listing all subcontracts at any tier containing a patent rights clause or stating that there were none.

(4) The Contractor shall require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in the Contractor's format each subject invention in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (e)(2) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, as to the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(5) Subject to FAR [27.302\(i\)](#), the Contractor agrees that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) *Examination of records relating to inventions.*

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether—

(i) Any inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by paragraphs (e)(1) and (e)(4) of this clause; and

(iii) The Contractor and its inventors have complied with the procedures.

(2) The Contractor shall disclose to the Contracting Officer, for the determination of ownership rights, any unreported invention that the Contracting Officer believes may be a subject invention.

(3) Any examination of records under paragraph (f) of this clause will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) *Withholding of payment. (This paragraph does not apply to subcontracts.)* (1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Office's opinion, the Contractor fails to—

(i) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to paragraph (e)(1) of this clause;

(ii) Disclose any subject invention pursuant to paragraph (e)(2) of this clause;

(iii) Deliver acceptable interim reports pursuant to paragraph (e)(3)(i) of this clause; or

(iv) Provide the information regarding subcontracts pursuant to paragraph (i)(4) of this clause.

(2) The Contracting Officer will withhold the reserve or balance until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) The Contracting Officer will not make final payment under this contract before the Contractor delivers to the Contracting Officer, as required by this clause, all disclosures of subject inventions, an acceptable final report, and all due confirmatory instruments.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized. The Contracting Officer will not withhold any amount under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment shall not be construed as a waiver of any Government rights.

(h) *Preference for United States industry.* Unless provided otherwise, neither the Contractor nor any assignee shall grant to any person the exclusive right to use or sell any subject invention in the United States unless the person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the agency upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that, under the circumstances, domestic manufacture is not commercially feasible.

(i) *Subcontracts.* (1) The Contractor shall include the substance of the patent rights clause required by FAR [Subpart 27.3](#) in all subcontracts for experimental, developmental, or research work. The prescribed patent rights clause must be modified to identify the parties as follows: references to the Government are not changed, and the subcontractor has all rights and obligations of the Contractor in the clause. The Contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept the clause, the Contractor—

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In subcontracts at any tier, the agency, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by the patent rights clause constitute a contract between the subcontractor and the agency with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(End of clause)

*Alternate I (Jun 1989).* As prescribed in [27.303\(e\)](#) (4), add the following sentence at the end of paragraph (c)(1)(i) of the basic clause:

The license will include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements: \_\_\_\_\_\*  
[\*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

*Alternate II (Dec 2007).* As prescribed in [27.303\(e\)](#)(5), add the following sentence at the end of paragraph (c)(1)(i) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into by the Government before or after the effective date of this contract, and effectuate those license or other rights that are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under treaties or international agreements with respect to subject inventions made after the date of the amendment.

#### 52.227-14 Rights in Data—General.

As prescribed in [27.409\(b\)](#)(1), insert the following clause with any appropriate alternates:

##### RIGHTS IN DATA—GENERAL (MAY 2014)

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

“Computer database” or “database means” a collection of recorded information in a form capable of, and for the purpose

of, being stored in, processed, and operated on by a computer. The term does not include computer software.

“Computer software”— (1) *Means* (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

“Computer software documentation” means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

“Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

“Form, fit, and function data” means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

“Limited rights” means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

“Limited rights data” means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

“Restricted computer software” means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

“Restricted rights,” as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

“Technical data” means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See [41 U.S.C. 116](#)).

“Unlimited rights” means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in—

- (i) Data first produced in the performance of this contract;
- (ii) Form, fit, and function data delivered under this contract;
- (iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and
- (iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to—

- (i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;
- (ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;
- (iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and
- (iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) *Copyright*—(1) *Data first produced in the performance of this contract.* (i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia pro-

ceedings, or similar works. The prior, express written permission of the Contracting Officer is required to assert copyright in all other data first produced in the performance of this contract.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of [17 U.S.C. 401 or 402](#), and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor—

- (i) Identifies the data; and
- (ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of copyright notices.* The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) *Release, publication, and use of data.* The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except—

- (1) As prohibited by Federal law or regulation (*e.g.*, export control or national security laws or regulations);
- (2) As expressly set forth in this contract; or
- (3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.

(e) *Unauthorized marking of data.* (1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are

marked with the notices specified in paragraph (g)(3) or (g)(4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to [41 U.S.C. 4703](#), the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act ([5 U.S.C. 552](#)) if necessary to respond to a request thereunder.

(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise

as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) *Omitted or incorrect markings.* (1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may—

(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) *Protection of limited rights data and restricted computer software.* (1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall—

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3) [Reserved]

(h) *Subcontracting.* The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

(i) *Relationship to patents or other rights.* Nothing contained in this clause shall imply a license to the Government

**52.227-17 Rights in Data—Special Works.**

As prescribed in [27.409\(e\)](#), insert the following clause:

## RIGHTS IN DATA—SPECIAL WORKS (DEC 2007)

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

“Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

“Unlimited rights” means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of Rights.* (1) The Government shall have—

(i) Unlimited rights in all data delivered under this contract, and in all data first produced in the performance of this contract, except as provided in paragraph (c) of this clause.

(ii) The right to limit assertion of copyright in data first produced in the performance of this contract, and to obtain assignment of copyright in that data, in accordance with paragraph (c)(1) of this clause.

(iii) The right to limit the release and use of certain data in accordance with paragraph (d) of this clause.

(2) The Contractor shall have, to the extent permission is granted in accordance with paragraph (c)(1) of this clause, the right to assert claim to copyright subsisting in data first produced in the performance of this contract.

(c) *Copyright—* (1) *Data first produced in the performance of this contract.* (i) The Contractor shall not assert or authorize others to assert any claim to copyright subsisting in any data first produced in the performance of this contract without prior written permission of the Contracting Officer. When copyright is asserted, the Contractor shall affix the appropriate copyright notice of [17 U.S.C. 401 or 402](#) and acknowledgment of Government sponsorship (including contract number) to the data when delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all delivered data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(ii) If the Government desires to obtain copyright in data first produced in the performance of this contract and permission has not been granted as set forth in paragraph (c)(1)(i) of this clause, the Contracting Officer shall direct the Contractor to assign (with or without registration), or obtain the

assignment of, the copyright to the Government or its designated assignee.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract and that contain the copyright notice of [17 U.S.C. 401 or 402](#), unless the Contractor identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.

(d) *Release and use restrictions.* Except as otherwise specifically provided for in this contract, the Contractor shall not use, release, reproduce, distribute, or publish any data first produced in the performance of this contract, nor authorize others to do so, without written permission of the Contracting Officer.

(e) *Indemnity.* The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, delivery, publication, or use of any data furnished under this contract; or any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the Contractor’s consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and these provisions do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

*(End of clause)*

**52.227-18 Rights in Data—Existing Works.**

As prescribed in [27.409\(f\)](#), insert the following clause:

## RIGHTS IN DATA—EXISTING WORKS (DEC 2007)

(a) Except as otherwise provided in this contract, the Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government, for all the material or subject matter called for under this contract, or for which this clause is specifically made applicable.

(b) The Contractor shall indemnify the Government and its officers, agents, and employees acting for the Government against any liability, including costs and expenses, incurred as the result of (1) the violation of trade secrets, copyrights, or right of privacy or publicity, arising out of the creation, deliv-

ery, publication or use of any data furnished under this contract; or (2) any libelous or other unlawful matter contained in such data. The provisions of this paragraph do not apply unless the Government provides notice to the Contractor as soon as practicable of any claim or suit, affords the Contractor an opportunity under applicable laws, rules, or regulations to participate in the defense of the claim or suit, and obtains the Contractor's consent to the settlement of any claim or suit other than as required by final decree of a court of competent jurisdiction; and do not apply to material furnished to the Contractor by the Government and incorporated in data to which this clause applies.

(End of clause)

#### 52.227-19 Commercial Computer Software License.

As prescribed in [27.409\(g\)](#), insert the following clause:

##### COMMERCIAL COMPUTER SOFTWARE LICENSE (DEC 2007)

(a) Notwithstanding any contrary provisions contained in the Contractor's standard commercial license or lease agreement, the Contractor agrees that the Government will have the rights that are set forth in paragraph (b) of this clause to use, duplicate or disclose any commercial computer software delivered under this contract. The terms and provisions of this contract shall comply with Federal laws and the Federal Acquisition Regulation.

(b)(1) The commercial computer software delivered under this contract may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b)(2) of this clause or as expressly stated otherwise in this contract.

(2) The commercial computer software may be—

(i) Used or copied for use with the computer(s) for which it was acquired, including use at any Government installation to which the computer(s) may be transferred;

(ii) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(iii) Reproduced for safekeeping (archives) or backup purposes;

(iv) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, commercial computer software shall be subject to same restrictions set forth in this contract;

(v) Disclosed to and reproduced for use by support service Contractors or their subcontractors, subject to the same restrictions set forth in this contract; and

(vi) Used or copied for use with a replacement computer.

(3) If the commercial computer software is otherwise available without disclosure restrictions, the Contractor licenses it to the Government without disclosure restrictions.

(c) The Contractor shall affix a notice substantially as follows to any commercial computer software delivered under this contract:

NOTICE-Notwithstanding any other lease or license agreement that may pertain to, or accompany the delivery of, this computer software, the rights of the Government regarding its use, reproduction and disclosure are as set forth in Government Contract No. \_\_\_\_\_.

(End of clause)

#### 52.227-20 Rights in Data—SBIR Program.

As prescribed in [27.409\(h\)](#), insert the following clause:

##### RIGHTS IN DATA—SBIR PROGRAM (MAY 2014)

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

“Computer database” or “database” means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

“Computer software”—(1) Means. (i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

“Computer software documentation” means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

“Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing or management information.

“Form, fit, and function data” means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

“Limited rights data” means data (other than computer software) developed at private expense that embody trade

secrets or are commercial or financial and confidential or privileged.

“Restricted computer software” means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

“SBIR data” means data first produced by a Contractor that is a small business concern in performance of a small business innovation research contract issued under the authority of [15 U.S.C. 638](#), which data are not generally known, and which data without obligation as to its confidentiality have not been made available to others by the Contractor or are not already available to the Government.

“SBIR rights” means the rights in SBIR data set forth in the SBIR Rights Notice of paragraph (d) of this clause.

“Technical data” means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases. (See [41 U.S.C. 116](#).)

“Unlimited rights” means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) *Allocation of rights.* (1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data specifically identified in this contract as data to be delivered without restriction;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for SBIR data in accordance with paragraph (d) of this clause or for limited rights data or restricted computer software in accordance with paragraph (f) of this clause.

(2) The Contractor shall have the right to—

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Protect SBIR rights in SBIR data delivered under this contract in the manner and to the extent provided in paragraph (d) of this clause;

(iii) Substantiate use of, add, or correct SBIR rights or copyright notices and to take other appropriate action, in accordance with paragraph (e) of this clause; and

(iv) Withhold from delivery those data which are limited rights data or restricted computer software to the extent provided in paragraph (f) of this clause.

(c) *Copyright—* (1) *Data first produced in the performance of this contract.* (i) Except as otherwise specifically provided in this contract, the Contractor may assert copyright subsisting in any data first produced in the performance of this contract.

(ii) When asserting copyright, the Contractor shall affix the applicable copyright notice of [17 U.S.C. 401 or 402](#) and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly, by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data that are not first produced in the performance of this contract unless the Contractor (i) identifies such data and (ii) grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause.

(3) *Removal of copyright notices.* The Government will not remove any copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) *Rights to SBIR data.* (1) The Contractor is authorized to affix the following “SBIR Rights Notice” to SBIR data delivered under this contract and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

SBIR RIGHTS NOTICE (DEC 2007)

These SBIR data are furnished with SBIR rights under Contract No. \_\_\_\_ (and subcontract \_\_\_\_, if appropriate). For a period of 4 years, unless extended in accordance with FAR [27.409\(h\)](#), after acceptance of all items to be delivered under this contract, the Government will use these data for Government purposes only, and they shall not be disclosed outside the

Government (including disclosure for procurement purposes) during such period without permission of the Contractor, except that, subject to the foregoing use and disclosure prohibitions, these data may be disclosed for use by support Contractors. After the protection period, the Government has a paid-up license to use, and to authorize others to use on its behalf, these data for Government purposes, but is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties. This notice shall be affixed to any reproductions of these data, in whole or in part.

(END OF NOTICE)

(2) The Government's sole obligation with respect to any SBIR data shall be as set forth in this paragraph (d).

(e) *Omitted or incorrect markings.* (1) Data delivered to the Government without any notice authorized by paragraph (d) of this clause shall be deemed to have been furnished with unlimited rights. The Government assumes no liability for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense, and the Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure or use of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If the data has been marked with an incorrect notice, the Contracting Officer may—

(i) Permit correction of the notice at the Contractor's expense, if the Contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(f) *Protection of limited rights data and restricted computer software.* The Contractor may withhold from delivery qualifying limited rights data and restricted computer software that are not identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall identify the data being withheld, and furnish form, fit, and function data instead.

(g) *Subcontracting.* The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly

notify the Contracting Officer of the refusal and not proceed with the subcontract award without further authorization in writing from the Contracting Officer.

(h) *Relationship to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

(End of clause)

### 52.227-21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.

As prescribed in 27.409(j), insert the following clause:

#### TECHNICAL DATA DECLARATION, REVISION, AND WITHHOLDING OF PAYMENT—MAJOR SYSTEMS (MAY 2007)

(a) *Scope of declaration.* The Contractor shall provide, in accordance with 41 U.S.C. 2302(e)(7), the following declaration with respect to all technical data that relate to a major system and that are delivered or required to be delivered under this contract or that are delivered within 3 years after acceptance of all items (other than technical data) delivered under this contract unless a different period is set forth in the contract. The Contracting Officer may release the Contractor from all or part of the requirements of this clause for specifically identified technical data items at any time during the period covered by this clause.

(b) *Technical data declaration.* (1) All technical data that are subject to this clause shall be accompanied by the following declaration upon delivery:

#### TECHNICAL DATA DECLARATION (JAN 1997)

The Contractor, \_\_\_\_\_, hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Government contract No. \_\_\_\_\_ (and subcontract \_\_\_\_\_, if appropriate) are complete, accurate, and comply with the requirements of the contract concerning such technical data.

(END OF DECLARATION)

(2) The Government may, at any time during the period covered by this clause, direct correction of any deficiencies that are not in compliance with contract requirements. The corrections shall be made at the expense of the Contractor. Unauthorized markings on data shall not be considered a deficiency for the purpose of this clause, but will be treated in accordance with paragraph (e) of the Rights in Data—General clause included in this contract.

(c) *Technical data revision.* The Contractor also shall, at the request of the Contracting Officer, revise technical data that are subject to this clause to reflect engineering design changes made during the performance of this contract and affecting the form, fit, and function of any item (other than technical data) delivered under this contract. The Contractor



(3) That result from willful misconduct or lack of good faith on the part of any of the Contractor's directors, officers, managers, superintendents, or other representatives who have supervision or direction of—

(i) All or substantially all of the Contractor's business;

(ii) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or

(iii) A separate and complete major industrial operation in connection with the performance of this contract.

(f) The provisions of paragraph (e) of this clause shall not restrict the right of the Contractor to be reimbursed for the cost of insurance maintained by the Contractor in connection with the performance of this contract, other than insurance required in accordance with this clause; *provided*, that such cost is allowable under the Allowable Cost and Payment clause of this contract.

(g) If any suit or action is filed or any claim is made against the Contractor, the cost and expense of which may be reimbursable to the Contractor under this contract, and the risk of which is then uninsured or is insured for less than the amount claimed, the Contractor shall—

(1) Immediately notify the Contracting Officer and promptly furnish copies of all pertinent papers received;

(2) Authorize Government representatives to collaborate with counsel for the insurance carrier in settling or defending the claim when the amount of the liability claimed exceeds the amount of coverage; and

(3) Authorize Government representatives to settle or defend the claim and to represent the Contractor in or to take charge of any litigation, if required by the Government, when the liability is not insured or covered by bond. The Contractor may, at its own expense, be associated with the Government representatives in any such claim or litigation.

(End of clause)

#### 52.228-8 Liability and Insurance—Leased Motor Vehicles.

As prescribed in [28.312](#), insert the following clause:

##### LIABILITY AND INSURANCE—LEASED MOTOR VEHICLES (MAY 1999)

(a) The Government shall be responsible for loss of or damage to—

(1) Leased vehicles, except for—

(i) Normal wear and tear; and

(ii) Loss or damage caused by the negligence of the Contractor, its agents, or employees; and

(2) Property of third persons, or the injury or death of third persons, if the Government is liable for such loss, damage, injury, or death under the Federal Tort Claims Act ([28 U.S.C. 2671-2680](#)).

(b) The Contractor shall be liable for, and shall indemnify and hold harmless the Government against, all actions or claims for loss of or damage to property or the injury or death of persons, resulting from the fault, negligence, or wrongful act or omission of the Contractor, its agents, or employees.

(c) The Contractor shall provide and maintain insurance covering its liabilities under paragraph (b) of this clause, in amounts of at least \$200,000 per person and \$500,000 per occurrence for death or bodily injury and \$20,000 per occurrence for property damage or loss.

(d) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the interests of the Government shall not be effective (1) for such period as the laws of the State in which this contract is to be performed prescribe or (2) until 30 days after written notice to the Contracting Officer, whichever period is longer. The policies shall exclude any claim by the insurer for subrogation against the Government by reason of any payment under the policies.

(e) The contract price shall not include any costs for insurance or contingency to cover losses, damage, injury, or death for which the Government is responsible under paragraph (a) of this clause.

(End of clause)

#### 52.228-9 Cargo Insurance.

As prescribed in [28.313](#)(a), insert the following clause:

##### CARGO INSURANCE (MAY 1999)

(a) The Contractor, at the Contractor's expense, shall provide and maintain, during the continuance of this contract, cargo insurance of \$\_\_\_\_\_ per vehicle to cover the value of property on each vehicle and of \$\_\_\_\_\_ to cover the total value of the property in the shipment.

(b) All insurance shall be written on companies acceptable to \_\_\_\_\_ [*insert name of contracting agency*], and policies shall include such terms and conditions as required by \_\_\_\_\_ [*insert name of contracting agency*]. The Contractor shall provide evidence of acceptable cargo insurance to \_\_\_\_\_ [*insert name of contracting agency*] before commencing operations under this contract.

(c) Each cargo insurance policy shall include the following statement:

“It is a condition of this policy that the Company shall furnish—

(1) Written notice to \_\_\_\_\_ [*insert name and address of contracting agency*], 30 days in advance of the effective date of any reduction in, or cancellation of, this policy; and

(2) Evidence of any renewal policy to the address specified in paragraph (1) of this statement, not less than 15 days prior to the expiration of any current policy on file with \_\_\_\_\_ [*insert name of contracting agency*].”

(End of clause)

**52.228-10 Vehicular and General Public Liability**

**Insurance.**

As prescribed in [28.313](#)(b), insert a clause substantially the same as the following in solicitations and contracts for transportation or for transportation-related services when the contracting officer determines that vehicular liability or general public liability insurance required by law is not sufficient:

VEHICULAR AND GENERAL PUBLIC LIABILITY INSURANCE  
(APR 1984)

(a) The Contractor, at the Contractor’s expense, agrees to maintain, during the continuance of this contract, vehicular liability and general public liability insurance with limits of liability for—

- (1) Bodily injury of not less than \$ \_\_\_\_\_ for each person and \$ \_\_\_\_\_ for each occurrence; and
- (2) Property damage of not less than \$ \_\_\_\_\_ for each accident and \$ \_\_\_\_\_ in the aggregate.

(b) The Contractor also agrees to maintain workers’ compensation and other legally required insurance with respect to the Contractor’s own employees and agents.

(End of clause)

**52.228-11 Pledges of Assets.**

As prescribed in [28.203-6](#), insert the following clause:

PLEDGES OF ASSETS (JAN 2012)

(a) Offerors shall obtain from each person acting as an individual surety on a bid guarantee, a performance bond, or a payment bond—

- (1) Pledge of assets; and
- (2) [Standard Form 28](#), Affidavit of Individual Surety.

(b) Pledges of assets from each person acting as an individual surety shall be in the form of—

(1) Evidence of an escrow account containing cash, certificates of deposit, commercial or Government securities, or other assets described in FAR [28.203-2](#) (except see [28.203-2](#)(b)(2) with respect to Government securities held in book entry form); and/or

(2) A recorded lien on real estate. The offeror will be required to provide—

(i) A mortgagee title insurance policy, in an insurance amount equal to the amount of the lien, or other evidence of title that is consistent with the requirements of Section 2 of the United States Department of Justice Title Standards at [http://www.justice.gov/enrd/ENRD\\_Assets/Title\\_Standards\\_2001.pdf](http://www.justice.gov/enrd/ENRD_Assets/Title_Standards_2001.pdf). This title evidence must show fee simple title vested in the surety along with any concurrent

owners; whether any real estate taxes are due and payable; and any recorded encumbrances against the property, including the lien filed in favor of the Government as required by FAR [28.203-3](#)(d);

(ii) Evidence of the amount due under any encumbrance shown in the evidence of title;

(iii) A copy of the current real estate tax assessment of the property or a current appraisal dated no earlier than 6 months prior to the date of the bond, prepared by a professional appraiser who certifies that the appraisal has been conducted in accordance with the generally accepted appraisal standards as reflected in the Uniform Standards of Professional Appraisal Practice, as promulgated by the Appraisal Foundation.

(End of clause)

**52.228-12 Prospective Subcontractor Requests for Bonds.**

As prescribed in [28.106-4](#)(b), use the following clause:

PROSPECTIVE SUBCONTRACTOR REQUESTS FOR BONDS  
(MAY 2014)

In accordance with section 806(a)(3) of Pub. L. 102-190, as amended by sections 2091 and 8105 of Pub. L. 103-355 ([10 U.S.C. 2302 note](#)), upon the request of a prospective subcontractor or supplier offering to furnish labor or material for the performance of this contract for which a payment bond has been furnished to the Government pursuant to 40 U.S.C. chapter 31, subchapter III, Bonds, the Contractor shall promptly provide a copy of such payment bond to the requester.

(End of clause)

**52.228-13 Alternative Payment Protections.**

As prescribed in [28.102-3](#)(b), insert the following clause:

ALTERNATIVE PAYMENT PROTECTIONS (JULY 2000)

(a) The Contractor shall submit one of the following payment protections:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(b) The amount of the payment protection shall be 100 percent of the contract price.

(c) The submission of the payment protection is required within \_\_\_\_\_ days of contract award.

(d) The payment protection shall provide protection for the full contract performance period plus a one-year period.

(e) Except for escrow agreements and payment bonds, which provide their own protection procedures, the Contracting Officer is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred, and to withhold such funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

(f) When a tripartite escrow agreement is used, the Contractor shall utilize only suppliers of labor and material that signed the escrow agreement.

(End of clause)

**52.228-14 Irrevocable Letter of Credit.**

As prescribed in 28.204-4, insert the following clause:

IRREVOCABLE LETTER OF CREDIT (MAY 2014)

(a) “Irrevocable letter of credit” (ILC), as used in this clause, means a written commitment by a federally insured financial institution to pay all or part of a stated amount of money, until the expiration date of the letter, upon presentation by the Government (the beneficiary) of a written demand therefor. Neither the financial institution nor the offeror/Contractor can revoke or condition the letter of credit.

(b) If the offeror intends to use an ILC in lieu of a bid bond, or to secure other types of bonds such as performance and payment bonds, the letter of credit and letter of confirmation formats in paragraphs (e) and (f) of this clause shall be used.

(c) The letter of credit shall be irrevocable, shall require presentation of no document other than a written demand and the ILC (including confirming letter, if any), shall be issued/confirmed by an acceptable federally insured financial institution as provided in paragraph (d) of this clause, and—

(1) If used as a bid guarantee, the ILC shall expire no earlier than 60 days after the close of the bid acceptance period;

(2) If used as an alternative to corporate or individual sureties as security for a performance or payment bond, the offeror/Contractor may submit an ILC with an initial expiration date estimated to cover the entire period for which financial security is required or may submit an ILC with an initial expiration date that is a minimum period of one year from the date of issuance. The ILC shall provide that, unless the issuer provides the beneficiary written notice of non-renewal at least 60 days in advance of the current expiration date, the ILC is automatically extended without amendment for one year from the expiration date, or any future expiration date, until the period of required coverage is completed and the Contracting Officer provides the financial institution with a written statement waiving the right to payment. The period of required coverage shall be:

(i) For contracts subject to 40 U.S.C. chapter 31, subchapter III, Bonds, the later of—

(A) One year following the expected date of final payment;

(B) For performance bonds only, until completion of any warranty period; or

(C) For payment bonds only, until resolution of all claims filed against the payment bond during the one-year period following final payment.

(ii) For contracts not subject to 40 U.S.C. chapter 31, subchapter III, Bonds, the later of—

(A) 90 days following final payment; or

(B) For performance bonds only, until completion of any warranty period.

(d) Only federally insured financial institutions rated investment grade or higher shall issue or confirm the ILC. The offeror/Contractor shall provide the Contracting Officer a credit rating that indicates the financial institution has the required rating(s) as of the date of issuance of the ILC. Unless the financial institution issuing the ILC had letter of credit business of at least \$25 million in the past year, ILCs over \$5 million must be confirmed by another acceptable financial institution that had letter of credit business of at least \$25 million in the past year.

(e) The following format shall be used by the issuing financial institution to create an ILC:

\_\_\_\_\_  
*[Issuing Financial Institution's Letterhead  
 or Name and Address]*

Issue Date \_\_\_\_\_

Irrevocable Letter of Credit No. \_\_\_\_\_

Account party's name \_\_\_\_\_

Account party's address \_\_\_\_\_

For Solicitation No. \_\_\_\_\_ *(for reference only)*

To: *[U.S. Government agency]*

*[U.S. Government agency's address]*

1. We hereby establish this irrevocable and transferable Letter of Credit in your favor for one or more drawings up to United States \$\_\_\_\_\_. This Letter of Credit is payable at *[issuing financial institution's and, if any, confirming financial institution's]* office at *[issuing financial institution's address and, if any, confirming financial institution's address]* and expires with our close of business on \_\_\_\_\_, or any automatically extended expiration date.

2. We hereby undertake to honor your or the transferee's sight draft(s) drawn on the issuing or, if any, the confirming financial institution, for all or any part of this credit if presented with this Letter of Credit and confirmation, if any, at the office specified in paragraph 1 of this Letter of Credit on or before the expiration date or any automatically extended expiration date.

3. *[This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.]* It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiration date hereof, or any future expiration date, unless at least 60 days prior to any expiration date, we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you, we also agree to notify the account party (and confirming financial institution, if any) by the same means of delivery.

4. This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to

either the beneficiary or the transferee/assignee of proceeds. Such transfer or assignment shall be only at the written direction of the Government (the beneficiary) in a form satisfactory to the issuing financial institution and the confirming financial institution, if any.

5. This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of \_\_\_\_\_ [*state of confirming financial institution, if any, otherwise state of issuing financial institution*].

6. If this credit expires during an interruption of business of this financial institution as described in Article 17 of the UCP, the financial institution specifically agrees to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

\_\_\_\_\_  
[Issuing financial institution]

(f) The following format shall be used by the financial institution to confirm an ILC:

\_\_\_\_\_  
[Confirming Financial Institution's Letterhead or Name and Address]

(Date) \_\_\_\_\_

Our Letter of Credit Advice Number \_\_\_\_\_

Beneficiary: \_\_\_\_\_ [U.S. Government agency]

Issuing Financial Institution: \_\_\_\_\_

Issuing Financial Institution's LC No.: \_\_\_\_\_

Gentlemen:

1. We hereby confirm the above indicated Letter of Credit, the original of which is attached, issued by \_\_\_\_\_ [*name of issuing financial institution*] for drawings of up to United States dollars \_\_\_\_\_/U.S. \$ \_\_\_\_\_ and expiring with our close of business on \_\_\_\_\_ [*the expiration date*], or any automatically extended expiration date.

2. Draft(s) drawn under the Letter of Credit and this Confirmation are payable at our office located at \_\_\_\_\_.

3. We hereby undertake to honor sight draft(s) drawn under and presented with the Letter of Credit and this Confirmation at our offices as specified herein.

4. [*This paragraph is omitted if used as a bid guarantee, and subsequent paragraphs are renumbered.*] It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

(a) At least 60 days prior to any such expiration date, we shall notify the Contracting Officer, or the transferee and the issuing financial institution, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period; or

(b) The issuing financial institution shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the Letter of Credit.

5. This confirmation is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500, and to the extent not inconsistent therewith, to the laws of \_\_\_\_\_ [*state of confirming financial institution*].

6. If this confirmation expires during an interruption of business of this financial institution as described in Article 17 of the UCP, we specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of our business.

Sincerely,

\_\_\_\_\_  
[Confirming financial institution]

(g) The following format shall be used by the Contracting Officer for a sight draft to draw on the Letter of Credit:

SIGHT DRAFT

\_\_\_\_\_  
[City, State]

(Date) \_\_\_\_\_  
[Name and address of financial institution]

Pay to the order of \_\_\_\_\_ [Beneficiary Agency]  
\_\_\_\_\_ the sum of United States \$ \_\_\_\_\_. This draft is drawn under Irrevocable Letter of Credit No. \_\_\_\_\_.

\_\_\_\_\_  
[Beneficiary Agency]

\_\_\_\_\_  
[By]

(End of clause)

**52.228-15 Performance and Payment Bonds—Construction.**

As prescribed in [28.102-3\(a\)](#), insert a clause substantially as follows:

PERFORMANCE AND PAYMENT BONDS—CONSTRUCTION  
(OCT 2010)

(a) *Definitions.* As used in this clause—  
“Original contract price” means the award price of the contract; or, for requirements contracts, the price payable for the estimated total quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) *Amount of required bonds.* Unless the resulting contract price is \$150,000 or less, the successful offeror shall furnish

(1) *Certificate of Concurrent Submission of Disclosure Statement.* The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows:

(i) Original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable; and

(ii) One copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: \_\_\_\_\_  
Name and Address of Cognizant ACO or Federal Official  
Where Filed: \_\_\_\_\_

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

(2) *Certificate of Previously Submitted Disclosure Statement.* The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: \_\_\_\_\_  
Name and Address of Cognizant ACO or Federal Official  
Where Filed: \_\_\_\_\_

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

(3) *Certificate of Monetary Exemption.* The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

(4) *Certificate of Interim Exemption.* The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under paragraph (c)(1) or (c)(2)

of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

CAUTION: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

## II. COST ACCOUNTING STANDARDS—ELIGIBILITY FOR MODIFIED CONTRACT COVERAGE

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

CAUTION: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$50 million or more.

## III. ADDITIONAL COST ACCOUNTING STANDARDS APPLICABLE TO EXISTING CONTRACTS

The offeror shall indicate below whether award of the contemplated contract would, in accordance with paragraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

Yes       No

(End of provision)

*Alternate I (Apr 1996).* As prescribed in [30.201-3\(b\)](#), add the following paragraph (c)(5) to Part I of the basic provision:

(5) *Certificate of Disclosure Statement Due Date by Educational Institution.* If the offeror is an educational institution that, under the transition provisions of 48 CFR 9903.202-1(f), is or will be required to submit a Disclosure

Statement after receipt of this award, the offeror hereby certifies that (check one and complete):

(i) A Disclosure Statement Filing Due Date of \_\_\_\_\_ has been established with the cognizant Federal agency.

(ii) The Disclosure Statement will be submitted within the 6-month period ending \_\_\_\_\_ months after receipt of this award.

Name and Address of Cognizant ACO or Federal Official Where Disclosure Statement is to be Filed:

\_\_\_\_\_  
\_\_\_\_\_

### 52.230-2 Cost Accounting Standards.

As prescribed in [30.201-4\(a\)](#), insert the following clause:

#### COST ACCOUNTING STANDARDS (MAY 2014)

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) (*CAS-covered Contracts Only*) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9904, in effect on the date of award of this contract or, if the Contractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The

Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) (Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to paragraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of paragraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 ([26 U.S.C. 6621\(a\)\(2\)](#)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR 9904 or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under [41 U.S.C. chapter 71](#), Contract Disputes.

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award

date or if the subcontractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection [30.201-4](#) of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$700,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

### 52.230-3 Disclosure and Consistency of Cost Accounting Practices.

As prescribed in [30.201-4\(b\)\(1\)](#), insert the following clause:

#### DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (MAY 2014)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard—Cost Accounting Period, in effect on the date of award of this contract as indicated in 48 CFR Part 9904.

(2) *(CAS-covered Contracts Only)* If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR 9903.201-6(c), that the change is desirable and not detrimen-

tal to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 ([26 U.S.C. 6621\(a\)\(2\)](#)), from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under [41 U.S.C. chapter 71](#), Contract Disputes.

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection [30.201-4](#) of the Federal Acquisition Regulation shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$700,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

### 52.230-4 Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.

As prescribed in [30.201-4\(c\)](#), insert the following clause:

#### DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES—FOREIGN CONCERNS (MAY 2012)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; and 48 CFR 9904.402, Consistency in Allocating Costs

Incurred for the Same Purpose, in effect on the date of award of this contract, as indicated in 48 CFR 9904.

(2) (*Cost Accounting Standard (CAS)-covered Contracts Only*). If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR 9903.202-1 through 48 CFR 9903.202-5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the U.S. Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the U.S. Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR 9903.201-6(c) that the change is desirable and not detrimental to the interests of the U.S. Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the U.S. Government.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the U.S. Government. Such adjustment shall provide for recovery of the increased costs to the U.S. Government, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 ([26 U.S.C. 6621\(a\)\(2\)](#)) for such period, from the time the payment by the U.S. Government was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS rule, or regulation as specified in 48 CFR 9903 and 48 CFR 9904 and as to any cost adjustment demanded by the U.S. Government, such failure to agree will constitute a dispute under [41 U.S.C. chapter 71](#), Contract Disputes.

(c) The Contractor shall permit any authorized representatives of the U.S. Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause prescribed in FAR [30.201-4](#) shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of \$700,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

#### 52.230-5 Cost Accounting Standards—Educational Institution.

As prescribed in [30.201-4](#)(e), insert the following clause:

##### COST ACCOUNTING STANDARDS—EDUCATIONAL INSTITUTION (MAY 2014)

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) (*CAS-covered Contracts Only*). If a business unit of an educational institution required to submit a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions, requires that a change in the Contractor's cost accounting practices be made after the date of this contract award, the change must be applied prospectively



to this contract and the Disclosure Statement, if required, must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with paragraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR 9905 in effect on the date of award of this contract or, if the Contractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to paragraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of paragraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an OMB Circular A-21 accounting principle amendment which, on becoming effective after the date of contract award, requires the Contractor to make a change to the Contractor's established cost accounting practices.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 ([26 U.S.C. 6621\(a\)\(2\)](#)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost account-

ing practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS or a CAS rule or regulation in 48 CFR 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under [41 U.S.C. chapter 71](#), Contract Disputes.

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or, if the subcontractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201-4 shall be inserted;

(2) This requirement shall apply only to negotiated subcontracts in excess of \$700,000; and

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

#### **52.230-6 Administration of Cost Accounting Standards.**

As prescribed in [30.201-4\(d\)\(1\)](#), insert the following clause:

##### ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUNE 2010)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause:

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

“Affected CAS-covered contract or subcontract” means a contract or subcontract subject to CAS rules and regulations for which a Contractor or subcontractor—

(1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

(2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

“Cognizant Federal agency official (CFAO)” means the Contracting Officer assigned by the cognizant Federal agency to administer the CAS.

“Desirable change” means a compliant change to a Contractor’s established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

“Fixed-price contracts and subcontracts” means—

(1) Fixed-price contracts and subcontracts described at FAR [16.202](#), [16.203](#), (except when price adjustments are based on actual costs of labor or material, described at [16.203-1\(a\)\(2\)](#)), and [16.207](#);

(2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (FAR [Subpart 16.4](#));

(3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (FAR [Subpart 16.5](#)); and

(4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (FAR [Subpart 16.6](#)).

“Flexibly-priced contracts and subcontracts” means—

(1) Fixed-price contracts and subcontracts described at FAR [16.203-1\(a\)\(2\)](#), [16.204](#), [16.205](#), and [16.206](#);

(2) Cost-reimbursement contracts and subcontracts (FAR [Subpart 16.3](#));

(3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (FAR [Subpart 16.4](#));

(4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR [Subpart 16.5](#)); and

(5) The materials portion of time-and-materials contracts and subcontracts (FAR [Subpart 16.6](#)).

“Noncompliance” means a failure in estimating, accumulating, or reporting costs to—

(1) Comply with applicable CAS; or

(2) Consistently follow disclosed or established cost accounting practices.

“Required change” means—

(1) A change in cost accounting practice that a Contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently become applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or

(2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

“Unilateral change” means a change in cost accounting practice from one compliant practice to another compliant practice that a Contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

(b) Submit to the CFAO a description of any cost accounting practice change as outlined in paragraphs (b)(1) through (3) of this clause (including revisions to the Disclosure Statement, if applicable), and any written statement that the cost impact of the change is immaterial. If a change in cost accounting practice is implemented without submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR [52.230-2](#), Cost Accounting Standards; paragraph (a)(4) of the clause at FAR [52.230-3](#), Disclosure and Consistency of Cost Accounting Practices; paragraph (a)(4) of the clause at FAR [52.230-4](#), Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns; or paragraph (a)(2) of the clause at FAR [52.230-5](#), Cost Accounting Standards—Educational Institution.

(1) When a description has been submitted for a change in cost accounting practice that is dependent on a contact award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.

(2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with paragraphs (a)(3) and (a)(4)(i) of the clause at FAR [52.230-2](#); or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR [52.230-5](#); submit a description of the change to the CFAO not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change.

(3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (iii) of the clauses at FAR [52.230-2](#) and FAR [52.230-5](#); or with paragraph (a)(3) of the clauses at FAR [52.230-3](#) and FAR [52.230-4](#), submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date submit supporting rationale.

(4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR [52.230-2](#) and FAR [52.230-5](#); or by paragraph (a)(4) of the clauses at FAR [52.230-3](#) and FAR [52.230-4](#))—

(i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the date of agreement with the CFAO that there is a noncompliance; or

(ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.

(c) When requested by the CFAO, submit on or before a date specified by the CFAO—

**52.232-1 Payments.**

As prescribed in [32.111\(a\)\(1\)](#), insert the following clause, appropriately modified with respect to payment due date in accordance with agency regulations, in solicitations and contracts when a fixed-price supply contract, a fixed-price service contract, or a contract for nonregulated communication services is contemplated:

## PAYMENTS (APR 1984)

The Government shall pay the Contractor, upon the submission of proper invoices or vouchers, the prices stipulated in this contract for supplies delivered and accepted or services rendered and accepted, less any deductions provided in this contract. Unless otherwise specified in this contract, payment shall be made on partial deliveries accepted by the Government if—

- (a) The amount due on the deliveries warrants it; or
- (b) The Contractor requests it and the amount due on the deliveries is at least \$1,000 or 50 percent of the total contract price.

(End of clause)

**52.232-2 Payments under Fixed-Price Research and Development Contracts.**

As prescribed in [32.111\(a\)\(2\)](#), insert the following clause, as appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a fixed-price research and development contract is contemplated:

## PAYMENTS UNDER FIXED-PRICE RESEARCH AND DEVELOPMENT CONTRACTS (APR 1984)

The Government shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for work delivered or rendered and accepted, less any deductions provided in this contract. Unless otherwise specified, payment shall be made upon acceptance of any portion of the work delivered or rendered for which a price is separately stated in the contract.

(End of clause)

**52.232-3 Payments under Personal Services Contracts.**

As prescribed in [32.111\(a\)\(3\)](#), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for personal services:

## PAYMENTS UNDER PERSONAL SERVICES CONTRACTS (APR 1984)

The Government shall pay the Contractor for the services performed by the Contractor, as set forth in the Schedule of this contract, at the rates prescribed, upon the submission by

the Contractor of proper invoices or time statements to the office or officer designated and at the time provided for in this contract. The Government shall also pay the Contractor—

(a) A per diem rate in lieu of subsistence for each day the Contractor is in a travel status away from home or regular place of employment in accordance with Federal Travel Regulations (41 CFR 101-7) as authorized in appropriate Travel Orders; and

(b) Any other transportation expenses if provided for in the Schedule.

(End of clause)

**52.232-4 Payments under Transportation Contracts and Transportation-Related Services Contracts.**

As prescribed in [32.111\(a\)\(4\)](#), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for transportation or transportation-related services:

## PAYMENTS UNDER TRANSPORTATION CONTRACTS AND TRANSPORTATION-RELATED SERVICES CONTRACTS (APR 1984)

The Government shall pay the Contractor upon the submission of properly certified invoices or vouchers, the amount due for services rendered and accepted, less deductions, if any, as herein provided.

(End of clause)

**52.232-5 Payments under Fixed-Price Construction Contracts.**

As prescribed in [32.111\(a\)\(5\)](#), insert the following clause:

## PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS (MAY 2014)

(a) *Payment of price.* The Government shall pay the Contractor the contract price as provided in this contract.

(b) *Progress payments.* The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates of work accomplished which meets the standards of quality established under the contract, as approved by the Contracting Officer.

(1) The Contractor's request for progress payments shall include the following substantiation:

(i) An itemization of the amounts requested, related to the various elements of work required by the contract covered by the payment requested.

(ii) A listing of the amount included for work performed by each subcontractor under the contract.

(iii) A listing of the total amount of each subcontract under the contract.

(iv) A listing of the amounts previously paid to each such subcontractor under the contract.

(v) Additional supporting data in a form and detail required by the Contracting Officer.

(2) In the preparation of estimates, the Contracting Officer may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the Contractor at locations other than the site also may be taken into consideration if—

(i) Consideration is specifically authorized by this contract; and

(ii) The Contractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this contract.

(c) *Contractor certification.* Along with each request for progress payments, the Contractor shall furnish the following certification, or payment shall not be made: (However, if the Contractor elects to delete paragraph (c)(4) from the certification, the certification is still acceptable.)

I hereby certify, to the best of my knowledge and belief, that—

(1) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;

(2) All payments due to subcontractors and suppliers from previous payments received under the contract have been made, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with subcontract agreements and the requirements of Chapter 39 of Title 31, United States Code;

(3) This request for progress payments does not include any amounts which the prime contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of the subcontract; and

(4) This certification is not to be construed as final acceptance of a subcontractor's performance.

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

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

(d) *Refund of unearned amounts.* If the Contractor, after making a certified request for progress payments, discovers that a portion or all of such request constitutes a payment for performance by the Contractor that fails to conform to the specifications, terms, and conditions of this contract (hereinafter referred to as the "unearned amount"), the Contractor shall—

(1) Notify the Contracting Officer of such performance deficiency; and

(2) Be obligated to pay the Government an amount (computed by the Contracting Officer in the manner provided in paragraph (j) of this clause) equal to interest on the unearned amount from the 8th day after the date of receipt of the unearned amount until—

(i) The date the Contractor notifies the Contracting Officer that the performance deficiency has been corrected; or

(ii) The date the Contractor reduces the amount of any subsequent certified request for progress payments by an amount equal to the unearned amount.

(e) *Retainage.* If the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer shall authorize payment to be made in full. However, if satisfactory progress has not been made, the Contracting Officer may retain a maximum of 10 percent of the amount of the payment until satisfactory progress is achieved. When the work is substantially complete, the Contracting Officer may retain from previously withheld funds and future progress payments that amount the Contracting Officer considers adequate for protection of the Government and shall release to the Contractor all the remaining withheld funds. Also, on completion and acceptance of each separate building, public work, or other division of the contract, for which the price is stated separately in the contract, payment shall be made for the completed work without retention of a percentage.

(f) *Title, liability, and reservation of rights.* All material and work covered by progress payments made shall, at the time of payment, become the sole property of the Government, but this shall not be construed as—

(1) Relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work; or

(2) Waiving the right of the Government to require the fulfillment of all of the terms of the contract.

(g) *Reimbursement for bond premiums.* In making these progress payments, the Government shall, upon request, reimburse the Contractor for the amount of premiums paid for performance and payment bonds (including coinsurance and reinsurance agreements, when applicable) after the Contractor has furnished evidence of full payment to the surety. The retainage provisions in paragraph (e) of this clause shall not apply to that portion of progress payments attributable to bond premiums.

(h) *Final payment.* The Government shall pay the amount due the Contractor under this contract after—

(1) Completion and acceptance of all work;

(2) Presentation of a properly executed voucher; and

(3) Presentation of release of all claims against the Government arising by virtue of this contract, other than claims, in stated amounts, that the Contractor has specifically excepted from the operation of the release. A release may also be required of the assignee if the Contractor's claim to

amounts payable under this contract has been assigned under the Assignment of Claims Act of 1940 ([31 U.S.C. 3727](#) and [41 U.S.C. 6305](#)).

(i) *Limitation because of undefinitized work.* Notwithstanding any provision of this contract, progress payments shall not exceed 80 percent on work accomplished on undefinitized contract actions. A “contract action” is any action resulting in a contract, as defined in FAR [Subpart 2.1](#), including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes.

(j) *Interest computation on unearned amounts.* In accordance with [31 U.S.C. 3903\(c\)\(1\)](#), the amount payable under paragraph (d)(2) of this clause shall be—

(1) Computed at the rate of average bond equivalent rates of 91-day Treasury bills auctioned at the most recent auction of such bills prior to the date the Contractor receives the unearned amount; and

(2) Deducted from the next available payment to the Contractor.

(End of clause)

**52.232-6 Payment under Communication Service**

**Contracts with Common Carriers.**

As prescribed in [32.111\(a\)\(6\)](#), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts for regulated communication services by common carriers:

PAYMENT UNDER COMMUNICATION SERVICE CONTRACTS WITH COMMON CARRIERS (APR 1984)

The Government shall pay the Contractor, in arrears, upon submission of invoices for services and facilities furnished in accordance with the terms of CSAs issued under this contract, the rates and charges for the services and facilities as set forth in the clause entitled “Rates, Charges and Services.”

(End of clause)

**52.232-7 Payments under Time-and-Materials and**

**Labor-Hour Contracts.**

As prescribed in [32.111\(a\)\(7\)](#), insert the following clause:

PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (AUG 2012)

The Government will pay the Contractor as follows upon the submission of vouchers approved by the Contracting Officer or the authorized representative:

(a) *Hourly rate.* (1) *Hourly rate* means the rate(s) prescribed in the contract for payment for labor that meets the

labor category qualifications of a labor category specified in the contract that are—

- (i) Performed by the Contractor;
- (ii) Performed by the subcontractors; or
- (iii) Transferred between divisions, subsidiaries, or affiliates of the Contractor under a common control.

(2) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the Schedule by the number of direct labor hours performed.

(3) The hourly rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by employees that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.

(4) The hourly rates shall include wages, indirect costs, general and administrative expense, and profit. Fractional parts of an hour shall be payable on a prorated basis.

(5) Vouchers may be submitted not more than once every two weeks, to the Contracting Officer or authorized representative. A small business concern may receive more frequent payments than every two weeks. The Contractor shall substantiate vouchers (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment and by—

- (i) Individual daily job timekeeping records;
- (ii) Records that verify the employees meet the qualifications for the labor categories specified in the contract; or
- (iii) Other substantiation approved by the Contracting Officer.

(6) Promptly after receipt of each substantiated voucher, the Government shall, except as otherwise provided in this contract, and subject to the terms of paragraph (e) of this clause, pay the voucher as approved by the Contracting Officer or authorized representative.

(7) Unless otherwise prescribed in the Schedule, the Contracting Officer may unilaterally issue a contract modification requiring the Contractor to withhold amounts from its billings until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interests. The Contracting Officer may require a withhold of 5 percent of the amounts due under paragraph (a) of this clause, but the total amount withheld for the contract shall not exceed \$50,000. The amounts withheld shall be retained until the Contractor executes and delivers the release required by paragraph (g) of this clause.

(8) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis. If no overtime rates are provided in the Schedule and overtime work is approved in advance by the Contracting Officer, overtime rates shall be negotiated. Failure to agree upon these

overtime rates shall be treated as a dispute under the Disputes clause of this contract. If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(b) *Materials*. (1) For the purposes of this clause—

(i) *Direct materials* means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(ii) *Materials* means—

(A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the Contractor under a common control;

(B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(C) Other direct costs (*e.g.*, incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.); and

(D) Applicable indirect costs.

(2) If the Contractor furnishes its own materials that meet the definition of a commercial item at [2.101](#), the price to be paid for such materials shall not exceed the Contractor's established catalog or market price, adjusted to reflect the—

(i) Quantities being acquired; and

(ii) Actual cost of any modifications necessary because of contract requirements.

(3) Except as provided for in paragraph (b)(2) of this clause, the Government will reimburse the Contractor for allowable cost of materials provided the Contractor—

(i) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(ii) Ordinarily makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or invoice.

(4) Payment for materials is subject to the Allowable Cost and Payment clause of this contract. The Contracting Officer will determine allowable costs of materials in accordance with [Subpart 31.2](#) of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.

(5) The Contractor may include allocable indirect costs and other direct costs to the extent they are—

(i) Comprised only of costs that are clearly excluded from the hourly rate;

(ii) Allocated in accordance with the Contractor's written or established accounting practices; and

(iii) Indirect costs are not applied to subcontracts that are paid at the hourly rates.

(6) To the extent able, the Contractor shall—

(i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. The Contractor shall give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The Contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government.

(7) Except as provided for in [31.205-26](#)(e) and (f), the Government will not pay profit or fee to the prime Contractor on materials.

(c) If the Contractor enters into any subcontract that requires consent under the clause at [52.244-2](#), Subcontracts, without obtaining such consent, the Government is not required to reimburse the Contractor for any costs incurred under the subcontract prior to the date the Contractor obtains the required consent. Any reimbursement of subcontract costs incurred prior to the date the consent was obtained shall be at the sole discretion of the Government.

(d) *Total cost*. It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule, and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during performing this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performing this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(e) *Ceiling price*. The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price

tract to the Government's right to require delivery of the property to the Government if—

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(5) If the financing payments are in the form of commercial item financing payments, the terms of the subcontract or interdivisional order concerning payments—

(i) Are constructed in accordance with FAR [32.206\(c\)](#) and included in a subcontract for a commercial item purchase that meets the definition and standards for acquisition of commercial items in FAR [Parts 2](#) and [12](#);

(ii) Are in conformance with the requirements of FAR [32.504\(g\)](#); and

(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if—

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(6) If financing is in the form of progress payments, the progress payment rate in the subcontract is the customary rate used by the contracting agency, depending on whether the subcontractor is or is not a small business concern.

(7) Concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, the parties agree that the proceeds shall be applied to reducing any unliquidated financing payments by the Government to the Contractor under this contract.

(8) If no unliquidated financing payments to the Contractor remain, but there are unliquidated financing payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.

(9) To facilitate small business participation in subcontracting under this contract, the Contractor shall provide financing payments to small business concerns, in conformity with the standards for customary contract financing payments stated in FAR [32.113](#). The Contractor shall not consider the need for such financing payments as a handicap or adverse factor in the award of subcontracts.

(k) *Limitations on undefinitized contract actions.* Notwithstanding any other progress payment provisions in this contract, progress payments may not exceed 80 percent of costs incurred on work accomplished under undefinitized contract actions. A “contract action” is any action resulting in a contract, as defined in [Subpart 2.1](#), including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the

terms of the contract, such as contract modifications issued pursuant to the Changes clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (a) of this clause, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, as described in paragraph (b) of this clause, progress payments for undefinitized contract actions shall be liquidated at 80 percent of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed 80 percent of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

(l) *Due date.* The designated payment office will make progress payments on the \_\_\_\_\_ [*Contracting Officer insert date as prescribed by agency head; if not prescribed, insert “30th”*] day after the designated billing office receives a proper progress payment request. In the event that the Government requires an audit or other review of a specific progress payment request to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date. Progress payments are considered contract financing and are not subject to the interest penalty provisions of the Prompt Payment Act.

(m) *Progress payments under indefinite-delivery contracts.* The Contractor shall account for and submit progress payment requests under individual orders as if the order constituted a separate contract, unless otherwise specified in this contract.

(End of clause)

*Alternate I (Mar 2000).* If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph (k) to the customary rate of 85 percent for small business concerns (see FAR [32.501-1](#)).

*Alternate II (Apr 2003).* If the contract is a letter contract, add paragraphs (n) and (o). The amount specified in paragraph (o) shall not exceed 80 percent of the maximum liability of the Government under the letter contract. The contracting officer may specify separate limits for separate parts of the work.

(n) The Contracting Officer will liquidate progress payments made under this letter contract, unless previously liquidated under paragraph (b) of this clause, using the following procedures:

(1) If this letter contract is superseded by a definitive contract, unliquidated progress payments made under this letter contract shall be liquidated by deducting the amount from the first progress or other payments made under the definitive contract.

(2) If this letter contract is not superseded by a definitive contract calling for the furnishing of all or part of the articles or services covered under the letter contract, unliquidated progress payments made under the letter contract shall be liquidated by deduction from the amount payable under the Termination clause.

(3) If this letter contract is partly terminated and partly superseded by a contract, the Government will allocate the unliquidated progress payments to the terminated and unterminated portions as the Government deems equitable, and will liquidate each portion under the relevant procedure in paragraphs (n)(1) and (n)(2) of this clause.

(4) If the method of liquidating progress payments provided in this clause does not result in full liquidation, the Contractor shall immediately pay the unliquidated balance to the Government on demand.

(o) The amount of unliquidated progress payments shall not exceed \_\_\_\_\_ [*Contracting Officer specify dollar amount*].

*Alternate III (Apr 2003).* As prescribed in [32.502-4\(d\)](#), add the following paragraph (n) to the basic clause. If Alternate II is also being used, redesignate the following paragraph as paragraph (p):

(n) The provisions of this clause will not be applicable to individual orders at or below the simplified acquisition threshold.

**52.232-17 Interest.**

As prescribed in [32.611\(a\)](#) and (b), insert the following clause:

INTEREST (MAY 2014)

(a) Except as otherwise provided in this contract under a Price Reduction for Defective Certified Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, as provided in paragraph (e) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(b) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(c) *Final Decisions.* The Contracting Officer will issue a final decision as required by [33.211](#) if—

(1) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

(2) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(3) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see [32.607-2](#)).

(d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(e) Amounts shall be due at the earliest of the following dates:

(1) The date fixed under this contract.

(2) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(f) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(1) The date on which the designated office receives payment from the Contractor;

(2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(g) The interest charge made under this clause may be reduced under the procedures prescribed in [32.608-2](#) of the Federal Acquisition Regulation in effect on the date of this contract.

(End of clause)

**52.232-18 Availability of Funds.**

As prescribed in [32.706-1\(a\)](#), insert the following clause:

AVAILABILITY OF FUNDS (APR 1984)

Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this



the Schedule, unless they contain a statement increasing the amount allotted.

(k) Nothing in this clause shall affect the right of the Government to terminate this contract. If this contract is terminated, the Government and the Contractor shall negotiate an equitable distribution of all property produced or purchased under the contract, based upon the share of costs incurred by each.

(l) If the Government does not allot sufficient funds to allow completion of the work, the Contractor is entitled to a percentage of the fee specified in the Schedule equalling the percentage of completion of the work contemplated by this contract.

(End of clause)

**52.232-23 Assignment of Claims.**

As prescribed in [32.806](#)(a)(1), insert the following clause:

ASSIGNMENT OF CLAIMS (MAY 2014)

(a) The Contractor, under the Assignment of Claims Act, as amended, [31 U.S.C. 3727](#), [41 U.S.C. 6305](#) (hereafter referred to as “the Act”), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

(End of clause)

*Alternate I (Apr 1984).* If a no-setoff commitment is to be included in the contract (see [32.801](#) and [32.803\(d\)](#)), add the following sentence at the end of paragraph (a) of the basic clause:

Unless otherwise stated in this contract, payments to an assignee of any amounts due or to become due under this contract shall not, to the extent specified in the Act, be subject to reduction or setoff.

**52.232-24 Prohibition of Assignment of Claims.**

As prescribed in [32.806](#)(b), insert the following clause:

PROHIBITION OF ASSIGNMENT OF CLAIMS (MAY 2014)

The assignment of claims under the Assignment of Claims Act of 1940 “([31 U.S.C. 3727](#), [41 U.S.C. 6305](#))” is prohibited for this contract.

(End of clause)

**52.232-25 Prompt Payment.**

As prescribed in [32.908](#)(c), insert the following clause:

PROMPT PAYMENT (JUL 2013)

Notwithstanding any other payment clause in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer (EFT). Definitions of pertinent terms are set forth in sections [2.101](#), [32.001](#), and [32.902](#) of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(4) of this clause concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) *Invoice payments*—(1) *Due date.*(i) Except as indicated in paragraphs (a)(2) and (c) of this clause, the due date for making invoice payments by the designated payment office is the later of the following two events:

(A) The 30th day after the designated billing office receives a proper invoice from the Contractor (except as provided in paragraph (a)(1)(ii) of this clause).

(B) The 30th day after Government acceptance of supplies delivered or services performed. For a final invoice, when the payment amount is subject to contract settlement actions, acceptance is deemed to occur on the effective date of the contract settlement.

(ii) If the designated billing office fails to annotate the invoice with the actual date of receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor’s invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) *Certain food products and other payments.*(i) Due dates on Contractor invoices for meat, meat food products, or fish; perishable agricultural commodities; and dairy products, edible fats or oils, and food products prepared from edible fats or oils are—

(A) For meat or meat food products, as defined in section 2(a)(3) of the Packers and Stockyard Act of 1921

(7 U.S.C. 182(3)), and as further defined in Pub. L. 98-181, including any edible fresh or frozen poultry meat, any perishable poultry meat food product, fresh eggs, and any perishable egg product, as close as possible to, but not later than, the 7th day after product delivery.

(B) For fresh or frozen fish, as defined in section 204(3) of the Fish and Seafood Promotion Act of 1986 (16 U.S.C. 4003(3)), as close as possible to, but not later than, the 7th day after product delivery.

(C) For perishable agricultural commodities, as defined in section 1(4) of the Perishable Agricultural Commodities Act of 1930 (7 U.S.C. 499a(4)), as close as possible to, but not later than, the 10th day after product delivery, unless another date is specified in the contract.

(D) For dairy products, as defined in section 111(e) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4502(e)), edible fats or oils, and food products prepared from edible fats or oils, as close as possible to, but not later than, the 10th day after the date on which a proper invoice has been received. Liquid milk, cheese, certain processed cheese products, butter, yogurt, ice cream, mayonnaise, salad dressings, and other similar products, fall within this classification. Nothing in the Act limits this classification to refrigerated products. When questions arise regarding the proper classification of a specific product, prevailing industry practices will be followed in specifying a contract payment due date. The burden of proof that a classification of a specific product is, in fact, prevailing industry practice is upon the Contractor making the representation.

(ii) If the contract does not require submission of an invoice for payment (e.g., periodic lease payments), the due date will be as specified in the contract.

(3) *Contractor's invoice.* The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(3)(i) through (a)(3)(x) of this clause. If the invoice does not comply with these requirements, the designated billing office will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice. The Government will take into account untimely notification when computing any interest penalty owed the Contractor.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of the mailing or transmission.)

(iii) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).

(iv) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.

(v) Shipping and payment terms (e.g., shipment number and date of shipment, discount for prompt payment terms). Bill of lading number and weight of shipment will be shown for shipments on Government bills of lading.

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

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

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

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

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., 52.232-38, Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(x) Any other information or documentation required by the contract (e.g., evidence of shipment).

(4) *Interest penalty.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(4)(i) through (a)(4)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment, and there was no disagreement over quantity, quality, or Contractor compliance with any contract term or condition.

(iii) In the case of a final invoice for any balance of funds due the Contractor for supplies delivered or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) *Computing penalty amount.* The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR Part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor, Government acceptance or approval is deemed to occur constructively as shown in paragraphs (a)(4)(i)(A) and (B) of this clause. If actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, Contractor compliance with a contract provision, or requested progress payment amounts. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(A) For work or services completed by the Contractor, Government acceptance is deemed to occur constructively on the 7th day after the Contractor completes the work or services in accordance with the terms and conditions of the contract.

(B) For progress payments, Government approval is deemed to occur on the 7th day after the designated billing office receives the Contractor estimates.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR [52.233-1](#), Disputes.

(5) *Discounts for prompt payment.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a dis-

count for prompt payment improperly. The Government will calculate the interest penalty in accordance with 5 CFR Part 1315.

(6) *Additional interest penalty.*(i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR Part 1315, in addition to the interest penalty amount only if—

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, post-marked not later than 40 days after the date the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall—

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest is due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible—

(1) The designated payment office that receives the demand will annotate it with the date of receipt, provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(iii) The additional penalty does not apply to payments regulated by other Government regulations (e.g., payments under utility contracts subject to tariffs and regulation).

(b) *Contract financing payments.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

(iii) Affected contract line item or subline item, if applicable; and

(iv) Contractor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(End of clause)

#### 52.232-27 Prompt Payment for Construction Contracts.

As prescribed in [32.908\(b\)](#), insert the following clause:

##### PROMPT PAYMENT FOR CONSTRUCTION CONTRACTS (MAY 2014)

Notwithstanding any other payment terms in this contract, the Government will make invoice payments under the terms and conditions specified in this clause. The Government considers payment as being made on the day a check is dated or the date of an electronic funds transfer. Definitions of pertinent terms are set forth in sections [2.101](#), [32.001](#), and [32.902](#) of the Federal Acquisition Regulation. All days referred to in this clause are calendar days, unless otherwise specified. (However, see paragraph (a)(3) concerning payments due on Saturdays, Sundays, and legal holidays.)

(a) *Invoice payments*—(1) *Types of invoice payments*. For purposes of this clause, there are several types of invoice payments that may occur under this contract, as follows:

(i) Progress payments, if provided for elsewhere in this contract, based on Contracting Officer approval of the estimated amount and value of work or services performed, including payments for reaching milestones in any project.

(A) The due date for making such payments is 14 days after the designated billing office receives a proper payment request. If the designated billing office fails to annotate the payment request with the actual date of receipt at the time of receipt, the payment due date is the 14th day after the date of the Contractor's payment request, provided the designated billing office receives a proper payment request and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(B) The due date for payment of any amounts retained by the Contracting Officer in accordance with the clause at [52.232-5](#), Payments Under Fixed-Price Construction Contracts, is as specified in the contract or, if not specified, 30 days after approval by the Contracting Officer for release to the Contractor.

(ii) Final payments based on completion and acceptance of all work and presentation of release of all claims against the Government arising by virtue of the contract, and payments for partial deliveries that have been accepted by the Government (*e.g.*, each separate building, public work, or other division of the contract for which the price is stated separately in the contract).

(A) The due date for making such payments is the later of the following two events:

(1) The 30th day after the designated billing office receives a proper invoice from the Contractor.

(2) The 30th day after Government acceptance of the work or services completed by the Contractor. For a final invoice when the payment amount is subject to contract settlement actions (*e.g.*, release of claims), acceptance is deemed to occur on the effective date of the contract settlement.

(B) If the designated billing office fails to annotate the invoice with the date of actual receipt at the time of receipt, the invoice payment due date is the 30th day after the date of the Contractor's invoice, provided the designated billing office receives a proper invoice and there is no disagreement over quantity, quality, or Contractor compliance with contract requirements.

(2) *Contractor's invoice*. The Contractor shall prepare and submit invoices to the designated billing office specified in the contract. A proper invoice must include the items listed in paragraphs (a)(2)(i) through (a)(2)(xi) of this clause. If the invoice does not comply with these requirements, the designated billing office must return it within 7 days after receipt, with the reasons why it is not a proper invoice. When computing any interest penalty owed the Contractor, the Government will take into account if the Government notifies the Contractor of an improper invoice in an untimely manner.

(i) Name and address of the Contractor.

(ii) Invoice date and invoice number. (The Contractor should date invoices as close as possible to the date of mailing or transmission.)

(iii) Contract number or other authorization for work or services performed (including order number and contract line item number).

(iv) Description of work or services performed.

(v) Delivery and payment terms (*e.g.*, discount for prompt payment terms).

(vi) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the contract or in a proper notice of assignment).

(vii) Name (where practicable), title, phone number, and mailing address of person to notify in the event of a defective invoice.

(viii) For payments described in paragraph (a)(1)(i) of this clause, substantiation of the amounts requested and certification in accordance with the requirements of the clause

at [52.232-5](#), Payments Under Fixed-Price Construction Contracts.

(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.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision (e.g., [52.232-38](#), Submission of Electronic Funds Transfer Information with Offer), contract clause (e.g., [52.232-33](#), Payment by Electronic Funds Transfer—System for Award Management, or [52.232-34](#), Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(xi) Any other information or documentation required by the contract.

(3) *Interest penalty.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if payment is not made by the due date and the conditions listed in paragraphs (a)(3)(i) through (a)(3)(iii) of this clause are met, if applicable. However, when the due date falls on a Saturday, Sunday, or legal holiday, the designated payment office may make payment on the following working day without incurring a late payment interest penalty.

(i) The designated billing office received a proper invoice.

(ii) The Government processed a receiving report or other Government documentation authorizing payment and there was no disagreement over quantity, quality, Contractor compliance with any contract term or condition, or requested progress payment amount.

(iii) In the case of a final invoice for any balance of funds due the Contractor for work or services performed, the amount was not subject to further contract settlement actions between the Government and the Contractor.

(4) *Computing penalty amount.* The Government will compute the interest penalty in accordance with the Office of Management and Budget prompt payment regulations at 5 CFR Part 1315.

(i) For the sole purpose of computing an interest penalty that might be due the Contractor for payments described in paragraph (a)(1)(ii) of this clause, Government acceptance or approval is deemed to occur constructively on the 7th day after the Contractor has completed the work or services in accordance with the terms and conditions of the contract. If

actual acceptance or approval occurs within the constructive acceptance or approval period, the Government will base the determination of an interest penalty on the actual date of acceptance or approval. Constructive acceptance or constructive approval requirements do not apply if there is a disagreement over quantity, quality, or Contractor compliance with a contract provision. These requirements also do not compel Government officials to accept work or services, approve Contractor estimates, perform contract administration functions, or make payment prior to fulfilling their responsibilities.

(ii) The prompt payment regulations at 5 CFR 1315.10(c) do not require the Government to pay interest penalties if payment delays are due to disagreement between the Government and the Contractor over the payment amount or other issues involving contract compliance, or on amounts temporarily withheld or retained in accordance with the terms of the contract. The Government and the Contractor shall resolve claims involving disputes, and any interest that may be payable in accordance with the clause at FAR [52.233-1](#), Disputes.

(5) *Discounts for prompt payment.* The designated payment office will pay an interest penalty automatically, without request from the Contractor, if the Government takes a discount for prompt payment improperly. The Government will calculate the interest penalty in accordance with the prompt payment regulations at 5 CFR Part 1315.

(6) *Additional interest penalty.*(i) The designated payment office will pay a penalty amount, calculated in accordance with the prompt payment regulations at 5 CFR Part 1315 in addition to the interest penalty amount only if—

(A) The Government owes an interest penalty of \$1 or more;

(B) The designated payment office does not pay the interest penalty within 10 days after the date the invoice amount is paid; and

(C) The Contractor makes a written demand to the designated payment office for additional penalty payment, in accordance with paragraph (a)(6)(ii) of this clause, post-marked not later than 40 days after the date the invoice amount is paid.

(ii)(A) The Contractor shall support written demands for additional penalty payments with the following data. The Government will not request any additional data. The Contractor shall—

(1) Specifically assert that late payment interest is due under a specific invoice, and request payment of all overdue late payment interest penalty and such additional penalty as may be required;

(2) Attach a copy of the invoice on which the unpaid late payment interest was due; and

(3) State that payment of the principal has been received, including the date of receipt.

(B) If there is no postmark or the postmark is illegible—

(1) The designated payment office that receives the demand will annotate it with the date of receipt provided the demand is received on or before the 40th day after payment was made; or

(2) If the designated payment office fails to make the required annotation, the Government will determine the demand's validity based on the date the Contractor has placed on the demand, provided such date is no later than the 40th day after payment was made.

(b) *Contract financing payments.* If this contract provides for contract financing, the Government will make contract financing payments in accordance with the applicable contract financing clause.

(c) *Subcontract clause requirements.* The Contractor shall include in each subcontract for property or services (including a material supplier) for the purpose of performing this contract the following:

(1) *Prompt payment for subcontractors.* A payment clause that obligates the Contractor to pay the subcontractor for satisfactory performance under its subcontract not later than 7 days from receipt of payment out of such amounts as are paid to the Contractor under this contract.

(2) *Interest for subcontractors.* An interest penalty clause that obligates the Contractor to pay to the subcontractor an interest penalty for each payment not made in accordance with the payment clause—

(i) For the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and

(ii) Computed at the rate of interest established by the Secretary of the Treasury, and published in the *Federal Register*, for interest payments under [41 U.S.C. 7109](#) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(3) *Subcontractor clause flowdown.* A clause requiring each subcontractor to—

(i) Include a payment clause and an interest penalty clause conforming to the standards set forth in paragraphs (c)(1) and (c)(2) of this clause in each of its subcontracts; and

(ii) Require each of its subcontractors to include such clauses in their subcontracts with each lower-tier subcontractor or supplier.

(d) *Subcontract clause interpretation.* The clauses required by paragraph (c) of this clause shall not be construed to impair the right of the Contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that—

(1) *Retainage permitted.* Permit the Contractor or a subcontractor to retain (without cause) a specified percentage of each progress payment otherwise due to a subcontractor for

satisfactory performance under the subcontract without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond;

(2) *Withholding permitted.* Permit the Contractor or subcontractor to make a determination that part or all of the subcontractor's request for payment may be withheld in accordance with the subcontract agreement; and

(3) *Withholding requirements.* Permit such withholding without incurring any obligation to pay a late payment interest penalty if—

(i) A notice conforming to the standards of paragraph (g) of this clause previously has been furnished to the subcontractor; and

(ii) The Contractor furnishes to the Contracting Officer a copy of any notice issued by a Contractor pursuant to paragraph (d)(3)(i) of this clause.

(e) *Subcontractor withholding procedures.* If a Contractor, after making a request for payment to the Government but before making a payment to a subcontractor for the subcontractor's performance covered by the payment request, discovers that all or a portion of the payment otherwise due such subcontractor is subject to withholding from the subcontractor in accordance with the subcontract agreement, then the Contractor shall—

(1) *Subcontractor notice.* Furnish to the subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon ascertaining the cause giving rise to a withholding, but prior to the due date for subcontractor payment;

(2) *Contracting Officer notice.* Furnish to the Contracting Officer, as soon as practicable, a copy of the notice furnished to the subcontractor pursuant to paragraph (e)(1) of this clause;

(3) *Subcontractor progress payment reduction.* Reduce the subcontractor's progress payment by an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (e)(1) of this clause;

(4) *Subsequent subcontractor payment.* Pay the subcontractor as soon as practicable after the correction of the identified subcontract performance deficiency, and—

(i) Make such payment within—

(A) Seven days after correction of the identified subcontract performance deficiency (unless the funds therefor must be recovered from the Government because of a reduction under paragraph (e)(5)(i) of this clause; or

(B) Seven days after the Contractor recovers such funds from the Government; or

(ii) Incur an obligation to pay a late payment interest penalty computed at the rate of interest established by the Secretary of the Treasury, and published in the *Federal Register*,

for interest payments under [41 U.S.C. 7109](#) in effect at the time the Contractor accrues the obligation to pay an interest penalty;

(5) *Notice to Contracting Officer.* Notify the Contracting Officer upon—

(i) Reduction of the amount of any subsequent certified application for payment; or

(ii) Payment to the subcontractor of any withheld amounts of a progress payment, specifying—

(A) The amounts withheld under paragraph (e)(1) of this clause; and

(B) The dates that such withholding began and ended; and

(6) *Interest to Government.* Be obligated to pay to the Government an amount equal to interest on the withheld payments (computed in the manner provided in [31 U.S.C. 3903\(c\)\(1\)](#)), from the 8th day after receipt of the withheld amounts from the Government until—

(i) The day the identified subcontractor performance deficiency is corrected; or

(ii) The date that any subsequent payment is reduced under paragraph (e)(5)(i) of this clause.

(f) *Third-party deficiency reports—(1) Withholding from subcontractor.* If a Contractor, after making payment to a first-tier subcontractor, receives from a supplier or subcontractor of the first-tier subcontractor (hereafter referred to as a “second-tier subcontractor”) a written notice in accordance with [40 U.S.C. 3133](#), asserting a deficiency in such first-tier subcontractor’s performance under the contract for which the Contractor may be ultimately liable, and the Contractor determines that all or a portion of future payments otherwise due such first-tier subcontractor is subject to withholding in accordance with the subcontract agreement, the Contractor may, without incurring an obligation to pay an interest penalty under paragraph (e)(6) of this clause—

(i) Furnish to the first-tier subcontractor a notice conforming to the standards of paragraph (g) of this clause as soon as practicable upon making such determination; and

(ii) Withhold from the first-tier subcontractor’s next available progress payment or payments an amount not to exceed the amount specified in the notice of withholding furnished under paragraph (f)(1)(i) of this clause.

(2) *Subsequent payment or interest charge.* As soon as practicable, but not later than 7 days after receipt of satisfactory written notification that the identified subcontract performance deficiency has been corrected, the Contractor shall—

(i) Pay the amount withheld under paragraph (f)(1)(ii) of this clause to such first-tier subcontractor; or

(ii) Incur an obligation to pay a late payment interest penalty to such first-tier subcontractor computed at the rate of interest established by the Secretary of the Treasury, and pub-

lished in the *Federal Register*, for interest payments under [41 U.S.C. 7109](#) in effect at the time the Contractor accrues the obligation to pay an interest penalty.

(g) *Written notice of subcontractor withholding.* The Contractor shall issue a written notice of any withholding to a subcontractor (with a copy furnished to the Contracting Officer), specifying—

(1) The amount to be withheld;

(2) The specific causes for the withholding under the terms of the subcontract; and

(3) The remedial actions to be taken by the subcontractor in order to receive payment of the amounts withheld.

(h) *Subcontractor payment entitlement.* The Contractor may not request payment from the Government of any amount withheld or retained in accordance with paragraph (d) of this clause until such time as the Contractor has determined and certified to the Contracting Officer that the subcontractor is entitled to the payment of such amount.

(i) *Prime-subcontractor disputes.* A dispute between the Contractor and subcontractor relating to the amount or entitlement of a subcontractor to a payment or a late payment interest penalty under a clause included in the subcontract pursuant to paragraph (c) of this clause does not constitute a dispute to which the Government is a party. The Government may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

(j) *Preservation of prime-subcontractor rights.* Except as provided in paragraph (i) of this clause, this clause shall not limit or impair any contractual, administrative, or judicial remedies otherwise available to the Contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by the Contractor or deficient subcontract performance or nonperformance by a subcontractor.

(k) *Non-recourse for prime contractor interest penalty.* The Contractor’s obligation to pay an interest penalty to a subcontractor pursuant to the clauses included in a subcontract under paragraph (c) of this clause shall not be construed to be an obligation of the Government for such interest penalty. A cost-reimbursement claim may not include any amount for reimbursement of such interest penalty.

(l) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(1) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(i) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(ii) Affected contract number and delivery order number if applicable;

(iii) Affected contract line item or subline item, if applicable; and

(iv) Contractor point of contact.

(2) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(End of clause)

### 52.232-28 Invitation to Propose Performance-Based Payments.

As prescribed in [32.1005\(b\)\(1\)](#), insert the following provision:

#### INVITATION TO PROPOSE PERFORMANCE-BASED PAYMENTS (MAR 2000)

(a) The Government invites the offeror to propose terms under which the Government will make performance-based contract financing payments during contract performance. The Government will consider performance-based payment financing terms proposed by the offeror in the evaluation of the offeror's proposal. The Contracting Officer will incorporate the financing terms of the successful offeror and the FAR clause, Performance-Based Payments, at FAR [52.232-32](#), in any resulting contract.

(b) In the event of any conflict between the terms proposed by the offeror and the terms in the clause at FAR [52.232-32](#), Performance-Based Payments, the terms of the clause at FAR [52.232-32](#) shall govern.

(c) The Contracting Officer will not accept the offeror's proposed performance-based payment financing if the financing does not conform to the following limitations:

(1) The Government will make delivery payments only for supplies delivered and accepted, or services rendered and accepted in accordance with the payment terms of this contract.

(2) The terms and conditions of the performance-based payments must—

(i) Comply with FAR [32.1004](#);

(ii) Be reasonable and consistent with all other technical and cost information included in the offeror's proposal; and

(iii) Their total shall not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis.

(3) The terms and conditions of the performance-based financing must be in the best interests of the Government.

(d) The offeror's proposal of performance-based payment financing shall include the following:

(1) The proposed contractual language describing the performance-based payments (see FAR [32.1004](#) for appropriate criteria for establishing performance bases and performance-based finance payment amounts).

(2) A listing of—

(i) The projected performance-based payment dates and the projected payment amounts; and

(ii) The projected delivery date and the projected payment amount.

(3) Information addressing the Contractor's investment in the contract.

(e) Evaluation of the offeror's proposed prices and financing terms will include whether the offeror's proposed performance-based payment events and payment amounts are reasonable and consistent with all other terms and conditions of the offeror's proposal.

(End of provision)

*Alternate I (Mar 2000).* As prescribed in FAR [32.1005\(b\)\(2\)](#), add the following paragraph (f) to the basic provision:

(f) The Government will adjust each proposed price to reflect the cost of providing the proposed performance-based payments to determine the total cost to the Government of that particular combination of price and performance-based financing. The Government will make the adjustment using the procedure described in FAR [32.205\(c\)](#).

### 52.232-29 Terms for Financing of Purchases of Commercial Items.

As prescribed in [32.206\(b\)\(2\)](#), insert the following clause:

#### TERMS FOR FINANCING OF PURCHASES OF COMMERCIAL ITEMS (FEB 2002)

(a) *Contractor entitlement to financing payments.* The Contractor may request, and the Government shall pay, a contract financing payment as specified elsewhere in this contract when: the payment requested is properly due in accordance with this contract; the supplies deliverable or services due under the contract will be delivered or performed in accordance with the contract; and there has been no impairment or diminution of the Government's security under this contract.

(b) *Special terms regarding termination for cause.* If this contract is terminated for cause, the Contractor shall, on demand, repay to the Government the amount of unliquidated contract financing payments. The Government shall be liable for no payment except as provided by the Termination for Cause paragraph of the clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items.

(c) *Security for Government financing.* In the event the Contractor fails to provide adequate security, as required in this contract, no financing payment shall be made under this contract. Upon receipt of adequate security, financing payments shall be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the provisions for contract financing. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly pro-



vide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided and suspend further payments to the Contractor; and the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(d) *Reservation of rights.*(1) No payment or other action by the Government under this clause shall—

(i) Excuse the Contractor from performance of obligations under this contract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause—

(i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(e) *Content of Contractor's request for financing payment.* The Contractor's request for financing payment shall contain the following:

(1) The name and address of the Contractor;

(2) The date of the request for financing payment;

(3) The contract number and/or other identifier of the contract or order under which the request is made; and

(4) An appropriately itemized and totaled statement of the financing payments requested and such other information as is necessary for computation of the payment, prepared in accordance with the direction of the Contracting Officer.

(f) *Limitation on frequency of financing payments.* Contractor financing payments shall be provided no more frequently than monthly.

(g) *Dates for payment.* A payment under this clause is a contract financing payment and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved payment requests within 30 days of submittal of a proper request for payment.

(h) *Conflict between terms of offeror and clause.* In the event of any conflict between the terms proposed by the offeror in response to an invitation to propose financing terms (52.232-31) and the terms in this clause, the terms of this clause shall govern.

(End of clause)

### 52.232-30 Installment Payments for Commercial Items.

As prescribed in 32.206(g), insert the following clause:

#### INSTALLMENT PAYMENTS FOR COMMERCIAL ITEMS (OCT 1995)

(a) *Contractor entitlement to financing payments.* The Contractor may request, and the Government shall pay, a contract financing installment payment as specified in this contract when: the payment requested is properly due in accordance with this contract; the supplies deliverable or services due under the contract will be delivered or performed in accordance with the contract; and there has been no impairment or diminution of the Government's security under this contract.

(b) *Computation of amounts.* Installment payment financing shall be paid to the Contractor when requested for each separately priced unit of supply (but not for services) of each contract line item in amounts approved by the Contracting Officer pursuant to this clause.

(1) *Number of installment payments for each contract line item.* Each separately priced unit of each contract line item is authorized a fixed number of monthly installment payments. The number of installment payments authorized for each unit of a contract line item is equal to the number of months from the date of contract award to the date one month before the first delivery of the first separately priced unit of the contract line item. For example, if the first scheduled delivery of any separately priced unit of a contract line item is 9 months after award of the contract, all separately priced units of that contract line item are authorized 8 installment payments.

(2) *Amount of each installment payment.* The amount of each installment payment for each separately priced unit of each contract line item is equal to 70 percent of the unit price divided by the number of installment payments authorized for that unit.

(3) *Date of each installment payment.* Installment payments for any particular separately priced unit of a contract line item begin the number of months prior to the delivery of that unit that are equal to the number of installment payments authorized for that unit. For example, if 8 installment payments are authorized for each separately priced unit of a contract line item, the first installment payment for any particular unit of that contract line item would be 8 months before the scheduled delivery date for that unit. The last installment payment would be 1 month before scheduled delivery of a unit.

(4) *Limitation on payment.* Prior to the delivery payment for a separately priced unit of a contract line item, the sum of all installment payments for that unit shall not exceed 70 percent of the price of that unit.

(c) *Contractor request for installment payment.* The Contractor may submit requests for payment of installment payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all installment payments in any month for which payment is being requested

shall be included in a single request, appropriately itemized and totaled.

(d) *Dates for payment.* An installment payment under this clause is a contract financing payment under the Prompt Payment clause of this contract, and except as provided in paragraph (e) of this clause, approved requests shall be paid within 30 days of submittal of a proper request for payment.

(e) *Liquidation of installment payments.* Installment payments shall be liquidated by deducting from the delivery payment of each item the total unliquidated amount of installment payments made for that separately priced unit of that contract line item. The liquidation amounts for each unit of each line item shall be clearly delineated in each request for delivery payment submitted by the Contractor.

(f) *Security for installment payment financing.* In the event the Contractor fails to provide adequate security as required in this contract, no financing payment shall be made under this contract. Upon receipt of adequate security, financing payments shall be made, including all previous payments to which the Contractor is entitled, in accordance with the terms of the contract. If at any time the Contracting Officer determines that the security provided by the Contractor is insufficient, the Contractor shall promptly provide such additional security as the Contracting Officer determines necessary. In the event the Contractor fails to provide such additional security, the Contracting Officer may collect or liquidate such security that has been provided, and suspend further payments to the Contractor; the Contractor shall repay to the Government the amount of unliquidated financing payments as the Contracting Officer at his sole discretion deems repayable.

(g) *Special terms regarding termination for cause.* If this contract is terminated for cause, the Contractor shall, on demand, repay to the Government the amount of unliquidated installment payments. The Government shall be liable for no payment except as provided by the Termination for Cause paragraph of the clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items.

(h) *Reservation of rights.*(1) No payment, vesting of title under this clause, or other action taken by the Government under this clause shall—

(i) Excuse the Contractor from performance of obligations under this contract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause—

(i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single exercise preclude or impair

any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(i) *Content of Contractor's request for installment payment.* The Contractor's request for installment payment shall contain the following:

(1) The name and address of the Contractor;

(2) The date of the request for installment payment;

(3) The contract number and/or other identifier of the contract or order under which the request is made; and

(4) An itemized and totaled statement of the items, installment payment amount, and month for which payment is being requested, for each separately priced unit of each contract line item.

(End of clause)

### 52.232-31 Invitation to Propose Financing Terms.

As prescribed in [32.205\(b\)](#) and [32.206](#), insert the following provision:

#### INVITATION TO PROPOSE FINANCING TERMS (MAY 2014)

(a) The offeror is invited to propose terms under which the Government shall make contract financing payments during contract performance. The financing terms proposed by the offeror shall be a factor in the evaluation of the offeror's proposal. The financing terms of the successful offeror and the clause, Terms for Financing of Purchases of Commercial Items, at [52.232-29](#), shall be incorporated in any resulting contract.

(b) The offeror agrees that in the event of any conflict between the terms proposed by the offeror and the terms in the clause at [52.232-29](#), Terms for Financing of Purchases of Commercial Items, the terms of the clause at [52.232-29](#) shall govern.

(c) Because of statutory limitations ([10 U.S.C. 2307\(f\)](#) and [41 U.S.C. 4505](#)), the offeror's proposed financing shall not be acceptable if it does not conform to the following limitations:

(1) Delivery payments shall be made only for supplies delivered and accepted, or services rendered and accepted in accordance with the payment terms of this contract;

(2) Contract financing payments shall not exceed 15 percent of the contract price in advance of any performance of work under the contract;

(3) The terms and conditions of the contract financing must be appropriate or customary in the commercial marketplace; and

(4) The terms and conditions of the contract financing must be in the best interests of the United States.

(d) The offeror's proposal of financing terms shall include the following:

(1) The proposed contractual language describing the contract financing (see FAR [32.202-2](#) for appropriate definitions of types of payments); and

payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the prompt payment terms of this contract, the Contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(e) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment and the provisions of paragraph (d) shall apply.

(f) *EFT and prompt payment.* A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) *EFT and assignment of claims.* If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall provide the EFT information required by paragraph (j) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) *Liability for change of EFT information by financial agent.* The Government is not liable for errors resulting from changes to EFT information provided by the Contractor's financial agent.

(i) *Payment information.* The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the

EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address in the contract.

(j) *EFT information.* The Contractor shall provide the following information to the designated office. The Contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause). The Contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.

(1) The contract number (or other procurement identification number).

(2) The Contractor's name and remittance address, as stated in the contract(s).

(3) The signature (manual or electronic, as appropriate), title, and telephone number of the Contractor official authorized to provide this information.

(4) The name, address, and 9-digit Routing Transit Number of the Contractor's financial agent.

(5) The Contractor's account number and the type of account (checking, saving, or lockbox).

(6) If applicable, the Fedwire Transfer System telegraphic abbreviation of the Contractor's financial agent.

(7) If applicable, the Contractor shall also provide the name, address, telegraphic abbreviation, and 9-digit Routing Transit Number of the correspondent financial institution receiving the wire transfer payment if the Contractor's financial agent is not directly on-line to the Fedwire Transfer System; and, therefore, not the receiver of the wire transfer payment.

(End of clause)

#### **52.232-35 Designation of Office for Government Receipt of Electronic Funds Transfer Information.**

As prescribed in [32.1110\(c\)](#), insert the following clause:

DESIGNATION OF OFFICE FOR GOVERNMENT RECEIPT OF ELECTRONIC FUNDS TRANSFER INFORMATION (JUL 2013)

(a) As provided in paragraph (b) of the clause at [52.232-34](#), Payment by Electronic Funds Transfer—Other than System for Award Management, the Government has designated the office cited in paragraph (c) of this clause as the office to receive the Contractor's electronic funds transfer (EFT) information, in lieu of the payment office of this contract.

(b) The Contractor shall send all EFT information, and any changes to EFT information to the office designated in paragraph (c) of this clause. The Contractor shall not send EFT information to the payment office, or any other office than that designated in paragraph (c). The Government need not use any EFT information sent to any office other than that designated in paragraph (c).

(c) Designated Office:

Name:

\_\_\_\_\_

Mailing Address:

\_\_\_\_\_

Telephone Number:

\_\_\_\_\_

Person to Contact:

\_\_\_\_\_

Electronic Address:

\_\_\_\_\_

(End of clause)

**52.232-36 Payment by Third Party.**

As prescribed in [32.1110](#)(d), insert the following clause:

**PAYMENT BY THIRD PARTY (MAY 2014)**

(a) *General.* (1) Except as provided in paragraph (a)(2) of this clause, the Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the Government, in accordance with the terms of this clause. The third party and, if applicable, the particular Governmentwide commercial purchase card to be used are identified elsewhere in this contract.

(2) The Governmentwide commercial purchase card is not authorized as a method of payment during any period the System for Award Management (SAM) indicates that the Contractor has delinquent debt that is subject to collection under the Treasury Offset Program (TOP). Information on TOP is available at <http://fms.treas.gov/debt/index.html>. If the SAM subsequently indicates that the Contractor no longer has delinquent debt, the Contractor may request the Contracting Officer to authorize payment by Governmentwide commercial purchase card.

(b) *Contractor payment request.* (1) Except as provided in paragraph (b)(2) of this clause, the Contractor shall make payment requests through a charge to the Government account with the third party, at the time and for the amount due in accordance with those clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, other payment requests, or as provided in other clauses providing for payment to the Contractor.

(2) When the Contracting Officer has notified the Contractor that the Governmentwide commercial purchase card is no longer an authorized method of payment, the Contractor shall make such payment requests in accordance with instructions provided by the Contracting Officer during the period when the purchase card is not authorized.

(c) *Payment.* The Contractor and the third party shall agree that payments due under this contract shall be made upon submittal of payment requests to the third party in accordance with the terms and conditions of an agreement between the Contractor, the Contractor's financial agent (if any), and the third party and its agents (if any). No payment shall be due the Contractor until such agreement is made. Payments made or due by the third party under this clause are not payments made by the Government and are not subject to the Prompt Payment Act or any implementation thereof in this contract.

(d) *Documentation.* Documentation of each charge against the Government's account shall be provided to the Contracting Officer upon request.

(e) *Assignment of claims.* Notwithstanding any other provision of this contract, if any payment is made under this clause, then no payment under this contract shall be assigned under the provisions of the assignment of claims terms of this contract or the Assignment of Claims Act of 1940 ([31 U.S.C. 3727](#), [41 U.S.C. 6305](#)).

(f) *Other payment terms.* The other payment terms of this contract shall govern the content and submission of payment requests. If any clause requires information or documents in or with the payment request, that is not provided in the third party agreement referenced in paragraph (c) of this clause, the Contractor shall obtain instructions from the Contracting Officer before submitting such a payment request.

(End of clause)

**52.232-37 Multiple Payment Arrangements.**

As prescribed in [32.1110](#)(e), insert the following clause:

**MULTIPLE PAYMENT ARRANGEMENTS (MAY 1999)**

This contract or agreement provides for payments to the Contractor through several alternative methods. The applicability of specific methods of payment and the designation of the payment office(s) are either stated—

(a) Elsewhere in this contract or agreement; or

(b) In individual orders placed under this contract or agreement.

(End of clause)

**52.232-38 Submission of Electronic Funds Transfer Information with Offer.**

As prescribed in [32.1110](#)(g), insert the following provision:

**52.233-1 Disputes.**

As prescribed in [33.215](#), insert the following clause:

## DISPUTES (MAY 2014)

(a) This contract is subject to [41 U.S.C chapter 71](#), Contract Disputes.

(b) Except as provided in [41 U.S.C chapter 71](#), all disputes arising under or relating to this contract shall be resolved under this clause.

(c) “Claim,” as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under [41 U.S.C chapter 71](#) until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under [41 U.S.C chapter 71](#). The submission may be converted to a claim under [41 U.S.C chapter 71](#), by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: “I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor.”

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer’s decision shall be final unless the Contractor appeals or files a suit as provided in [41 U.S.C chapter 71](#).

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor’s specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR [33.201](#), interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

*Alternate I (Dec 1991).* As prescribed in [33.215](#), substitute the following paragraph (i) for paragraph (i) of the basic clause:

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

**52.233-2 Service of Protest.**

As prescribed in [33.106](#), insert the following provision:

## SERVICE OF PROTEST (SEPT 2006)

(a) Protests, as defined in section [33.101](#) of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from \_\_\_\_\_. [*Contracting Officer designate the official or location where a protest may be served on the Contracting Officer.*]

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

**52.233-3 Protest after Award.**

As prescribed in [33.106\(b\)](#), insert the following clause:

PROTEST AFTER AWARD (AUG 1996)

(a) Upon receipt of a notice of protest (as defined in FAR [33.101](#)) or a determination that a protest is likely (see FAR [33.102\(d\)](#)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either—

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR [33.102\(b\)\(2\)](#) or [33.104\(h\)\(1\)](#), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the

requirements of [Subpart 32.6](#), the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

(End of clause)

*Alternate I (June 1985).* As prescribed in [33.106\(b\)](#), substitute in paragraph (a)(2) the words “the Termination clause of this contract” for the words “the Default, or the Termination for Convenience of the Government clause of this contract.” In paragraph (b) substitute the words “an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected” for the words “an equitable adjustment in the delivery schedule or contract price, or both.”

**52.233-4 Applicable Law for Breach of Contract Claim.**

As prescribed in [33.215\(b\)](#), insert the following clause:

APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM  
(OCT 2004)

United States law will apply to resolve any claim of breach of this contract.

(End of clause)

**52.234-1 Industrial Resources Developed Under Defense Production Act Title III.**

As prescribed at [34.104](#), insert the following clause:

INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE  
PRODUCTION ACT TITLE III (DEC 1994)

(a) *Definitions.* “Title III industrial resource” means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) established or maintained under the authority of Title III, Defense Production Act ([50 U.S.C. App. 2091-2093](#)).

“Title III project contractor” means a contractor that has received assistance for the development or manufacture of an industrial resource under [50 U.S.C. App. 2091-2093](#), Defense Production Act.

(b) The Contractor shall refer any request from a Title III project contractor for testing and qualification of a Title III industrial resource to the Contracting Officer.

(c) Upon the direction of the Contracting Officer, the Contractor shall test Title III industrial resources for qualification. The Contractor shall provide the test results to the Defense Production Act Office, Title III Program, located at Wright Patterson Air Force Base, Ohio 45433-7739.

(d) When the Contracting Officer modifies the contract to direct testing pursuant to this clause, the Government will provide the Title III industrial resource to be tested and will make

an equitable adjustment in the contract for the costs of testing and qualification of the Title III industrial resource.

(e) The Contractor agrees to insert the substance of this clause, including paragraph (e), in every subcontract issued in performance of this contract.

(End of clause)

**52.234-2 Notice of Earned Value Management System - Pre-Award IBR.**

As prescribed in [34.203](#)(a) use the following provision:

NOTICE OF EARNED VALUE MANAGEMENT SYSTEM -  
PRE-AWARD IBR (JULY 2006)

(a) The offeror shall provide documentation that the Cognizant Federal Agency has determined that the proposed earned value management system (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard - 748 (current version at time of solicitation).

(b) If the offeror proposes to use a system that has not been determined to be in compliance with the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS guidelines.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contracts;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the guidelines;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedure for administration of the guidelines, as applied to subcontractors; and

(v) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with the EVMS guidelines.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review and approve the offeror's plan for an EVMS before contract award.

(4) The offeror's EVMS plan must provide milestones that indicate when the offeror anticipates that the EVM system will be compliant with the ANSI/EIA Standard - 748 guidelines.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected subject to the guidelines. The prime Contractor and the Government shall agree to subcontractors selected for application of the EVMS guidelines.

(d) The Government will conduct an Integrated Baseline Review (IBR), as designated by the agency, prior to contract award. The objective of the IBR is for the Government and the

Contractor to jointly assess technical areas, such as the Contractor's planning, to ensure complete coverage of the contract requirements, logical scheduling of the work activities, adequate resources, methodologies for earned value (budgeted cost for work performed (BCWP)), and identification of inherent risks.

(End of provision)

**52.234-3 Notice of Earned Value Management System - Post Award IBR.**

As prescribed in [34.203](#)(b) use the following provision:

NOTICE OF EARNED VALUE MANAGEMENT SYSTEM -  
POST AWARD IBR (JULY 2006)

(a) The offeror shall provide documentation that the Cognizant Federal Agency has determined that the proposed earned value management system (EVMS) complies with the EVMS guidelines in ANSI/EIA Standard - 748 (current version at time of solicitation).

(b) If the offeror proposes to use a system that has not been determined to be in compliance with the requirements of paragraph (a) of this provision, the offeror shall submit a comprehensive plan for compliance with the EVMS guidelines.

(1) The plan shall—

(i) Describe the EVMS the offeror intends to use in performance of the contracts;

(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the guidelines;

(iii) Describe the management system and its application in terms of the EVMS guidelines;

(iv) Describe the proposed procedure for administration of the guidelines, as applied to subcontractors; and

(v) Provide documentation describing the process and results of any third-party or self-evaluation of the system's compliance with the EVMS guidelines.

(2) The offeror shall provide information and assistance as required by the Contracting Officer to support review of the plan.

(3) The Government will review and approve the offeror's plan for an EVMS before contract award.

(4) The offeror's EVMS plan must provide milestones that indicate when the offeror anticipates that the EVM system will be compliant with the ANSI/EIA Standard -748 guidelines.

(c) Offerors shall identify the major subcontractors, or major subcontracted effort if major subcontractors have not been selected, planned for application of the guidelines. The prime Contractor and the Government shall agree to subcontractors selected for application of the EVMS guidelines.

(End of provision)

**52.234-4 Earned Value Management System.**

As prescribed in [34.203\(c\)](#), insert the following clause:

EARNED VALUE MANAGEMENT SYSTEM (MAY 2014)

(a) The Contractor shall use an earned value management system (EVMS) that has been determined by the Cognizant Federal Agency (CFA) to be compliant with the guidelines in ANSI/EIA Standard - 748 (current version at the time of award) to manage this contract. If the Contractor's current EVMS has not been determined compliant at the time of award, see paragraph (b) of this clause. The Contractor shall submit reports in accordance with the requirements of this contract.

(b) If, at the time of award, the Contractor's EVM System has not been determined by the CFA as complying with EVMS guidelines or the Contractor does not have an existing cost/schedule control system that is compliant with the guidelines in ANSI/EIA Standard - 748 (current version at time of award), the Contractor shall—

(1) Apply the current system to the contract; and

(2) Take necessary actions to meet the milestones in the Contractor's EVMS plan approved by the Contracting Officer.

(c) The Government will conduct an Integrated Baseline Review (IBR). If a pre-award IBR has not been conducted, a post award IBR shall be conducted as early as practicable after contract award.

(d) The Contracting Officer may require an IBR at—

(1) Exercise of significant options; or

(2) Incorporation of major modifications.

(e) Unless a waiver is granted by the CFA, Contractor proposed EVMS changes require approval of the CFA prior to implementation. The CFA will advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the CFA, the Contractor shall disclose EVMS changes to the CFA at least 14 calendar days prior to the effective date of implementation.

(f) The Contractor shall provide access to all pertinent records and data requested by the Contracting Officer or an authorized representative as necessary to permit Government surveillance to ensure that the EVMS conforms, and continues to conform, with the performance criteria referenced in paragraph (a) of this clause.

(g) The Contractor shall require the subcontractors specified below to comply with the requirements of this clause: *[Insert list of applicable subcontractors.]*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(End of clause)

**52.235 [Reserved]**

**52.236-1 Performance of Work by the Contractor.**

As prescribed in [36.501\(b\)](#), insert the following clause: *[Complete the clause by inserting the appropriate percentage consistent with the complexity and magnitude of the work and customary or necessary specialty subcontracting (see [36.501\(a\)](#).)]*

PERFORMANCE OF WORK BY THE CONTRACTOR  
(APR 1984)

The Contractor shall perform on the site, and with its own organization, work equivalent to at least \_\_\_\_\_ *[insert the appropriate number in words followed by numerals in parentheses]* percent of the total amount of work to be performed under the contract. This percentage may be reduced by a supplemental agreement to this contract if, during performing the work, the Contractor requests a reduction and the Contracting Officer determines that the reduction would be to the advantage of the Government.

(End of clause)

**52.236-2 Differing Site Conditions.**

As prescribed in [36.502](#), insert the following clause:

DIFFERING SITE CONDITIONS (APR 1984)

(a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of—

(1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or

(2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.

(b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

(c) No request by the Contractor for an equitable adjustment to the contract under this clause shall be allowed, unless the Contractor has given the written notice required; *provided*, that the time prescribed in paragraph (a) of this clause for giv-



tor's final payment, all title that has not passed to the Contractor shall vest in the Contractor, unless specifically designated in the Schedule as being retained by the Government. The Government shall not be responsible for the condition of, or any loss or damage to, the property.

(c) The Contractor shall promptly remove from the site all property acquired by the Contractor. The Government will not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition of the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(End of clause)

#### **52.237-7 Indemnification and Medical Liability Insurance.**

As prescribed in [37.403](#), insert the following clause:

##### INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (JAN 1997)

(a) It is expressly agreed and understood that this is a non-personal services contract, as defined in Federal Acquisition Regulation (FAR) [37.101](#), under which the professional services rendered by the Contractor are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered, including by example, the Contractor's professional medical judgment, diagnosis, or specific medical treatments. The Contractor shall be solely liable for and expressly agrees to indemnify the Government with respect to any liability producing acts or omissions by it or by its employees or agents. The Contractor shall maintain during the term of this contract liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: \* \_\_\_\_\_.

(b) An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of its insurability concerning the medical liability insurance required by paragraph (a) of this clause.

(c) Liability insurance may be on either an occurrences basis or on a claims-made basis. If the policy is on a claims-made basis, an extended reporting endorsement (tail) for a period of not less than 3 years after the end of the contract term must also be provided.

(d) Evidence of insurance documenting the required coverage for each health care provider who will perform under this contract shall be provided to the Contracting Officer prior to the commencement of services under this contract. If the insurance is on a claims-made basis and evidence of an extended reporting endorsement is not provided prior to the

commencement of services, evidence of such endorsement shall be provided to the Contracting Officer prior to the expiration of this contract. Final payment under this contract shall be withheld until evidence of the extended reporting endorsement is provided to the Contracting Officer.

(e) The policies evidencing required insurance shall also contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. If, during the performance period of the contract the Contractor changes insurance providers, the Contractor must provide evidence that the Government will be indemnified to the limits specified in paragraph (a) of this clause, for the entire period of the contract, either under the new policy, or a combination of old and new policies.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts under this contract for health care services and shall require such subcontractors to provide evidence of and maintain insurance in accordance with paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

\* Contracting Officer insert the dollar value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests.

#### **52.237-8 Restriction on Severance Payments to Foreign Nationals.**

As prescribed in [37.113-2\(a\)](#), use the following provision:

##### RESTRICTION ON SEVERANCE PAYMENTS TO FOREIGN NATIONALS (AUG 2003)

(a) The Federal Acquisition Regulation (FAR), at [31.205-6\(g\)\(6\)](#), limits the cost allowability of severance payments to foreign nationals employed under a service contract performed outside the United States unless the agency grants a waiver pursuant to FAR [37.113-1](#) before contract award.

(b) In making the determination concerning the granting of a waiver, the agency will determine that—

(1) The application of the severance pay limitations to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for—

(i) Members of the armed forces stationed or deployed outside the United States; or

(ii) Employees of an executive agency posted outside the United States;

(2) The Contractor has taken (or has established plans to take) appropriate actions within its control to minimize the amount and number of incidents of the payment of severance pay to employees under the contract who are foreign nationals; and

(3) The payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the foreign national receiving the payment performed services under the contract, or is necessary to comply with a collective bargaining agreement.

(End of provision)

**52.237-9 Waiver of Limitation on Severance Payments to Foreign Nationals.**

As prescribed in [37.113-2\(b\)](#), use the following clause:

WAIVER OF LIMITATION ON SEVERANCE PAYMENTS TO FOREIGN NATIONALS (MAY 2014)

(a) Pursuant to [10 U.S.C. 2324\(e\)\(3\)\(A\)](#) or [41 U.S.C. 4304\(b\)\(1\)](#), as applicable, the cost allowability limitations in FAR [31.205-6\(g\)\(6\)](#) are waived.

(b) This clause may be incorporated into subcontracts issued under this contract, if approved by the Contracting Officer.

(End of clause)

**52.237-10 Identification of Uncompensated Overtime.**

As prescribed in [37.115-3](#), insert the following provision:

IDENTIFICATION OF UNCOMPENSATED OVERTIME (OCT 1997)

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

(b) “Uncompensated overtime” means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

“Uncompensated overtime rate” is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40-hour work week basis at \$20 per hour would be converted to an uncompensated overtime rate of \$17.78 per hour (\$20.00 × 40 divided by 45 = \$17.78).

(c) For any proposed hours against which an uncompensated overtime rate is applied, the offeror shall identify in its proposal the hours in excess of an average of 40 hours per week, by labor category at the same level of detail as compensated hours, and the uncompensated overtime rate per hour, whether at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools

for personnel whose regular hours are normally charged direct.

(d) The offeror’s accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.

(e) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a risk assessment and will be evaluated for award in accordance with that assessment.

(f) The offeror shall include a copy of its policy addressing uncompensated overtime with its proposal.

(End of provision)

**52.237-11 Accepting and Dispensing of \$1 Coin.**

As prescribed in [37.116-2](#), insert the following clause:

ACCEPTING AND DISPENSING OF \$1 COIN (SEPT 2008)

(a) This clause applies to service contracts that involve business operations conducted in U.S. coin and currency, including vending machines, on any premises owned by the United States or under the control of any agency or instrumentality of the United States. All such business operations must be compliant with the requirements in paragraphs (b) and (c) of this clause on and after January 1, 2008.

(b) All business operations conducted under this contract that involve coins or currency, including vending machines, shall be fully capable of—

(1) Accepting \$1 coins in connection with such operations; and

(2) Dispensing \$1 coins in connection with such operations, unless the vending machine does not receive currency denominations greater than \$1.

(c) The Contractor shall ensure that signs and notices are displayed denoting the capability of accepting and dispensing \$1 coins with business operations on all premises where coins or currency are accepted or dispensed, including on each vending machine.

(End of clause)

**52.238 [Reserved]**

**52.239-1 Privacy or Security Safeguards.**

As prescribed in [39.107](#), insert a clause substantially the same as the following:

PRIVACY OR SECURITY SAFEGUARDS (AUG 1996)

(a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer’s written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.

made a part of the contract by the issuance of a contract modification to include the name and location of the service, specifying any different rate, the point of delivery, different service specifications, and any other terms and conditions.

(b) The applicable monthly charge specified in this contract shall be equitably prorated from the period in which commencement or discontinuance of service at any service location designated under the Service Specifications shall become effective.

(End of clause)

**52.241-12 Nonrefundable, Nonrecurring Service Charge.**

As prescribed in [41.501](#)(d)(6), insert a clause substantially the same as the following:

NONREFUNDABLE, NONRECURRING SERVICE CHARGE  
(FEB 1995)

As provided herein, the Government will pay a nonrefundable, nonrecurring charge when the rules and regulations of a Contractor require that a customer pay (1) a charge for the initiation of service, (2) a contribution in aid of construction, or (3) a nonrefundable membership fee. This charge may be in addition to or in lieu of a connection charge. Therefore, there is hereby added to the Contractor's schedule a nonrefundable, nonrecurring charge for \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ dollars payable [*specify dates or schedules*].

(End of clause)

**52.241-13 Capital Credits.**

As prescribed in [41.501](#)(d)(7), insert a clause substantially the same as the following:

CAPITAL CREDITS (FEB 1995)

(a) The Government is a member of the \_\_\_\_\_ [*insert cooperative name*], and as any other member, is entitled to capital credits consistent with the bylaws of the cooperative, which states the obligation of the Contractor to pay capital credits and which specifies the method and time of payment.

(b) The Contractor shall furnish to the Contracting Officer, or the designated representative of the Contracting Officer, in writing, on an \_\_\_\_\_ basis [*insert period of time*] a list of accrued credits by contract number, year, and delivery point.

(c) Payment of capital credits will be made by check, payable to the \_\_\_\_\_ [*insert agency name*], and forwarded to the Contracting Officer at \_\_\_\_\_ [*insert agency address*], unless otherwise directed in writing by the Contracting Officer. Checks shall cite the current or last contract number and indicate whether the check is partial or final payment for all capital credits accrued.

(End of clause)

**52.242-1 Notice of Intent to Disallow Costs.**

As prescribed in [42.802](#), insert the following clause in solicitations and contracts when a cost-reimbursement contract, a fixed-price incentive contract, or a contract providing for price redetermination is contemplated:

NOTICE OF INTENT TO DISALLOW COSTS (APR 1984)

(a) Notwithstanding any other clause of this contract—

(1) The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms; and

(2) The Contractor may, after receiving a notice under paragraph (a)(1) of this clause, submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.

(b) Failure to issue a notice under this Notice of Intent to Disallow Costs clause shall not affect the Government's rights to take exception to incurred costs.

(End of clause)

**52.242-2 Production Progress Reports.**

As prescribed in [42.1107](#)(a), insert the following clause:

PRODUCTION PROGRESS REPORTS (APR 1991)

(a) The Contractor shall prepare and submit to the Contracting Officer the production progress reports specified in the contract Schedule.

(b) During any delay in furnishing a production progress report required under this contract, the Contracting Officer may withhold from payment an amount not exceeding \$25,000 or 5 percent of the amount of this contract, whichever is less.

(End of clause)

**52.242-3 Penalties for Unallowable Costs.**

As prescribed in [42.709-6](#), use the following clause:

PENALTIES FOR UNALLOWABLE COSTS (MAY 2014)

(a) *Definition.* "Proposal," as used in this clause, means either—

(1) A final indirect cost rate proposal submitted by the Contractor after the expiration of its fiscal year which—

(i) Relates to any payment made on the basis of billing rates; or

(ii) Will be used in negotiating the final contract price; or

(2) The final statement of costs incurred and estimated to be incurred under the Incentive Price Revision clause (if applicable), which is used to establish the final contract price.

(b) Contractors which include unallowable indirect costs in a proposal may be subject to penalties. The penalties are prescribed in [10 U.S.C. 2324](#) or [41 U.S.C. chapter 43](#), as applicable, which is implemented in Section [42.709](#) of the Federal Acquisition Regulation (FAR).

(c) The Contractor shall not include in any proposal any cost that is unallowable, as defined in [Subpart 2.1](#) of the FAR, or an executive agency supplement to the FAR.

(d) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the Contractor shall be assessed a penalty equal to—

(1) The amount of the disallowed cost allocated to this contract; plus

(2) Simple interest, to be computed—

(i) On the amount the Contractor was paid (whether as a progress or billing payment) in excess of the amount to which the Contractor was entitled; and

(ii) Using the applicable rate effective for each six-month interval prescribed by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).

(e) If the Contracting Officer determines that a cost submitted by the Contractor in its proposal includes a cost previously determined to be unallowable for that Contractor, then the Contractor will be assessed a penalty in an amount equal to two times the amount of the disallowed cost allocated to this contract.

(f) Determinations under paragraphs (d) and (e) of this clause are final decisions within the meaning of [41 U.S.C. chapter 71](#), Contract Disputes.

(g) Pursuant to the criteria in FAR [42.709-5](#), the Contracting Officer may waive the penalties in paragraph (d) or (e) of this clause.

(h) Payment by the Contractor of any penalty assessed under this clause does not constitute repayment to the Government of any unallowable cost which has been paid by the Government to the Contractor.

(End of clause)

**52.242-4 Certification of Final Indirect Costs.**

As prescribed in [42.703-2\(f\)](#), insert the following clause:

CERTIFICATION OF FINAL INDIRECT COSTS (JAN 1997)

(a) The Contractor shall—

(1) Certify any proposal to establish or modify final indirect cost rates;

(2) Use the format in paragraph (c) of this clause to certify; and

(3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.

(b) Failure by the Contractor to submit a signed certificate, as described in this clause, may result in final indirect costs at rates unilaterally established by the Contracting Officer.

(c) The certificate of final indirect costs shall read as follows:

CERTIFICATE OF FINAL INDIRECT COSTS

This is to certify that I have reviewed this proposal to establish final indirect cost rates and to the best of my knowledge and belief:

1. All costs included in this proposal (identify proposal and date) to establish final indirect cost rates for (identify period covered by rate) are allowable in accordance with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to the contracts to which the final indirect cost rates will apply; and

2. This proposal does not include any costs which are expressly unallowable under applicable cost principles of the FAR or its supplements.

Firm: \_\_\_\_\_

Signature: \_\_\_\_\_

Name of Certifying Official: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_

(End of clause)

**52.242-5 [Reserved]**

**52.242-6 [Reserved]**

**52.242-7 [Reserved]**

**52.242-8 [Reserved]**

**52.242-9 [Reserved]**

**52.242-10 [Reserved]**

**52.242-11 [Reserved]**

**52.242-12 [Reserved]**

**52.242-13 Bankruptcy.**

As prescribed in [42.903](#), insert the following clause:

BANKRUPTCY (JULY 1995)

In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail or electronic commerce

**52.244-1 [Reserved]****52.244-2 Subcontracts.**

As prescribed in [44.204\(a\)\(1\)](#), insert the following clause:

## SUBCONTRACTS (OCT 2010)

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

“Approved purchasing system” means a Contractor’s purchasing system that has been reviewed and approved in accordance with [Part 44](#) of the Federal Acquisition Regulation (FAR).

“Consent to subcontract” means the Contracting Officer’s written consent for the Contractor to enter into a particular subcontract.

“Subcontract” means any contract, as defined in FAR [Subpart 2.1](#), entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds—

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer’s written consent before placing the following subcontracts:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(e)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor’s current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor’s Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason certified cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor’s certified cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor’s certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor’s price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor’s purchasing system shall constitute a determination—

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR [15.404-4\(c\)\(4\)\(i\)](#).

(h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(i) The Government reserves the right to review the Contractor's purchasing system as set forth in FAR [Subpart 44.3](#).

(j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

(End of clause)

*Alternate I (June 2007).* As prescribed in [44.204\(a\)\(2\)](#), substitute the following paragraph (e)(2) for paragraph (e)(2) of the basic clause:

(e)(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), or (d) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (e)(1)(i) through (e)(1)(iv) of this clause.

### 52.244-3 [Reserved]

### 52.244-4 Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).

As prescribed in [44.204\(b\)](#), insert the following clause:

SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND  
CONSULTANTS (ARCHITECT-ENGINEER SERVICES)  
(AUG 1998)

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates, or consultants.

(End of clause)

### 52.244-5 Competition in Subcontracting.

As prescribed in [44.204\(c\)](#), insert the following clause:

COMPETITION IN SUBCONTRACTING (DEC 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical

extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

(End of clause)

### 52.244-6 Subcontracts for Commercial Items.

As prescribed in [44.403](#), insert the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS (MAY 2014)

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

“Commercial item” has the meaning contained in Federal Acquisition Regulation [2.101](#), Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (APR 2010) ([41 U.S.C. 3509](#)), if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

(iii) [52.219-8](#), Utilization of Small Business Concerns (MAY 2014) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)), if the subcontract offers further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include [52.219-8](#) in lower tier subcontracts that offer subcontracting opportunities.

(iv) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(v) [52.222-35](#), Equal Opportunity for Veterans (SEP 2010) ([38 U.S.C. 4212\(a\)](#));

(vi) [52.222-36](#), Affirmative Action for Workers with Disabilities (OCT 2010) ([29 U.S.C. 793](#)).

(vii) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496), if flow down is required in accordance with paragraph (f) of FAR clause [52.222-40](#).

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.219-25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.	19.1204(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.	19.1204(c)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.219-27 Notice of Service-Disabled Veteran-Owned Small Business Set Aside.	19.1407	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-28 Post-Award Small Business Program Rerepresentation.	19.309(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-29 Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns.	19.1506(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-30 Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.	19.1506(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-1 Notice to the Government of Labor Disputes.	22.103-5(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-2 Payment for Overtime Premiums.	22.103-5(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-3 Convict Labor.	22.202	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-4 Contract Work Hours and Safety Standards—Overtime Compensation.✓	22.305	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-5 Construction Wage Rate Requirements—Secondary Site of the Work.✓	22.407(h)	P	No	L																			
52.222-6 Construction Wage Rate Requirements.✓	22.407(a)	C	Yes	I																			
52.222-7 Withholding of Funds.	22.407(a)	C	Yes	I																			
52.222-8 Payrolls and Basic Records.	22.407(a)	C	Yes	I																			
52.222-9 Apprentices and Trainees.	22.407(a)	C	Yes	I																			
52.222-10 Compliance with Copeland Act Requirements.	22.407(a)	C	Yes	I																			
52.222-11 Subcontracts (Labor Standards).	22.407(a)	C	Yes	I																			
52.222-12 Contract Termination—Debarment.	22.407(a)	C	Yes	I																			
52.222-13 Compliance with Construction Wage Rate Requirements and Related Regulations.✓	22.407(a)	C	Yes	I																			
52.222-14 Disputes Concerning Labor Standards.	22.407(a)	C	Yes	I																			
52.222-15 Certification of Eligibility.	22.407(a)	C	Yes	I																			
52.222-16 Approval of Wage Rates.	22.407(b)	C	Yes	I																			

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.222-17 Nondisplacement of Qualified Workers	22.1207	C	Yes	I					R										A				A
52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.	22.1505(a)	P	No	K	A	A															A		A
52.222-19 Child Labor—Cooperation with Authorities and Remedies.	22.1505(b)	C	Yes	I	A	A															A		A
52.222-20 Walsh-Healey Public Contracts Act.	22.610	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-21 Prohibition of Segregated Facilities.	22.810(a)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-22 Previous Contracts and Compliance Reports.	22.810(a)(2)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction.	22.810(b)	P	Yes								A												
52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation.	22.810(c)	P	Yes	L	A	A	A	A	A	A													A
52.222-25 Affirmative Action Compliance.	22.810(d)	P	No	K	A	A	A	A	A	A													A
52.222-26 Equal Opportunity.	22.810(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	22.810(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-27 Affirmative Action Compliance Requirements for Construction.	22.810(f)	C	Yes								A												
52.222-29 Notification of Visa Denial.	22.810(g)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-30 Construction Wage Rate Requirements—Price Adjustment (None or Separately Specified Method).✓	22.407(e)	C									A												
52.222-31 Construction Wage Rate Requirements—Price Adjustment (Percentage Method).✓	22.407(f)	C									A												
52.222-32 Construction Wage Rate Requirements—Price Adjustment (Actual Method).✓	22.407(g)	C									A												
52.222-33 Notice of Requirement for Project Labor Agreement.	22.505(a)(1)	P	Yes								A												
Alternate I	22.505(a)(1)	P	Yes								A												
Alternate II	22.505(a)(2)	P	Yes								A												
52.222-34 Project Labor Agreement.	22.505(b)(1)	C	Yes								A												
Alternate I	22.505(b)(1)	C	Yes								A												
52.222-35 Equal Opportunity for Veterans.	22.1310(a)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	22.1310(a)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	



PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.222-36 Affirmative Action for Workers with Disabilities.	22.1408(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	22.1408(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-37 Employment Reports on Veterans.	22.1310(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.222-38 Compliance with Veterans' Employment Reporting Requirements.	22.1310(c)	P	Yes	K	A	A	A	A	A	A	a	A	A	A	A	A	A	A	A	A	A	A	
52.222-40 Notification of Employee Rights Under the National Labor Relations Act.	22.1605	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-41 Service Contract Labor Standards.	22.1006(a)	C	Yes	I	A		A		A				A		A	A	A			A	A		
52.222-42 Statement of Equivalent Rates for Federal Hires.	22.1006(b)	C	No	I	A		A		A				A		A	A	A			A	A		
52.222-43 Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts).	22.1006(c)(1)	C	Yes	I			A						A		A	A	A			A	A		
52.222-44 Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment.	22.1006(c)(2)	C	Yes	I	A		A		A				A		A	A	A			A	A		
52.222-46 Evaluation of Compensation for Professional Employees.	22.1103	P	Yes	L					A														
52.222-48 Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification.	22.1006(e)(1)	C	Yes	I			A		A				A								A		
52.222-49 Service Contract Labor Standards—Place of Performance Unknown.	22.1006(f)	C	Yes	I					A				A		A	A					A		
52.222-50 Combating Trafficking in Persons.	22.1705(a)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
Alternate I	22.1705(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-51 Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.	22.1006(e)(2)	C	Yes	I					A				A								A		
52.222-52 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Certification.	22.1006(e)(3)	P	Yes	I					A				A								A		
52.222-53 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements.	22.1006(e)(4)	C	Yes	I					A				A								A		
52.222-54 Employment Eligibility Verification	22.1803	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-1 Biobased Product Certification.	23.406(a)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

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																								PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT
52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.	23.406(b)	C	Yes	I					A	A	A	A	A			A			A	A	A		A	
52.223-3 Hazardous Material Identification and Material Safety Data.	23.303	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	23.303(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.223-4 Recovered Material Certification.	23.406(c)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-5 Pollution Prevention and Right-to-Know Information.	23.1005	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	23.1005(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate II	23.1005(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.223-6 Drug-Free Workplace.	23.505	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.223-7 Notice of Radioactive Materials.	23.602	C	No	I	A	A	A	A	A	A	A	A	A	A		A								
52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Products.	23.406(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	23.406(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-10 Waste Reduction Program.	23.705(a)	C	Yes	I					A	A					A									
52.223-11 Ozone-Depleting Substances.	23.804(a)	C	No	I	A																			
52.223-12 Refrigeration Equipment and Air Conditioners.	23.804(b)	C	Yes	I					A	A						A								
52.223-15 Energy Efficiency in Energy-Consuming Products.	23.206	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.	23.705(b)(1)	C	Yes	I	A	A	A	A	A	A				A	A	A								A
Alternate I	23.705(b)(2)	C	Yes	I	A	A	A	A	A	A				A	A	A								A
52.223-17 Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.	23.406(e)	C	Yes	I					A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving	23.1105	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.223-19 Compliance with Environmental Management Systems.	23.903	C	Yes						A	A					A									
52.224-1 Privacy Act Notification.	24.104(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.224-2 Privacy Act.	24.104(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-1 Buy American—Supplies.✓	25.1101(a)(1)	C	Yes	I	A	A	A	A	A	A				A	A	A								A
52.225-2 Buy American Certificate.✓	25.1101(a)(2)	P	No	K	A	A	A	A	A	A				A	A	A								A

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52.225-3 Buy American—Free Trade Agreements-Israeli Trade Act.✓	25.1101(b)(1)(i)	C	Yes	I	A	A							A	A					A		A		A
Alternate I	25.1101(b)(1)(ii)	C	Yes	I	A	A							A	A					A		A		A
Alternate II	25.1101(b)(1)(iii)	C	Yes	I	A	A							A	A					A		A		A
Alternate III	25.1101(b)(1)(iv)	C	Yes	I	A	A							A	A					A		A		A
52.225-4 Buy American—Free Trade Agreements-Israeli Trade Act Certificate.✓	25.1101(b)(2)(i)	P	No	K	A	A							A	A					A		A		
Alternate I	25.1101(b)(2)(ii)	P	No	K	A	A							A	A					A		A		
Alternate II	25.1101(b)(2)(iii)	P	No	K	A	A							A	A					A		A		
Alternate III	25.1101(b)(2)(iv)	P	No	K	A	A							A	A					A		A		
52.225-5 Trade Agreements.	25.1101(c)(1)	C	Yes	I	A	A																	
52.225-6 Trade Agreements Certificate.	25.1101(c)(2)	P	No	K	A	A																	
52.225-7 Waiver of Buy American Statute for Civil Aircraft and Related Articles.✓	25.1101(d)	P	Yes	L	A	A	A																A
52.225-8 Duty-Free Entry.	25.1101(e)	C	Yes	I	A	A	A						A	A									A
52.225-9 Buy American—Construction Materials.✓	25.1102(a)	C	No																				
52.225-10 Notice of Buy American Requirement—Construction Materials.✓	25.1102(b)(1)	P	No																				
Alternate I	25.1102(b)(2)	P	No																				
52.225-11 Buy American—Construction Materials under Trade Agreements.✓	25.1102(c)	C	No																				
Alternate I	25.1102(c)(3)	C	No																				
52.225-12 Notice of Buy American Requirement—Construction Materials Under Trade Agreements.✓	25.1102(d)(1)	P	No																				
Alternate I	25.1102(d)(2)	P	No																				
Alternate II	25.1102(d)(3)	P	No																				
52.225-13 Restrictions on Certain Foreign Purchases.	25.1103(a)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.225-14 Inconsistency Between English Version and Translation of Contract.	25.1103(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-17 Evaluation of Foreign Currency Offers.	25.1103(c)	P	Yes	M	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-18 Place of Manufacture.	25.1101(f)	P	No	K	R	R							A								A		A
52.225-19 Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States.	25.301-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

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52.225-20 Prohibition on Conducting Restricted Business Operations in Sudan—Certification.	25.1103(d)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-21 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials.✓	25.1102(e)(1)	C	No								A	A											
52.225-22 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials.✓	25.1102(e)(1)	P	No								A	A											
Alternate I	25.1102(e)(1)	P	No								A	A											
52.225-23 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials under Trade Agreements.✓	25.1102(e)(1)	C	No								A	A											
Alternate I	25.1102(e)(1)	C	No								A	A											
52.225-24 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements.✓	25.1102(e)(1)	P	No								A	A											
Alternate I	25.1102(e)(1)	P	No								A	A											
Alternate II	25.1102(e)(1)	P	No								A	A											
52.225-25 Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications	25.1103	P	Yes	K	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.225-26 Contractors Performing Private Security Functions Outside the United States.	25.302-6	C	Yes	I	A	A	A	A	A	A	A	A	O	A	A	A	A	A	A	A	A	A	A
52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.	26.104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.226-2 Historically Black College or University and Minority Institution Representation.	26.304	P	No	K	A	A	A	A	A	A			A		A						A		
52.226-3 Disaster or Emergency Area Representation.	26.206(a)	P	No	K	A	A	A		A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.226-4 Notice of Disaster or Emergency Area Set-Aside.	26.206(b)	C	Yes	I	A	A			A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.226-5 Restrictions on Subcontracting Outside Disaster or Emergency Area.	26.206(c)	C	Yes	I	A	A			A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.226-6 Promoting Excess Food Donation to Nonprofit Organizations.	26.404	C	Yes	I	A	A			A	A											A		A

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52.227-1 Authorization and Consent.	27.201-2(a)(1)	C	Yes	I	A	A	A		A		A	A			A	A	A	A	A				
Alternate I	27.201-2(a)(2)	C	Yes	I			A				A	A			A		A						
Alternate II	27.201-2(a)(3)	C	Yes	I			A				A	A											
52.227-2 Notice and Assistance Regarding Patent and Copyright Infringement.	27.201-2(b)	C	Yes	I	A	A																	
52.227-3 Patent Indemnity.	27.201-2(c)(1)	C	Yes	I	A	A			A	A									A				
Alternate I	27.201-2(c)(2)	C	Yes	I	A	A			A	A									A				
Alternate II	27.201-2(c)(2)	C	Yes	I	A	A			A	A					A				A				
Alternate III	27.201-2(c)(3)	C	Yes	I											A						A		
52.227-4 Patent Indemnity—Construction Contracts.	27.201-2(d)(1)	C	Yes								A	A				A							
Alternate I	27.201-2(d)(2)	C	Yes								O	O				O							
52.227-5 Waiver of Indemnity.	27.201-2(e)	C	Yes	I	A	A	A	A	A	A	A	A							A				
52.227-6 Royalty Information.	27.202-5(a)(1)	P	No	K	A	A	A	A	A	A	A	A							A				
Alternate I	27.202-5(a)(2)	P	No	K															A				
52.227-7 Patents—Notice of Government License.	27.202-5(b)	P	No	K	A	A	A	A	A	A	A	A							A				
52.227-9 Refund of Royalties.	27.202-5(c)	C	Yes	I	A	A	A	A	A	A	A	A							A				
52.227-10 Filing of Patent Applications—Classified Subject Matter.	27.203-2	C	Yes	I	A	A	A	A	A	A	A	A							A				
52.227-11 Patent Rights—Ownership by the Contractor.	27.303(b)(1)	C	Yes	I			A	A			A	A											
Alternate I	27.303(b)(3)	C	Yes	I			A	A			A	A							A				
Alternate II	27.303(b)(4)	C	Yes	I			A	A			A	A							A				
Alternate III	27.303(b)(5)	C	Yes	I			A	A			A	A											
Alternate IV	27.303(b)(6)	C	Yes	I			A	A			A	A											
Alternate V	27.303(b)(7)	C	Yes	I			A	A			A	A											
52.227-13 Patent Rights—Ownership by the Government.	27.303(e)	C	Yes	I			A	A			A	A							A				
Alternate I	27.303(e)(4)	C	Yes	I			A	A			A	A							A				
Alternate II	27.303(e)(5)	C	Yes	I			A	A			A	A							A				
52.227-14 Rights in Data—General.	27.409(b)(1)	C	Yes	I	A	A	A	A	A	A									A	A	A	A	
Alternate I	27.409(b)(2)	C	Yes	I	A	A	A	A	A	A									A	A	A	A	
Alternate II	27.409(b)(3)	C	Yes	I	A	A	A	A	A	A									A	A	A	A	
Alternate III	27.409(b)(4)	C	Yes	I	A	A	A	A	A	A									A	A	A	A	
Alternate IV	27.409(b)(5)	C	Yes	I	O	O	A	A	O	O									O	O	O	O	
Alternate V	27.409(b)(6)	C	Yes	I	A	A	A	A	A	A									A	A	A	A	

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52.227-15 Representation of Limited Rights Data and Restricted Computer Software.	27.409(c)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.227-16 Additional Data Requirements.	27.409(d)	C	Yes	I			A														A		
52.227-17 Rights in Data—Special Works.	27.409(e)	C	Yes	I	A	A	A	A	O	O					A		O				A		
52.227-18 Rights in Data—Existing Works.	27.409(f)	C	Yes	I	A	A	A	A	A	A					A		A				A		
52.227-19 Commercial Computer Software License.	27.409(g)	C	Yes	I	A				A						A						A		
52.227-20 Rights in Data—SBIR Program.	27.409(h)	C	Yes	I			A																
52.227-21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.	27.409(i)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.227-22 Major System—Minimum Rights.	27.409(k)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.227-23 Rights to Proposal Data (Technical).	27.409(l)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.228-1 Bid Guarantee.	28.101-2	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.228-2 Additional Bond Security.	28.106-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.228-3 Workers' Compensation Insurance (Defense Base Act).	28.309(a)	C	Yes	I					A	A	A	A	A				A						
52.228-4 Workers' Compensation and War-Hazard Insurance Overseas.	28.309(b)	C	Yes	I					A	A	A	A	A				A						
52.228-5 Insurance—Work on a Government Installation.	28.310	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.228-7 Insurance—Liability to Third Persons.	28.311-1	C	Yes	I		A		A							A								
52.228-8 Liability and Insurance—Leased Motor Vehicles.	28.312	C	Yes	I																		A	
52.228-9 Cargo Insurance.	28.313(a)	C	Yes	I																		A	
52.228-10 Vehicular and General Public Liability Insurance.	28.313(b)	C	Yes	I																		A	
52.228-11 Pledges of Assets.	28.203-6	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.228-12 Prospective Subcontractor Requests for Bonds.	28.106-4(b)	C	Yes	I					A							A							
52.228-13 Alternative Payment Protections.	28.102-3(b)	C	Yes	I					A							A							
52.228-14 Irrevocable Letter of Credit.	28.204-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	

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52.228-15 Performance and Payment Bonds—Construction.	28.102-3(a)	C	Yes	I							A	A				A							
52.228-16 Performance and Payment Bonds—Other Than Construction.	28.103-4	C	No	I	A	A	A	A	A				A	A	A		A	A	A	A		A	
Alternate 1	28.103-4	C	No	I	A	A	A	A	A				A	A	A		A	A	A	A		A	
52.229-1 State and Local Taxes.	29.401-1	C	Yes	I																			
52.229-2 North Carolina State and Local Sales and Use Tax.	29.401-2	C	Yes	I					A	A													
Alternate 1	29.401-2	C	Yes	I					A	A													
52.229-3 Federal, State, and Local Taxes.	29.401-3	C	Yes	I	A	A	A	A	A				A	A	A		A	A	A	A			
52.229-4 Federal, State, and Local Taxes (State and Local Adjustments).	29.401-3	C	Yes	I	A	A	A	A	A				A	A	A		A	A	A	A			
52.229-6 Taxes—Foreign Fixed-Price Contracts.	29.402-1(a)	C	Yes	I	A	A	A	A	A				A	A	A		A	A	A	A			
52.229-7 Taxes—Fixed-Price Contracts with Foreign Governments.	29.402-1(b)	C	Yes	I	A	A	A	A	A				A	A	A		A	A	A	A		A	
52.229-8 Taxes—Foreign Cost-Reimbursement Contracts.	29.402-2(a)	C	Yes	I		A		A		A							A	A	A	A			
52.229-9 Taxes—Cost-Reimbursement Contracts with Foreign Governments.	29.402-2(b)	C	Yes	I		A		A		A							A	A	A	A			
52.229-10 State of New Mexico Gross Receipts and Compensating Tax.	29.401-4(b)	C	Yes	I		A		A		A							A	A	A	A			
52.230-1 Cost Accounting Standards Notices and Certification.	30.201-3	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate 1	30.201-3(b)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.230-2 Cost Accounting Standards.	30.201-4(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.230-3 Disclosure and Consistency in Cost Accounting Practices.	30.201-4(b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.230-4 Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.	30.201-4(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.230-5 Cost Accounting Standards—Educational Institution.	30.201-4(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.230-6 Administration of Cost Accounting Standards.	30.201-4(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.230-7 Proposal Disclosure—Cost Accounting Practice Changes.	30.201-3(c)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.232-1 Payments.	32.111(a)(1)	C	Yes	I	R				R													A	

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.232-2 Payments under Fixed-Price Research and Development Contracts.	32.111(a)(2)	C	Yes	I			R																
52.232-3 Payments under Personal Service Contracts.	32.111(a)(3)	C	Yes	I					A														
52.232-4 Payments under Transportation Contracts and Transportation-Related Services Contracts.	32.111(a)(4)	C	Yes	I																	R	A	
52.232-5 Payments under Fixed-Price Construction Contracts.	32.111(a)(5)	C	Yes								R												
52.232-6 Payment under Communication Service Contracts with Common Carriers.	32.111(a)(6)	C	Yes	I											A							A	
52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts.	32.111(a)(7)	C	Yes	I									A										
Alternate I	32.111(b)	C	Yes	I									A										
52.232-8 Discounts for Prompt Payment.	32.111(b)(1)	C	Yes	I	A				A														
52.232-9 Limitation on Withholding of Payments.	32.111(b)(2)	C	Yes	I	A	A	A	A	A	A													
52.232-10 Payments under Fixed-Price Architect-Engineer Contracts.	32.111(c)(1)	C	Yes														A						
52.232-11 Extras.	32.111(e)(2)	C	Yes	I	A				A						A							A	A
52.232-12 Advance Payments.	32.412(a)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	32.412(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	32.412(c)	C	No	I																			
Alternate III	32.412(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate IV	32.412(e)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate V	32.412(f)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-13 Notice of Progress Payments.	32.502-3(a)	P	Yes	L	A				A														
52.232-14 Notice of Availability of Progress Payments Exclusively for Small Business Concerns.	32.502-3(b)(2)	P	Yes	L	A				A														
52.232-15 Progress Payments Not Included.	32.502-3(c)	P	Yes	M	A				A														
52.232-16 Progress Payments.	32.502-4(a)	C	Yes	I	A				A														
Alternate I	32.502-4(b)	C	Yes	I	A				A														
Alternate II (See Note 1.)	32.502-4(c)	C	Yes	I																			
Alternate III	32.502-4(d)	C	Yes	I																			
52.232-17 Interest.	32.611(a) and (b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-18 Availability of Funds.	32.706-1(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.232-19 Availability of Funds for the Next Fiscal Year.	32.706-1(b)	C	No	I					A														



PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
<u>52.232-20</u> Limitation of Cost.	<u>32.706-2(a)</u>	C	Yes	I		A	A	A	A					A	A	A		A	A	A			A
<u>52.232-22</u> Limitation of Funds.	<u>32.706-2(b)</u>	C	Yes	I		A		A						A	A	A		A	A	A			
<u>52.232-23</u> Assignment of Claims.	<u>32.806(a)(1)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	<u>32.806(a)(2)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.232-24</u> Prohibition of Assignment of Claims.	<u>32.806(b)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.232-25</u> Prompt Payment.	<u>32.908(c)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	<u>32.908(c)(3)</u>	C	Yes	I				A						A	A	A	A	A	A	A	A	A	A
<u>52.232-26</u> Prompt Payment for Fixed-Price Architect-Engineer Contracts.	<u>32.908(a)</u>	C	Yes	I													A						
<u>52.232-27</u> Prompt Payment for Construction Contracts.	<u>32.908(b)</u>	C	Yes	I					R														
<u>52.232-28</u> Invitation to Propose Performance-Based Payments.	<u>32.1005(b)(1)</u>	P	No	L	A		A		A							A	A	A	A	A			A
Alternate I	<u>32.1005(b)(2)</u>	P	No	L	A		A		A							A	A	A	A	A			A
<u>52.232-29</u> Terms for Financing of Purchases of Commercial Items.	<u>32.206(b)(2)</u>	C	No	I	A		A																A
<u>52.232-30</u> Installment Payments for Commercial Items.	<u>32.206(g)</u>	C	Yes	I	A		A																A
<u>52.232-31</u> Invitation to Propose Financing Terms.	<u>32.205(b)</u> <u>32.206</u>	P	No	L	A				A														
<u>52.232-32</u> Performance-Based Payments.	<u>32.1005</u>	C	No	I	A				A														
<u>52.232-33</u> Payment by Electronic Funds Transfer—System for Award Management.	<u>32.1110(a)(1)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.232-34</u> Payment by Electronic Funds Transfer—Other than System for Award Management.	<u>32.1110(a)(2)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.232-35</u> Designation of Office for Government Receipt of Electronic Funds Transfer Information.	<u>32.1110(c)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.232-36</u> Payment by Third Party.	<u>32.1110(d)</u> and <u>(e)(3)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.232-37</u> Multiple Payment Arrangements.	<u>32.1110(e)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.232-38</u> Submission of Electronic Funds Transfer Information with Offer.	<u>32.1110(g)</u>	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.232-39</u> Unenforceability of Unauthorized Obligations.	<u>32.706-3</u>	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.232-40 Providing Accelerated Payments to Small Business Subcontractors	32.009-2	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.233-1 Disputes.	33.215	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	33.215	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.233-2 Service of Protest.	33.106(a)	P	No	L	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.233-3 Protest after Award.	33.106(b)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
Alternate I	33.106(b)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.233-4 Applicable Law for Breach of Contract Claim.	33.215(b)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.234-1 Industrial Resources Developed Under Defense Production Act Title III.	34.104	C	N	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.234-2 Notice of Earned Value Management System - Pre-Award IBR.	34.203(a)	P	N	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.234-3 Notice of Earned Value Management System - Post Award IBR.	34.203(b)	P	N	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.234-4 Earned Value Management System.	34.203(c)	C	Y	H	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.236-1 Performance of Work by the Contractor.	36.501(b)	C	Yes						A														
52.236-2 Differing Site Conditions.	36.502	C	Yes						A														
52.236-3 Site Investigation and Conditions Affecting the Work.	36.503	C	Yes						A														
52.236-4 Physical Data.	36.504	C	No						A														
52.236-5 Material and Workmanship.	36.505	C	Yes						R	R													
52.236-6 Superintendence by the Contractor.	36.506	C	Yes						A														
52.236-7 Permits and Responsibilities.	36.507	C	Yes						R	R													
52.236-8 Other Contracts.	36.508	C	Yes						A														
52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.	36.509	C	Yes						A														
52.236-10 Operations and Storage Areas.	36.510	C	Yes						A														
52.236-11 Use and Possession Prior to Completion.	36.511	C	Yes						A														
52.236-12 Cleaning Up.	36.512	C	Yes						A														
52.236-13 Accident Prevention.	36.513	C	Yes						A														
Alternate I	36.513	C	Yes						A														

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	CR T&M	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
<u>52.236-14</u> Availability and Use of Utility Services.	<u>36.514</u>	C	Yes																	A			A
<u>52.236-15</u> Schedules for Construction Contracts.	<u>36.515</u>	C	Yes																				
<u>52.236-16</u> Quantity Surveys.	<u>36.516</u>	C	Yes																				
Alternate I	<u>36.516</u>	C	Yes																				O
<u>52.236-17</u> Layout of Work.	<u>36.517</u>	C	Yes																				A
<u>52.236-18</u> Work Oversight in Cost-Reimbursement Construction Contracts.	<u>36.518</u>	C	Yes								R												
<u>52.236-19</u> Organization and Direction of the Work.	<u>36.519</u>	C	Yes									R											
<u>52.236-21</u> Specifications and Drawings for Construction.	<u>36.521</u>	C	Yes								A											A	O
Alternate I	<u>36.521</u>	C	Yes																			A	O
Alternate II	<u>36.521</u>	C	Yes																			A	O
<u>52.236-22</u> Design Within Funding Limitations.	<u>36.609-1(c)</u>	C	Yes																			A	O
<u>52.236-23</u> Responsibility of the Architect-Engineer Contractor.	<u>36.609-2(b)</u>	C	Yes																			A	
<u>52.236-24</u> Work Oversight in Architect-Engineer Contracts.	<u>36.609-3</u>	C	Yes																			A	
<u>52.236-25</u> Requirements for Registration of Designers.	<u>36.609-4</u>	C	Yes																			A	
<u>52.236-26</u> Preconstruction Conference.	<u>36.522</u>	C	Yes	I																		A	
<u>52.236-27</u> Site Visit (Construction).	<u>36.523</u>	P	Yes	L																		A	
Alternate I	<u>36.523</u>	P	Yes	L																		A	
<u>52.236-28</u> Preparation of Proposals—Construction.	<u>36.520</u>	P	Yes	K																		R	
<u>52.237-1</u> Site Visit.	<u>37.110(a)</u>	P	Yes	L																		A	A
<u>52.237-2</u> Protection of Government Buildings, Equipment, and Vegetation.	<u>37.110(b)</u>	C	Yes	I																		A	A
<u>52.237-3</u> Continuity of Services.	<u>37.110(c)</u>	C	Yes	I																		O	O
<u>52.237-4</u> Payment by Government to Contractor.	<u>37.304(a)</u>	C	Yes	I																		A	A
Alternate I	<u>37.304(a)</u>	C	Yes	I																		A	A
<u>52.237-5</u> Payment by Contractor to Government.	<u>37.304(b)</u>	C	Yes	I																		A	A
<u>52.237-6</u> Incremental Payment by Contractor to Government.	<u>37.304(c)</u>	C	Yes	I																		A	A

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
<u>52.237-7</u> Indemnification and Medical Liability Insurance.	<u>37.403</u>	C	Yes	I					A	A									A		O		
<u>52.237-8</u> Restriction on Severance Payments to Foreign Nationals.	<u>37.113-2(a)</u>	P	Yes	K		A		A		A			A	A	A	A	A		A	A			
<u>52.237-9</u> Waiver of Limitation on Severance Payments to Foreign Nationals.	<u>37.113-2(b)</u>	C	Yes	I		A		A		A			A	A	A	A	A		A	A			
<u>52.237-10</u> Identification of Uncompensated Overtime.	<u>37.115-3</u>	P	Yes	L					A	A													
<u>52.237-11</u> Accepting and Dispensing of \$1 Coin.	<u>37.116-2</u>	C	Yes	I	A	A			A	A			A					A	A		A		A
<u>52.239-1</u> Privacy or Security Safeguards. (See Note 4.)	<u>39.107</u>	C	Yes	I	A	A		A	A	A			A					A	A		A		A
<u>52.241-1</u> Electric Service Territory Compliance Representation.	<u>41.501(b)</u>	P	No	K																			
<u>52.241-2</u> Order of Precedence—Utilities.	<u>41.501(c)(1)</u>	C	Yes	I																	O	R	
<u>52.241-3</u> Scope of Duration of Contract.	<u>41.501(c)(2)</u>	C	No	I																			
<u>52.241-4</u> Change in Class of Service.	<u>41.501(c)(3)</u>	C	Yes	I																			
<u>52.241-5</u> Contractor's Facilities.	<u>41.501(c)(4)</u>	C	Yes	I																			
<u>52.241-6</u> Service Provisions.	<u>41.501(c)(5)</u>	C	No	I																			
<u>52.241-7</u> Change in Rates or Terms and Conditions of Service for Regulated Services.	<u>41.501(d)(1)</u>	C	No	I																			
<u>52.241-8</u> Change in Rates or Terms and Conditions of Service for Unregulated Services.	<u>41.501(d)(2)</u>	C	No	I																	O	A	
<u>52.241-9</u> Connection Change.	<u>41.501(d)(3)</u>	C	No	I																			
Alternate 1	<u>41.501(d)(3)</u>	C	No	I																			
<u>52.241-10</u> Termination Liability.	<u>41.501(d)(4)</u>	C	No	I																			
<u>52.241-11</u> Multiple Service Locations.	<u>41.501(d)(5)</u>	C	Yes	I																			
<u>52.241-12</u> Nonrefundable, Nonrecurring Service Charge.	<u>41.501(d)(6)</u>	C	No	I																			
<u>52.241-13</u> Capital Credits.	<u>41.501(d)(7)</u>	C	No	I																			
<u>52.242-1</u> Notice of Intent to Disallow Costs.	<u>42.802</u>	C	Yes	I	A	R	A	R	A	R	A	R	A	A	A	A	A	R	A	A			
<u>52.242-2</u> Production Progress Reports.	<u>42.1107(a)</u>	C	Yes	I	A	A	A	A	A	A			A	A					A				
<u>52.242-3</u> Penalties for Unallowable Costs.	<u>42.709-6</u>	C	Yes	I		A		A		A			A	A	A	A	A		A	A			
<u>52.242-4</u> Certification of Final Indirect Costs.	<u>42.703-2(f)</u>	C	Yes	I		A		A		A			A	A	A	A	A		A	A			
<u>52.242-13</u> Bankruptcy.	<u>42.903</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	O	R	

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
<u>52.242-14</u> Suspension of Work.	<u>42.1305(a)</u>	C	Yes																				
<u>52.242-15</u> Stop-Work Order.	<u>42.1305(b)(1)</u>	C	Yes	F	O	O	O	O	O	O													
Alternate I	<u>42.1305(b)(2)</u>	C	Yes	F	O	O	O	O	O	O													
<u>52.242-17</u> Government Delay of Work.	<u>42.1305(c)</u>	C	Yes	F	A																		
<u>52.243-1</u> Changes—Fixed Price.	<u>43.205(a)(1)</u>	C	Yes	I	R																		
Alternate I	<u>43.205(a)(2)</u>	C	Yes	I					A														
Alternate II	<u>43.205(a)(3)</u>	C	Yes	I					A														
Alternate III	<u>43.205(a)(4)</u>	C	Yes	I					A														
Alternate IV	<u>43.205(a)(5)</u>	C	Yes	I																			
Alternate V	<u>43.205(a)(6)</u>	C	Yes	I																			
<u>52.243-2</u> Changes—Cost Reimbursement.	<u>43.205(b)(1)</u>	C	Yes	I																			
Alternate I	<u>43.205(b)(2)</u>	C	Yes	I																			
Alternate II	<u>43.205(b)(3)</u>	C	Yes	I																			
Alternate III	<u>43.205(b)(4)</u>	C	Yes	I																			
Alternate V	<u>43.205(b)(6)</u>	C	Yes	I																			
<u>52.243-3</u> Changes—Time-and-Materials or Labor-Hours.	<u>43.205(c)</u>	C	Yes	I																			
<u>52.243-4</u> Changes.	<u>43.205(d)</u>	C	Yes	I																			
<u>52.243-5</u> Changes and Changed Conditions.	<u>43.205(e)</u>	C	Yes	I																			
<u>52.243-6</u> Change Order Accounting.	<u>43.205(f)</u>	C	Yes	I	O	O	O	O															
<u>52.243-7</u> Notification of Changes.	<u>43.107</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	O
<u>52.244-2</u> Subcontracts. (See Note 1.)	<u>44.204(a)(1)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I (See Note 1.)	<u>44.204(a)(2)</u>	C	Yes	I																			
<u>52.244-4</u> Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).	<u>44.204(b)</u>	C	Yes	I																			
<u>52.244-5</u> Competition in Subcontracting.	<u>44.204(c)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.244-6</u> Subcontracts for Commercial Items.	<u>44.403</u>	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
<u>52.245-1</u> Government Property.	<u>45.107(a)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	<u>45.107(a)(2)</u>				A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	<u>45.107(a)(3)</u>				A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.245-2</u> Government Property Installation Operation Services.	<u>45.107(b)</u>	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.245-9</u> Use and Charges.	<u>45.107(c)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.246-1</u> Contractor Inspection Requirements.	<u>46.301</u>	C	Yes																				

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.246-2 Inspection of Supplies—Fixed-Price.	46.302	C	Yes	E	A	A	A	A	A					A					A		O		
Alternate I	46.302	C	Yes	E	A		A							A									
Alternate II	46.302	C	Yes	E	A		A							A									
52.246-3 Inspection of Supplies—Cost-Reimbursement.	46.303	C	Yes	E		A	A		A														
52.246-4 Inspection of Services—Fixed-Price.	46.304	C	Yes	E	A	A	A		A				A	A					A		O		
52.246-5 Inspection of Services—Cost-Reimbursement.	46.305	C	Yes	E		A	A		A														
52.246-6 Inspection—Time-and-Material and Labor-Hour.	46.306	C	Yes	E									R										
Alternate I	46.306	C	Yes	E									A								O		
52.246-7 Inspection of Research and Development—Fixed Price.	46.307(a)	C	Yes	E			A														O		
52.246-8 Inspection of Research and Development—Cost Reimbursement.	46.308	C	Yes	E				A															
Alternate I	46.308	C	Yes	E				A															
52.246-9 Inspection of Research and Development (Short Form).	46.309	C	Yes	E			A														O		
52.246-11 Higher-Level Contract Quality Requirement.	46.311	C	Yes	E	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.246-12 Inspection of Construction.	46.312	C	Yes								A	A									O		
52.246-13 Inspection—Dismantling, Demolition, or Removal of Improvements.	46.313	C	Yes													R					A		
52.246-14 Inspection of Transportation.	46.314	C	Yes	E																	A		
52.246-15 Certificate of Conformance.	46.315	C	Yes	E	A	A	A	A	A	A				A							A		
52.246-16 Responsibility for Supplies.	46.316	C	Yes	E	A	A	A	A	A	A				A							O		
52.246-17 Warranty of Supplies of a Noncomplex Nature.	46.710(a)(1)	C	Yes	I	O																		
Alternate I	46.710(a)(2)	C	Yes	I	O																		
Alternate II	46.710(a)(3)	C	Yes	I	O																		
Alternate III	46.710(a)(4)	C	Yes	I	O																		
Alternate IV	46.710(a)(5)	C	Yes	I	O																		
Alternate V	46.710(a)(6)	C	Yes	I	O																		
52.246-18 Warranty of Supplies of a Complex Nature.	46.710(b)(1)	C	Yes	I	O																		
Alternate II	46.710(b)(2)	C	Yes	I	O																		
Alternate III	46.710(b)(3)	C	Yes	I	O																		
Alternate IV	46.710(b)(4)	C	Yes	I	O																		

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																		
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
<u>52.246-19</u> Warranty of Systems and Equipment under Performance Specifications or Design Criteria.	<u>46.710(c)(1)</u>	C	Yes	I	O																		
Alternate I	<u>46.710(c)(2)</u>	C	Yes	I	O																		
Alternate II	<u>46.710(c)(3)</u>	C	Yes	I	O																		
Alternate III	<u>46.710(c)(4)</u>	C	Yes	I	O																		
<u>52.246-20</u> Warranty of Services.	<u>46.710(d)</u>	C	Yes	I																			
<u>52.246-21</u> Warranty of Construction.	<u>46.710(e)(1)</u>	C	Yes																				
Alternate I	<u>46.710(e)(2)</u>	C	Yes																				
<u>52.246-23</u> Limitation of Liability.	<u>46.805</u>	C	Yes	I	A	A	A	A															
<u>52.246-24</u> Limitation of Liability—High-Value Items.	<u>46.805(a)</u>	C	Yes	I	A	A	A	A															
Alternate I	<u>46.805(a)</u>	C	Yes	I	A	A	A	A															
<u>52.246-25</u> Limitation of Liability—Services.	<u>46.805(a)(4)</u>	C	Yes	I																			
<u>52.247-1</u> Commercial Bill of Lading Notations.	<u>47.104-4</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.247-2</u> Permits, Authorities, or Franchises.	<u>47.207-1(a)</u>	C	No	I																			
<u>52.247-3</u> Capability to Perform a Contract for the Relocation of a Federal Office.	<u>47.207-1(b)(1)</u>	C	Yes	I																			
Alternate I	<u>47.207-1(b)(2)</u>	C	Yes	I																			
<u>52.247-4</u> Inspection of Shipping and Receiving Facilities.	<u>47.207-1(c)</u>	P	Yes	L																			
<u>52.247-5</u> Familiarization with Conditions.	<u>47.207-1(d)</u>	C	Yes	I																			
<u>52.247-6</u> Financial Statement.	<u>47.207-1(e)</u>	P	Yes	L																			
<u>52.247-7</u> Freight Excluded.	<u>47.207-3(d)(2)</u>	C	Yes	I																			
<u>52.247-8</u> Estimated Weights or Quantities Not Guaranteed.	<u>47.207-3(e)(2)</u>	C	Yes	I																			
<u>52.247-9</u> Agreed Weight—General Freight.	<u>47.207-4(a)(1)</u>	C	Yes	I																			
<u>52.247-10</u> Net Weight—General Freight.	<u>47.207-4(a)(2)</u>	C	Yes	I																			
<u>52.247-11</u> Net Weight—Household Goods or Office Furniture.	<u>47.207-4(b)</u>	C	Yes	I																			
<u>52.247-12</u> Supervision, Labor, or Materials.	<u>47.207-5(b)</u>	C	Yes	I																			
<u>52.247-13</u> Accessorial Services—Moving Contracts.	<u>47.207-5(c)</u>	C	Yes	I																			

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	FP LH	CR LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
																									PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT
52.247-14 Contractor Responsibility for Receipt of Shipment.	47.207-5(d)	C	Yes	I																	A	A			
52.247-15 Contractor Responsibility for Loading and Unloading.	47.207-5(e)	C	Yes	I																		A	A		
52.247-16 Contractor Responsibility for Returning Undelivered Freight.	47.207-5(f)	C	Yes	I																		A	A		
52.247-17 Charges.	47.207-6(a)(2)	C	Yes	I																		A	A		
52.247-18 Multiple Shipments.	47.207-6(c)(5)(i)	C	Yes	I																		A	A		
52.247-19 Stopping in Transit for Partial Uploading.	47.207-6(c)(5)(ii)	C	No	I																		A	A		
52.247-20 Estimated Quantities or Weights for Evaluation of Offers.	47.207-6(c)(6)	P	Yes	M																		A	A		
52.247-21 Contractor Liability for Personal Injury and/or Property Damage.	47.207-7(c)	C	Yes	I																		A	A		
52.247-22 Contractor Liability for Loss of and/or Damage to Freight Other Than Household Goods.	47.207-7(d)	C	Yes	I																		A	A		
52.247-23 Contractor Liability for Loss of and/or Damage to Household Goods.	47.207-7(e)	C	Yes	I																		A	A		
52.247-24 Advance Notification by the Government.	47.207-8(a)(1)	C	Yes	I																		A	A		
52.247-25 Government-Furnished Equipment With or Without Operators.	47.207-8(a)(2)(i)	C	Yes	I																		A	A		
52.247-26 Government Direction and Marking.	47.207-8(a)(3)	C	Yes	I																		A	A		
52.247-27 Contract Not Affected by Oral Agreement.	47.207-8(b)	C	Yes	I																		A	A		
52.247-28 Contractor's Invoices.	47.207-9(c)	C	Yes	I																		A	A		
52.247-29 F.o.b. Origin.	47.303-1(c)	C	Yes	F	A										A							A	A		
52.247-30 F.o.b. Origin, Contractor's Facility.	47.303-2(c)	C	Yes	F	A										A							A	A		
52.247-31 F.o.b. Origin, Freight Allowed.	47.303-3(c)	C	Yes	F	A										A							A	A		
52.247-32 F.o.b. Origin, Freight Prepaid.	47.303-4(c)	C	Yes	F	A										A							A	A		
52.247-33 F.o.b. Origin, with Differentials.	47.303-5(c)	C	No	F	A										A							A	A		
52.247-34 F.o.b. Destination.	47.303-6(c)	C	Yes	F	A										A							A	A		



PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
<u>52.247-35</u> F.o.b. Destination, within Consignee's Premises.	<u>47.303-7(c)</u>	C	Yes	F	A									A					A		A		
<u>52.247-36</u> F.a.s. Vessel, Port of Shipment.	<u>47.303-8(c)</u>	C	Yes	F	A									A					A		A		
<u>52.247-37</u> F.o.b. Vessel, Port of Shipment.	<u>47.303-9(c)</u>	C	Yes	F	A									A					A		A		
<u>52.247-38</u> F.o.b. Inland Carrier, Point of Exportation.	<u>47.303-10(c)</u>	C	Yes	F	A									A					A		A		
<u>52.247-39</u> F.o.b. Inland Point, Country of Importation.	<u>47.303-11(c)</u>	C	Yes	F	A									A					A		A		
<u>52.247-40</u> Ex Dock, Pier, or Warehouse, Port of Importation.	<u>47.303-12(c)</u>	C	Yes	F	A									A					A		A		
<u>52.247-41</u> C.&f. Destination.	<u>47.303-13(c)</u>	C	Yes	F	A									A					A		A		
<u>52.247-42</u> C.i.f. Destination.	<u>47.303-14(c)</u>	C	Yes	F	A									A					A		A		
<u>52.247-43</u> F.o.b. Designated Air Carrier's Terminal, Point of Exportation.	<u>47.303-15(c)</u>	C	Yes	F	A									A					A		A		
<u>52.247-44</u> F.o.b. Designated Air Carrier's Terminal, Point of Importation.	<u>47.303-16(c)</u>	C	Yes	F	A									A					A		A		
<u>52.247-45</u> F.o.b. Origin and/or F.o.b. Destination Evaluation.	<u>47.305-2(b)</u>	P	Yes	L	A									A					A		A		
<u>52.247-46</u> Shipping Point(s) Used in Evaluation of F.o.b. Origin Offers.	<u>47.305-3(b)(4)(ii)</u>	P	Yes	L	A									A					A		A		
<u>52.247-47</u> Evaluation—F.o.b. Origin.	<u>47.305-3(f)(2)</u>	P	Yes	M	A									A					A		A		
<u>52.247-48</u> F.o.b. Destination—Evidence of Shipment.	<u>47.305-4(c)</u>	C	Yes	F	A									A					A		A		
<u>52.247-49</u> Destination Unknown.	<u>47.305-5(b)(2)</u>	P	Yes	M	A									A					A		A		
<u>52.247-50</u> No Evaluation of Transportation Costs.	<u>47.305-5(c)(1)</u>	P	Yes	M	A									A					A		A		
<u>52.247-51</u> Evaluation of Export Offers.	<u>47.305-6(e)</u>	P	No	M	A									A					A		A		
Alternate I	<u>47.305-6(e)(1)</u>	P	No	M	A									A					A		A		
Alternate II	<u>47.305-6(e)(2)</u>	P	No	M	A									A					A		A		
Alternate III	<u>47.305-6(e)(3)</u>	P	No	M	A									A					A		A		
<u>52.247-52</u> Clearance and Documentation Requirements—Shipments to DOD Air or Water Terminal Transshipment Points.	<u>47.305-6(f)(2)</u>	C	Yes	F	A									A					A		A		
<u>52.247-53</u> Freight Classification Description.	<u>47.305-9(b)(1)</u>	P	No	K	A									A					A		A		
<u>52.247-55</u> F.o.b. Point for Delivery of Government-Furnished Property.	<u>47.305-12(a)(2)</u>	C	Yes	F	A									A					A		A		
<u>52.247-56</u> Transit Arrangements.	<u>47.305-13(a)(3)(ii)</u>	P	No	M	A									A					A		A		

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.247-57 Transportation Transit Privilege Credits.	47.305-13(b)(4)	C	No	F	A																		
52.247-58 Loading, Blocking, and Bracing of Freight Car Shipments.	47.305-15(a)(2)	C	Yes	F	A																		
52.247-59 F.o.b. Origin—Carload and Truckload Shipments.	47.305-16(a)	C	Yes	F	A																		
52.247-60 Guaranteed Shipping Characteristics.	47.305-16(b)(1)	C	No	F	A																		
52.247-61 F.o.b. Origin—Minimum Size of Shipments.	47.305-16(c)	C	Yes	F	A																		
52.247-62 Specific Quantities Unknown.	47.305-16(d)(2)	C	No	F	A																		
52.247-63 Preference for U.S.-Flag Air Carriers.	47.405	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels.	47.507(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	47.507(a)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	47.507(a)(3)	C		I																			
52.247-65 F.o.b. Origin, Prepaid Freight—Small Package Shipments.	47.303-17(f)	C	Yes	F	A																		
52.247-66 Returnable Cylinders.	47.305-17	C	No	I	A																		
52.247-67 Submission of Transportation Documents for Audit.	47.103-2	C	No	I																			
52.247-68 Report of Shipment (REPSHIP).	47.208-2	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.248-1 Value Engineering.	48.201	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	48.201(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	48.201(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate III	48.201(e)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.248-2 Value Engineering Program—Architect-Engineer.	48.201(f)	C	Yes																				
52.248-3 Value Engineering—Construction.	48.202	C	Yes																				
Alternate I	48.202	C	Yes																				
52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form).	49.502(a)(1)	C	Yes	I	A																		
Alternate I	49.502(a)(2)	C	Yes	I																			
52.249-2 Termination for Convenience of the Government (Fixed-Price).	49.502(b)(1)(i)	C	Yes	I	A																		
Alternate I	49.502(b)(1)(ii)	C	Yes	I																			
Alternate II	49.502(b)(1)(iii)	C	Yes	I	A																		
Alternate III	49.502(b)(1)(iii)	C	Yes	I																			

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).	49.502(b)(2)	C	Yes	I												A							
Alternate I	49.502(b)(2)	C	Yes	I												A							
52.249-4 Termination for Convenience of the Government (Services) (Short Form).	49.502(c)	C	Yes	I			A														A		A
52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).	49.502(d)	C	Yes	I			A														A		
52.249-6 Termination (Cost-Reimbursement).	49.503(a)(1)	C	Yes	I		A		A		A				A	A	A		A	A	A			A
Alternate I	49.503(a)(2)	C	Yes									A											
Alternate II	49.503(a)(3)	C	Yes	I		A		A		A				A	A	A		A	A	A			A
Alternate III	49.503(a)(3)	C	Yes									A											
Alternate IV	49.503(a)(4)	C	Yes	I									A										
Alternate V	49.503(a)(4)	C	Yes	I									A										
52.249-7 Termination (Fixed-Price Architect-Engineer).	49.503(b)	C	Yes														A						
52.249-8 Default (Fixed-Price Supply and Service).	49.504(a)(1)	C	Yes	I	A				A					A									A
Alternate I	49.504(a)(2)	C	Yes	I																			
52.249-9 Default (Fixed-Price Research and Development).	49.504(b)	C	Yes	I			A																
52.249-10 Default (Fixed-Price Construction).	49.504(c)(1)	C	Yes						A														
Alternate I	49.504(c)(2)	C	Yes														A						
Alternate II	49.504(c)(3)	C	Yes																				
Alternate III	49.504(c)(3)	C	Yes																				
52.249-12 Termination (Personal Services).	49.505(a)	C	Yes	I					A														
52.249-14 Excusable Delays.	49.505(b)	C	Yes	I		A		A		A				A									
52.250-1 Indemnification under Public Law 85-804.	50.104-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.250-2 SAFETY Act Coverage Not Applicable.	50.206(a)	P	Yes	L✓	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.250-3 SAFETY Act Block Designation/Certification.	50.206(b)(1)	P	Yes	L✓	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	50.206(b)(2)	P	Yes	L✓	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	50.206(b)(3)	P	Yes	L✓	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.250-4 SAFETY Act Pre-qualification Designation Notice.	50.206(c)(1)	P	Yes	L✓	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	50.206(c)(2)	P	Yes	L✓	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
Alternate II																							
52.250-5 SAFETY Act-Equitable Adjustment.	50.206(c)(3) 50.206(d)	P C	Yes Yes	L✓ I	A A	A A	A A	A A	A A	A A	A A	A A	A A	A A	A A	A A	A A	A A	A A	A A	A A	A A	A A
52.251-1 Government Supply Sources.	51.107	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.251-2 Interagency Fleet Management System Vehicles and Related Services.	51.205	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-1 Solicitation Provisions Incorporated by Reference.	52.107(a)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-2 Clauses Incorporated by Reference.	52.107(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-3 Alterations in Solicitation.	52.107(c)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-4 Alterations in Contract.	52.107(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-5 Authorized Deviations in Provisions.	52.107(e)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-6 Authorized Deviations in Clauses.	52.107(f)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.253-1 Computer Generated Forms.	53.111	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

**NOTE 1:**  
The following clauses are prescribed for use in letter contracts:  
  
[52.216-23](#), Execution and Commencement of Work.  
[52.216-24](#), Limitation of Government Liability.  
[52.216-25](#), Contract Definition.  
[52.216-25](#), Contract Definition, Alternate I.  
  
 Further instructions concerning provisions and clauses for letter contracts are set forth in [16.603-4\(a\)](#).  
  
**Note 2:**  
The following clauses are prescribed for use in Small Business Administration 8(a) contracts:  
  
[52.219-11](#), Special 8(a) Contract Conditions.  
[52.219-12](#), Special 8(a) Subcontract Conditions.  
[52.219-14](#), Limitations on Subcontracting.  
[52.219-17](#), Section 8(a) Award.  
  
**NOTE 3:**  
FAR provisions and clauses not identified on the matrix may be used in contracts for commercial items consistent with the procedures and limitations in [FAR 12.302](#)  
  
**NOTE 4:**  
The following clause is prescribed for use in Information Technology Management Reform Act (ITMRA) contracts:  
[52.239-1](#), Privacy or Security Safeguards. "A".

## 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>		
53.100	Scope of subpart.	53.223	[Reserved]
53.101	Requirements for use of forms.	53.224	[Reserved]
53.102	Current editions.	53.225	[Reserved]
53.103	Exceptions.	53.226	[Reserved]
53.104	Overprinting.	53.227	[Reserved]
53.105	Computer generation.	53.228	Bonds and insurance.
53.106	Special construction and printing.	53.229	Taxes (SF's 1094, 1094-A).
53.107	Obtaining forms.	53.230	[Reserved]
53.108	Recommendations concerning forms.	53.231	[Reserved]
53.109	Forms prescribed by other regulations.	53.232	Contract financing (SF 1443).
53.110	Continuation sheets.	53.233	[Reserved]
53.111	Contract clause.	53.234	[Reserved]
	<b>Subpart 53.2—Prescription of Forms</b>	53.235	Research and development contracting (SF 298).
53.200	Scope of subpart.	53.236	Construction and architect-engineer contracts.
53.201	Federal acquisition system.	53.236-1	Construction.
53.201-1	Contracting authority and responsibilities (SF 1402).	53.236-2	Architect-engineer services (SF's 252 and 330).
53.202	[Reserved]	53.237	[Reserved]
53.203	[Reserved]	53.238	[Reserved]
53.204	Administrative matters.	53.239	[Reserved]
53.204-1	Safeguarding classified information within industry (DD Form 254, DD Form 441).	53.240	[Reserved]
53.204-2	[Reserved]	53.241	[Reserved]
53.205	Publicizing contract actions.	53.242	Contract administration.
53.205-1	Paid advertisements.	53.242-1	Novation and change-of-name agreements (SF 30).
53.206	[Reserved]	53.243	Contract modifications (SF 30).
53.207	[Reserved]	53.244	[Reserved]
53.208	[Reserved]	53.245	Government property.
53.209	Contractor qualifications.	53.246	[Reserved]
53.209-1	Responsible prospective contractors.	53.247	Transportation (U.S. Commercial Bill of Lading).
53.210	[Reserved]	53.248	[Reserved]
53.211	[Reserved]	53.249	Termination of contracts.
53.212	Acquisition of commercial items.	53.250	[Reserved]
53.213	Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348).	53.251	Contractor use of Government supply sources (OF 347).
53.214	Sealed bidding.		
53.215	Contracting by negotiation.		<b>Subpart 53.3—Illustration of Forms</b>
53.215-1	Solicitation and receipt of proposals.	53.300	Scope of subpart.
53.216	Types of contracts.	53.301	Standard forms.
53.216-1	Delivery orders and orders under basic ordering agreements (OF 347).	53.302	Optional forms.
53.217	[Reserved]	53.303	Agency forms.
53.218	[Reserved]	53.301-18	SF 18, Request for Quotation.
53.219	Small business programs.	53.301-24	SF 24, Bid Bond.
53.220	[Reserved]	53.301-25	SF 25, Performance Bond.
53.221	[Reserved]	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.	53.301-1402	SF 1402, Certificate of Appointment.
53.301-34	SF 34, Annual Bid Bond.	53.301-1403	SF 1403, Preaward Survey of Prospective Contractor (General).
53.301-35	SF 35, Annual Performance Bond.		
53.301-44	SF 44, Purchase Order—Invoice—Voucher.	53.301-1404	SF 1404, Preaward Survey of Prospective Contractor—Technical.
53.301-120	SF 120, Report of Excess Personal Property.	53.301-1405	SF 1405, Preaward Survey of Prospective Contractor—Production.
53.301-120-A	SF 120-A, Continuation Sheet (Report of Excess Personal Property).	53.301-1406	SF 1406, Preaward Survey of Prospective Contractor—Quality Assurance.
53.301-126	SF 126, Report of Personal Property for Sale.	53.301-1407	SF 1407, Preaward Survey of Prospective Contractor—Financial Capability.
53.301-126-A	SF 126-A, Report of Personal Property for Sale (Continuation Sheet).	53.301-1408	SF 1408, Preaward Survey of Prospective Contractor—Accounting System.
53.301-252	SF 252, Architect-Engineer Contract.		
53.301-273	SF 273, Reinsurance Agreement For A Bonds Performance Bond.	53.301-1409	SF 1409, Abstract of Offers.
53.301-274	SF 274, Reinsurance Agreement For A Bonds Statute Payment Bond.	53.301-1410	SF 1410, Abstract of Offers—Continuation.
53.301-275	SF 275, Reinsurance Agreement in Favor of the United States.	53.301-1413	SF 1413, Statement and Acknowledgment.
53.301-294	SF 294, Subcontracting Report for Individual Contracts.	53.301-1414	SF 1414, Consent of Surety.
53.301-298	SF 298, Report Documentation Page.	53.301-1415	SF 1415, Consent of Surety and Increase of Penalty.
53.301-308	SF 308, Request for Wage Determination and Response to Request.	53.301-1416	SF 1416, Payment Bond for Other Than Construction Contracts.
53.301-330	Architect-Engineer Qualifications.	53.301-1418	SF 1418, Performance Bond for Other Than Construction Contracts.
53.301-1034	SF 1034, Public Voucher for Purchases and Services Other Than Personal.	53.301-1420	SF 1420, Performance Evaluation—Construction Contracts.
53.301-1034A	SF 1034A, Public Voucher for Purchases and Services Other Than Personal—Memorandum Copy.	53.301-1421	SF 1421, Performance Evaluation (Architect-Engineer).
53.301-1035	SF 1035, Public Voucher for Purchases and Services Other Than Personal, Continuation Sheet.	53.301-1423	SF 1423, Inventory Verification Survey.
53.301-1035A	SF 1035A, Public Voucher for Purchases and Services Other Than Personal—Memorandum, Continuation Sheet.	53.301-1424	SF 1424, Inventory Disposal Report.
		53.301-1427	SF 1427, Inventory Schedule A—Continuation Sheet (Metals in Mill Product Form).
53.301-1093	SF 1093, Schedule of Withholdings Under the Construction Wage Rate Requirements Statute (40 U.S.C. Chapter 31, Subchapter IV, section 3144) and/or the Contract Work Hours and Safety Standards Statute ( <a href="#">40 U.S.C. Chapter 37, section 3703</a> ).	53.301-1428	SF 1428, Inventory Schedule.
		53.301-1429	SF 1429, Inventory Schedule—Continuation Sheet.
53.301-1094	SF 1094, U.S. Tax Exemption Form.	53.301-1435	SF 1435, Settlement Proposal (Inventory Basis).
53.301-1094A	SF 1094A, Tax Exemption Forms Accountability Record.	53.301-1436	SF 1436, Settlement Proposal (Total Cost Basis).
53.301-1165	SF 1165, Receipt for Cash—Subvoucher.	53.301-1437	SF 1437, Settlement Proposal for Cost-Reimbursement Type Contracts.
		53.301-1438	SF 1438, Settlement Proposal (Short Form).
		53.301-1439	SF 1439, Schedule of Accounting Information.
		53.301-1440	SF 1440, Application for Partial Payment.

53.301-1442	SF 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair).	SF 33	Solicitation, Offer and Award
		SF 34	Annual Bid Bond
53.301-1443	SF 1443, Contractor's Request for Progress Payment.	SF 35	Annual Performance Bond
		SF 273	Reinsurance Agreement for a Miller Act Performance Bond
53.301-1444	SF 1444, Request for Authorization of Additional Classification and Rate.	SF 274	Reinsurance Agreement for a Miller Act Payment Bond
53.301-1445	SF 1445, Labor Standards Interview.	SF 275	Reinsurance Agreement in Favor of the United States
53.301-1446	SF 1446, Labor Standards Investigation Summary Sheet.	SF 294	Subcontracting Report for Individual Contracts
53.301-1447	SF 1447, Solicitation/Contract.	SF 295	Summary Subcontract Report
53.301-1449	SF 1449, Solicitation/Contract/Order for Commercial Items.	SF 308	Request for Wage Determination and Response to Request
53.302-17	Optional Form 17, Offer Label.	SF 330	Architect-Engineer Qualifications
53.302-90	Optional Form 90, Release of Lien on Real Property.	SF 1403	Preaward Survey of Prospective Contractor (General)
53.302-91	Optional Form 91, Release of Personal Property from Escrow.	SF 1404	Preaward Survey of Prospective Contractor—Technical
53.302-307	Optional Form 307, Contract Award.	SF 1405	Preaward Survey of Prospective Contractor—Production
53.302-308	Optional Form 308, Solicitation and Offer—Negotiated Acquisition.	SF 1406	Preaward Survey of Prospective Contractor—Quality Assurance
53.302-309	Optional Form 309, Amendment of Solicitation.	SF 1407	Preaward Survey of Prospective Contractor—Financial Capability
53.302-312	Optional Form 312, Small Disadvantaged Business Participation Report.	SF 1408	Preaward Survey of Prospective Contractor—Accounting System
53.302-336	Optional Form 336, Continuation Sheet.	SF 1409	Abstract of Offers
53.302-347	Optional Form 347, Order for Supplies or Services.	SF 1410	Abstract of Offers—Continuation.
53.302-348	Optional Form 348, Order for Supplies or Services Schedule—Continuation.	SF 1414	Consent of Surety
		SF 1415	Consent of Surety and Increase of Penalty
53.302-1419	Optional Form 1419, Abstract of Offers—Construction.	SF 1416	Payment Bond for Other Than Construction Contracts
53.302-1419A	Optional Form 1419A, Abstract of Offers—Construction, Continuation Sheet.	SF 1418	Performance Bond for Other Than Construction Contracts
53.303-DD-254	Department of Defense DD Form 254, Contract Security Classification Specification.	SF 1423	Inventory Verification Survey
		SF 1424	Inventory Disposal Report
		SF 1427	Inventory Schedule A—Continuation Sheet (Metals in Mill Product Form)
53.303-DD-441	Department of Defense DD Form 441, Security Agreement.	SF 1428	Inventory Schedule
53.303-WH-347	Department of Labor Form WH-347, Payroll (For Contractor's Optional Use).	SF 1429	Inventory Schedule—Continuation Sheet
		SF 1435	Settlement Proposal (Inventory Basis)
		SF 1436	Settlement Proposal (Total Cost Basis)
		SF 1437	Settlement Proposal for Cost-Reimbursement Type Contracts
		SF 1438	Settlement Proposal (Short Form)
		SF 1439	Schedule of Accounting Information
		SF 1440	Application for Partial Payment
		SF 1445	Labor Standards Interview
		SF 1446	Labor Standards Investigation Summary Sheet
<b>Forms Authorized for Local Reproduction</b>			
SF 18	Request for Quotation		
SF 24	Bid Bond	SF 1438	
SF 25	Performance Bond	SF 1439	
SF 25A	Payment Bond	SF 1440	
SF 25B	SF 25-B, Continuation Sheet (For SF's 24, 25, and 25-A)	SF 1445	
SF 28	Affidavit of Individual Surety	SF 1446	

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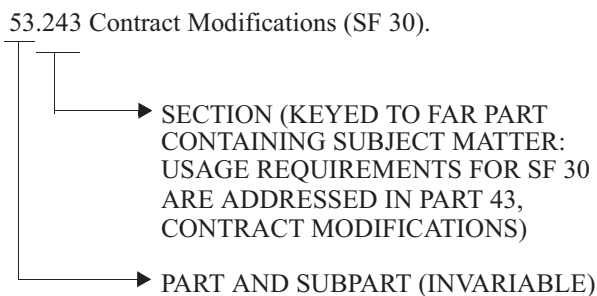
SF 1449	Solicitation/Contract/Order for Commercial Items	OF 308	Solicitation and Offer—Negotiated Acquisition
OF 90	Release of Lien on Real Property	OF 309	Amendment of Solicitation
OF 91	Release of Personal Property from Escrow	OF 312	Small Disadvantaged Business Participation Report
OF 307	Contract Award	OF 347	Order for Supplies or Services



## Subpart 53.2—Prescription of Forms

### 53.200 Scope of subpart.

This subpart prescribes standard forms and references optional forms and agency-prescribed forms for use in acquisition. Consistent with the approach used in [Subpart 52.2](#), this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the FAR in which the form usage requirements are addressed. For example, forms addressed in FAR [Part 14](#), Sealed Bidding, are treated in this subpart in section [53.214](#), Sealed Bidding; forms addressed in FAR [Part 43](#), Contract Modifications, are treated in this subpart in section [53.243](#), Contract modifications. The following example illustrates how the subjects are keyed to the parts in which they are addressed:



### 53.201 Federal acquisition system.

#### 53.201-1 Contracting authority and responsibilities (SF 1402).

[SF 1402](#) (10/83), *Certificate of Appointment*. [SF 1402](#) is prescribed for use in appointing contracting officers, as specified in [1.603-3](#).

#### 53.202 [Reserved]

#### 53.203 [Reserved]

### 53.204 Administrative matters.

#### 53.204-1 Safeguarding classified information within industry (DD Form 254, DD Form 441).

The following forms, which are prescribed by the Department of Defense, shall be used by agencies covered by the Defense Industrial Security Program if contractor access to classified information is required, as specified in and the clause at [52.204-2](#):

(a) [DD Form 254](#) (Department of Defense (DoD)), *Contract Security Classification Specification*. (See [4.403](#)(c)(1).)

(b) [DD Form 441](#) (DoD), *Security Agreement*. (See paragraph (b) of the clause at [52.204-2](#).)

#### 53.204-2 [Reserved]

### 53.205 Publicizing contract actions.

#### 53.205-1 Paid advertisements.

[SF 1449](#), prescribed in [53.212](#), shall be used to place orders for paid advertisements as specified in [5.503](#).

#### 53.206 [Reserved]

#### 53.207 [Reserved]

#### 53.208 [Reserved]

### 53.209 Contractor qualifications.

#### 53.209-1 Responsible prospective contractors.

The following forms are prescribed for use in conducting preaward surveys of prospective contractors, as specified in [9.106-1](#), [9.106-2](#), and [9.106-4](#):

(a) [SF 1403](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor (General)*. [SF 1403](#) is authorized for local reproduction.

(b) [SF 1404](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor—Technical*. [SF 1404](#) is authorized for local reproduction.

(c) [SF 1405](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor—Production*. [SF 1405](#) is authorized for local reproduction.

(d) [SF 1406](#) (Rev. 11/97), *Preaward Survey of Prospective Contractor—Quality Assurance*. [SF 1406](#) is authorized for local reproduction.

(e) [SF 1407](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor—Financial Capability*. [SF 1407](#) is authorized for local reproduction.

(f) [SF 1408](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor—Accounting System*. [SF 1408](#) is authorized for local reproduction.

#### 53.210 [Reserved]

#### 53.211 [Reserved]

### 53.212 Acquisition of commercial items.

[SF 1449](#) (Rev. 2/2012), *Solicitation/Contract/Order for Commercial Items*. [SF 1449](#) is prescribed for use in solicitations and contracts for commercial items. Agencies may prescribe additional detailed instructions for use of the form.

### 53.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348).

The following forms are prescribed as stated in this section for use in simplified acquisition procedures, orders under

existing contracts or agreements, and orders from required sources of supplies and services:

(a) [SF 18](#) (Rev. 6/95), *Request for Quotations*, or [SF 1449](#) (Rev. 2/2012), *Solicitation/Contract/Order for Commercial Items*. [SF 18](#) is prescribed for use in obtaining price, cost, delivery, and related information from suppliers as specified in [13.307](#)(b). [SF 1449](#), as prescribed in [53.212](#), or other agency forms/automated formats, may also be used to obtain price, cost, delivery, and related information from suppliers as specified in [13.307](#)(b).

(b) [SF 30](#) (Rev. 10/83), *Amendment of Solicitation/Modification of Contract*. [SF 30](#), prescribed in [53.243](#), may be used for modifying purchase orders, as specified in [13.307](#)(c)(3).

(c) [SF 44](#) (Rev. 10/83), *Purchase Order Invoice Voucher*. [SF 44](#) is prescribed for use in simplified acquisition procedures, as specified in [13.306](#).

(d) [SF 1165](#) (6/83 Ed.), *Receipt for Cash-Subvoucher*. [SF 1165](#) (GAO) may be used for imprest fund purchases, as specified in [13.307](#)(e).

(e) [OF 336](#) (4/86 Ed.), *Continuation Sheet*. [OF 336](#), prescribed in [53.214](#)(h), may be used as a continuation sheet in solicitations, as specified in [13.307](#)(c)(1).

(f) [SF 1449](#) (Rev. 2/2012) *Solicitation/Contract/Order for Commercial Items* prescribed in [53.212](#), [OF 347](#) (Rev. 2/2012), *Order for Supplies or Services*, and [OF 348](#) (Rev. 4/06), *Order for Supplies or Services—Schedule Continuation*. [SF 1449](#), [OF 347](#) and [348](#) (or approved agency forms/automated formats) may be used as follows:

(1) To accomplish acquisitions under simplified acquisition procedures, as specified in [13.307](#).

(2) To establish blanket purchase agreements (BPA's), as specified in [13.303-2](#), and to make purchases under BPA's, as specified in [13.303-5](#).

(3) To issue orders under basic ordering agreements, as specified in [16.703](#)(d)(2)(i).

(4) As otherwise specified in this chapter (e.g., see [5.503](#)(a)(2), [8.406-1](#), [36.701](#)(b), and [51.102](#)(e)(3)(ii)).

### 53.214 Sealed bidding.

The following forms are prescribed for use in contracting by sealed bidding (except for construction and architect-engineer services):

(a) [SF 26](#) (Rev. 3/2013), *Award/Contract*. [SF 26](#) is prescribed for use in awarding sealed bid contracts for supplies or services in which bids were obtained on [SF 33](#), *Solicitation, Offer and Award*, as specified in [14.408-1](#)(d)(1). Block 18 may only be used for sealed-bid procurements.

(b) [SF 30](#), *Amendment of Solicitation/Modification of Contract*. [SF 30](#), prescribed in [53.243](#), shall be used in amending invitations for bids, as specified in [14.208](#)(a).

(c) [SF 33](#) (Rev. 9/97), *Solicitation, Offer and Award*. [SF 33](#) is prescribed for use in soliciting bids for supplies or services and for awarding the contracts that result from the bids, as

specified in [14.201-2](#)(a)(1), unless award is accomplished by [SF 26](#).

(d) [SF 1447](#) (Rev. 2/2012), *Solicitation/Contract*. [SF 1447](#) is prescribed for use in soliciting supplies or services and for awarding contracts that result from the bids. It shall be used when the simplified contract format is used (see [14.201-9](#)) and may be used in place of the [SF 26](#) or [SF 33](#) with other solicitations and awards. Agencies may prescribe additional detailed instructions for use of the form.

(e) [Reserved]

(f) [SF 1409](#) (Rev. 9/88), *Abstract of Offers*, and [SF 1410](#) (9/88), *Abstract of Offers—Continuation*. [SF 1409](#) and [SF 1410](#) are prescribed for use in recording bids, as specified in [14.403](#)(a).

(g) [OF 17](#) (Rev. 12/93), *Offer Label*. [OF 17](#) may be furnished with each invitation for bids to facilitate identification and handling of bids, as specified in [14.202-3](#)(b).

(h) [OF 336](#) (Rev. 3/86), *Continuation Sheet*. [OF 336](#) may be used as a continuation sheet in solicitations, as specified in [14.201-2](#)(b).

### 53.215 Contracting by negotiation.

#### 53.215-1 Solicitation and receipt of proposals.

The following forms are prescribed, as stated in the following paragraphs, for use in contracting by negotiation (except for construction, architect-engineer services, or acquisitions made using simplified acquisition procedures):

(a) [SF 26](#) (Rev. 3/2013), *Award/Contract*. [SF 26](#), prescribed in [53.214](#)(a), may be used in entering into negotiated contracts in which the signature of both parties on a single document is appropriate, as specified in [15.509](#). Block 18 may not be used for negotiated procurements.

(b) [SF 30](#) (Rev. 10/83), *Amendment of Solicitation/Modification of Contract*. [SF 30](#), prescribed in [53.243](#), may be used for amending requests for proposals and for amending requests for information, as specified in [15.210](#)(b).

(c) [SF 33](#) (Rev. 9/97), *Solicitation, Offer and Award*. [SF 33](#), prescribed in [53.214](#)(c), may be used in connection with the solicitation and award of negotiated contracts. Award of such contracts may be made by either [OF 307](#), [SF 33](#), or [SF 26](#), as specified in [53.214](#)(c) and [15.509](#).

(d) [OF 17](#) (Rev. 12/93), *Offer Label*. [OF 17](#) may be furnished with each request for proposals to facilitate identification and handling of proposals, as specified in [15.210](#)(c).

(e) [OF 307](#) (Rev. 9/97), *Contract Award*. [OF 307](#) may be used to award negotiated contracts as specified in [15.509](#).

(f) [OF 308](#) (Rev. 9/97), *Solicitation and Offer-Negotiated Acquisition*. [OF 308](#) may be used to support solicitation of negotiated contracts as specified in [15.210](#)(a). Award of such contracts may be made by [OF 307](#), as specified in [15.509](#).

(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.

(a) 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](#).)

(b) The following standard form is prescribed for use in reporting small business (including Alaska Native Corporations and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including Alaska Native Corporations and Indian tribes) and women-owned small business subcontracting data, as specified in [Part 19: SF 294](#), (Rev. 1/2010) Subcontracting Report for Individual Contracts. [SF 294](#) is authorized for local reproduction.

#### 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) (Rev. 2/2013), *Request for Wage Determination and Response to Request*. (See [22.404-3](#)(a) and (b).)

(d) [SF 1093](#) (Rev. 2/2013), *Schedule of Withholdings Under the Construction Wage Rate Requirements Statute (40 U.S.C. Chapter 31, Subchapter IV, section 3144) and/or the Contract Work Hours and Safety Standards Statute (40 U.S.C. Chapter 37, section 3703)*. (See [22.406-9](#)(c)(1).)

(e) [SF 1413](#) (Rev. 4/2013), *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) *Form SF 1444* (Rev. 4/2013), *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](#) (Rev. 4/2013.), *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. 3/2013) *Performance Bond*. (See [28.106-1](#)(b).) [SF 25](#) is authorized for local reproduction.

(c) [SF 25A](#) (Rev. 3/2013) *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. 4/2013) *Reinsurance Agreement for a Bond statute Performance Bond*. (See [28.106-1](#)(h) and [28.202-1](#)(a)(4).) [SF 273](#) is authorized for local reproduction.

(i) [SF 274](#) (Rev. 4/2013) *Reinsurance Agreement for a Bond statute 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. 2/2012), *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](#) (Rev. 3/2013), *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]

### 53.242 Contract administration.

#### 53.242-1 Novation and change-of-name agreements (SF 30).

[SF 30](#), *Amendment of Solicitation/Modification of Contract*. [SF 30](#), prescribed in [53.243](#), shall be used in connection

# Standard Form 25

<b>PERFORMANCE BOND</b> <i>(See instructions on reverse)</i>	DATE BOND EXECUTED <i>(Must be same or later than date of contract)</i>	OMB Number: <b>9000-0045</b> Expiration Date: <b>6/30/2016</b>								
<p>PAPERWORK REDUCTION ACT STATEMENT: Public reporting burden for this collection of information is estimated to average 60 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to U.S. General Services Administration, Regulatory Secretariat (MVCB)/IC 9000-0045, Office of Governmentwide Acquisition Policy, 1800 F Street, NW, Washington, DC 20405.</p>										
PRINCIPAL <i>(Legal name and business address)</i>	TYPE OF ORGANIZATION ("X" one) <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION STATE OF INCORPORATION _____									
SURETY(IES) <i>(Name(s) and business address(es))</i>	PENAL SUM OF BOND <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:25%;">MILLION(S)</td> <td style="width:25%;">THOUSANDS</td> <td style="width:25%;">HUNDRED(S)</td> <td style="width:25%;">CENTS</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table> CONTRACT DATE _____ CONTRACT NO. _____		MILLION(S)	THOUSANDS	HUNDRED(S)	CENTS				
MILLION(S)	THOUSANDS	HUNDRED(S)	CENTS							
<p><b>OBLIGATION</b></p> <p>We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we the sureties bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit of liability is indicated, the limit of liability is the full amount of the penal sum.</p> <p><b>CONDITIONS</b></p> <p>The Principal has entered into the contract identified above.</p> <p>THEREFORE</p> <p>The above obligation is void if the Principal-</p> <p>(a)(1) Performs and fulfills all the undertaking, covenants, terms, conditions, and agreements of the contract during the original term of the contract and any extensions thereof that are granted by the Government, with or without notice of the Surety(ies) and during the life of any guaranty required under the contract, and (2) performs and fulfills all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the contract that hereafter are made. Notice of those modifications to the Surety(ies) are waived.</p> <p>(b) Pays to the Government the full amount of the taxes imposed by the Government, if the said contract is subject to 41 U.S.C. Chapter 31, Subchapter III, Bonds, which are collected, deducted, or withheld from wages paid by the Principal in carrying out the construction contract with respect to which this bond is furnished.</p> <p><b>WITNESS</b></p> <p>The Principal and Surety(ies) executed this performance bond and affixed their seals on the above date.</p>										
<b>PRINCIPAL</b>										
SIGNATURE(S)	1. _____ <span style="float:right;">(Seal)</span>	2. _____ <span style="float:right;">(Seal)</span>								
	3. _____ <span style="float:right;">(Seal)</span>	Corporate Seal								
NAME(S) & TITLE(S) <i>(Typed)</i>	1. _____	2. _____								
	3. _____									
<b>INDIVIDUAL SURETY(IES)</b>										
SIGNATURE(S)	1. _____ <span style="float:right;">(Seal)</span>	2. _____ <span style="float:right;">(Seal)</span>								
NAME(S) <i>(Typed)</i>	1. _____	2. _____								
<b>CORPORATE SURETY(IES)</b>										
<b>SURETY A</b>	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT (\$)	Corporate Seal						
	SIGNATURE(S)	1. _____	2. _____							
	NAME(S) & TITLE(S) <i>(Typed)</i>	1. _____	2. _____							
AUTHORIZED FOR LOCAL REPRODUCTION Previous edition not usable		<b>STANDARD FORM 25</b> (REV. 3/2013) Prescribed by GSA-FAR (48 CFR) 53.228 (b)								

# Standard Form 25 (Back)

CORPORATE SURETY(IES) (Continued)					
<b>SURETY B</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
<b>SURETY C</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
<b>SURETY D</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
<b>SURETY E</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
<b>SURETY F</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
<b>SURETY G</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT (\$)	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		

<b>BOND PREMIUM</b>	RATE PER THOUSAND (\$)	TOTAL (\$)
---------------------	------------------------	------------

**INSTRUCTIONS**

1. This form is authorized for use in connection with Government contracts. Any deviation from this form will require the written approval of the Administrator of General Services.
2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.
3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE

SURETY(IES)." In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the words "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.

# Standard Form 25A

<b>PAYMENT BOND</b> <i>(See instructions on reverse)</i>	DATE BOND EXECUTED <i>(Must be same or later than date of contract)</i>	OMB Number: <b>9000-0045</b> Expiration Date: <b>6/30/2016</b>								
<p><small>PAPERWORK REDUCTION ACT STATEMENT: Public reporting burden for this collection of information is estimated to average 60 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to U.S. General Services Administration, Regulatory Secretariat (MVCB)/IC 9000-0045, Office of Governmentwide Acquisition Policy, 1800 F Street, NW, Washington, DC 20405.</small></p>										
PRINCIPAL <i>(Legal name and business address)</i>	TYPE OF ORGANIZATION <i>(“X” one)</i> <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> CORPORATION STATE OF INCORPORATION									
SURETY(IES) <i>(Name(s) and business address(es))</i>	PENAL SUM OF BOND <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:25%;">MILLION(S)</td> <td style="width:25%;">THOUSAND(S)</td> <td style="width:25%;">HUNDRED(S)</td> <td style="width:25%;">CENTS</td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table> CONTRACT DATE                      CONTRACT NO.		MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS				
MILLION(S)	THOUSAND(S)	HUNDRED(S)	CENTS							
<p>OBLIGATION:</p> <p>We, the Principal and Surety(ies), are firmly bound to the United States of America (hereinafter called the Government) in the above penal sum. For payment of the penal sum, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally. However, where the Sureties are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us. For all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of the sum shown opposite the name of the Surety. If no limit is indicated, the limit of liability is the full amount of the penal sum.</p> <p>CONDITIONS:</p> <p>The above obligation is void if the Principal promptly makes payment to all persons having a direct relationship with the Principal or a subcontractor of the Principal for furnishing labor, material or both in the prosecution of the work provided for in the contract identified above, and any authorized modifications of the contract that subsequently are made. Notice of those modifications to the Surety(ies) are waived.</p> <p>WITNESS:</p> <p>The Principal and Surety(ies) executed this payment bond and affixed their seals on the above date.</p>										
<b>PRINCIPAL</b>										
SIGNATURE(S)	1. _____ <small>(Seal)</small>	2. _____ <small>(Seal)</small>	Corporate Seal							
NAME(S) & TITLE(S) <i>(Typed)</i>	1. _____	2. _____								
<b>INDIVIDUAL SURETY(IES)</b>										
SIGNATURE(S)	1. _____ <small>(Seal)</small>	2. _____ <small>(Seal)</small>								
NAME(S) <i>(Typed)</i>	1. _____	2. _____								
<b>CORPORATE SURETY(IES)</b>										
<b>SURETY A</b>	NAME & ADDRESS	STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal						
	SIGNATURE(S)	1. _____	2. _____							
	NAME(S) & TITLE(S) <i>(Typed)</i>	1. _____	2. _____							
AUTHORIZED FOR LOCAL REPRODUCTION <small>Previous edition is usable</small>			<b>STANDARD FORM 25A</b> (REV. 3/2013) Prescribed by GSA-FAR (48 CFR) 53.2228(c)							

# Standard Form 25A (Back)

CORPORATE SURETY(IES) (Continued)					
<b>SURETY B</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
<b>SURETY C</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
<b>SURETY D</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
<b>SURETY E</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
<b>SURETY F</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		
<b>SURETY G</b>	NAME & ADDRESS		STATE OF INC.	LIABILITY LIMIT \$	Corporate Seal
	SIGNATURE(S)	1.	2.		
	NAME(S) & TITLE(S) <i>(Typed)</i>	1.	2.		

### INSTRUCTIONS

1. This form, for the protection of persons supplying labor and material, is used when a payment bond is required under 40 U.S.C. Chapter 31, Subchapter III, Bonds. Any deviation from this form will require the written approval of the Administrator of General Services.

2. Insert the full legal name and business address of the Principal in the space designated "Principal" on the face of the form. An authorized person shall sign the bond. Any person signing in a representative capacity (e.g., an attorney-in-fact) must furnish evidence of authority if that representative is not a member of the firm, partnership, or joint venture, or an officer of the corporation involved.

3. (a) Corporations executing the bond as sureties must appear on the Department of the Treasury's list of approved sureties and must act within the limitation listed therein. Where more than one corporate surety is involved, their names and addresses shall appear in the spaces (Surety A, Surety B, etc.) headed "CORPORATE SURETY(IES)."

In the space designated "SURETY(IES)" on the face of the form, insert only the letter identification of the sureties.

(b) Where individual sureties are involved, a completed Affidavit of Individual Surety (Standard Form 28) for each individual surety, shall accompany the bond. The Government may require the surety to furnish additional substantiating information concerning their financial capability.

4. Corporations executing the bond shall affix their corporate seals. Individuals shall execute the bond opposite the words "Corporate Seal", and shall affix an adhesive seal if executed in Maine, New Hampshire, or any other jurisdiction requiring adhesive seals.

5. Type the name and title of each person signing this bond in the space provided.



# Standard Form 26

<b>AWARD/CONTRACT</b>		1. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		RATING	PAGE	OF	PAGES	
2. CONTRACT (Proc. Inst. Ident.) NO.		3. EFFECTIVE DATE		4. REQUISITION/PURCHASE REQUEST/PROJECT NO.				
5. ISSUED BY		CODE	6. ADMINISTERED BY (If other than Item 5)		CODE			
7. NAME AND ADDRESS OF CONTRACTOR (No., street, county, State and ZIP Code)				8. DELIVERY				
				<input type="checkbox"/> FOB ORIGIN <input type="checkbox"/> OTHER (See below)				
				9. DISCOUNT FOR PROMPT PAYMENT				
				10. SUBMIT INVOICES (4 copies unless otherwise specified) TO THE ADDRESS SHOWN IN		ITEM		
CODE		FACILITY CODE						
11. SHIP TO/MARK FOR		CODE	12. PAYMENT WILL BE MADE BY		CODE			
13. AUTHORITY FOR USING OTHER THAN FULL AND OPEN COMPETITION:				14. ACCOUNTING AND APPROPRIATION DATA				
<input type="checkbox"/> 10 U.S.C. 2304(c)( ) <input type="checkbox"/> 41 U.S.C. 3304(a)( )								
15A. ITEM NO.	15B. SUPPLIES/SERVICES		15C. QUANTITY	15D. UNIT	15E. UNIT PRICE	15F. AMOUNT		
<b>15G. TOTAL AMOUNT OF CONTRACT</b>							<b>▶ \$</b>	
<b>16. TABLE OF CONTENTS</b>								
(X)	SEC.	DESCRIPTION	PAGE(S)	(X)	SEC.	DESCRIPTION	PAGE(S)	
PART I - THE SCHEDULE				PART II - CONTRACT CLAUSES				
	A	SOLICITATION/CONTRACT FORM			I	CONTRACT CLAUSES		
	B	SUPPLIES OR SERVICES AND PRICES/COSTS		PART III - LIST OF DOCUMENTS, EXHIBITS AND OTHER ATTACH.				
	C	DESCRIPTION/SPECS./WORK STATEMENT			J	LIST OF ATTACHMENTS		
	D	PACKAGING AND MARKING		PART IV - REPRESENTATIONS AND INSTRUCTIONS				
	E	INSPECTION AND ACCEPTANCE			K	REPRESENTATIONS, CERTIFICATIONS AND OTHER STATEMENTS OF OFFERORS		
	F	DELIVERIES OR PERFORMANCE			L	INSTRS., CONDS., AND NOTICES TO OFFERORS		
	G	CONTRACT ADMINISTRATION DATA			M	EVALUATION FACTORS FOR AWARD		
	H	SPECIAL CONTRACT REQUIREMENTS						
CONTRACTING OFFICER WILL COMPLETE ITEM 17 (SEALED-BID OR NEGOTIATED PROCUREMENT) OR 18 (SEALED-BID PROCUREMENT) AS APPLICABLE								
17. <input type="checkbox"/> CONTRACTOR'S NEGOTIATED AGREEMENT (Contractor is required to sign this document and return _____ copies to issuing office.) Contractor agrees to furnish and deliver all items or perform all the services set forth or otherwise identified above and on any continuation sheets for the consideration stated herein. The rights and obligations of the parties to this contract shall be subject to and governed by the following documents: (a) this award/contract, (b) the solicitation, if any, and (c) such provisions, representations, certifications, and specifications, as are attached or incorporated by reference herein. (Attachments are listed herein.)				18. <input type="checkbox"/> SEALED-BID AWARD (Contractor is not required to sign this document.)				
19A. NAME AND TITLE OF SIGNER (Type or Print)				20A. NAME OF CONTRACTING OFFICER				
19B. NAME OF CONTRACTOR		19C. DATE SIGNED		20B. UNITED STATES OF AMERICA		20C. DATE SIGNED		
BY _____ <small>(Signature of person authorized to sign)</small>				BY _____ <small>(Signature of Contracting Officer)</small>				

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Previous edition is NOT usable

**STANDARD FORM 26** (REV. 3/2013)  
Prescribed by GSA - FAR (48 CFR) 53.214(a)



# Standard Form 273

<b>REINSURANCE AGREEMENT FOR A BONDS STATUTE PERFORMANCE BOND</b> (See instructions on reverse)		OMB Number: 9000-0045 Expiration Date: 6/30/2016	
<p><small>PAPERWORK REDUCTION ACT STATEMENT: Public reporting burden for this collection of information is estimated to average 60 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to U.S. General Services Administration, Regulatory Secretariat (MVCB)/IC 9000-0045, Office of Governmentwide Acquisition Policy, 1800 F Street, NW, Washington, DC 20405.</small></p>			
1. DIRECT WRITING COMPANY*		1A. DATE DIRECT WRITING COMPANY EXECUTES THIS AGREEMENT	
		1B. STATE OF INCORPORATION	
2. REINSURING COMPANY*		2A. AMOUNT OF THIS REINSURANCE (\$)	
		2B. DATE REINSURING COMPANY EXECUTES THIS AGREEMENT	
		2C. STATE OF INCORPORATION	
3. DESCRIPTION OF CONTRACT		4. DESCRIPTION OF BOND	
3A. AMOUNT OF CONTRACT		4A. PENAL SUM OF BOND	
3B. CONTRACT DATE	3C. CONTRACT NO.	4B. DATE OF BOND	4C. BOND NO.
3D. DESCRIPTION OF CONTRACT		4D. PRINCIPAL*	
3E. CONTRACTING AGENCY		4E. STATE OF INCORPORATION (If Corporate Principal)	
<p><b>AGREEMENT:</b></p> <p>(a) The Direct Writing Company named above is bound as surety to the United States of America on the performance bond described above, wherein the above described is the principal, for the protection of the United States on the contract described above. The contract is for the construction, alteration, or repair of a public building or public work of the United States, and the performance bond was furnished to the United States under 40 U.S.C. chapter 31, subchapter III, Bonds, known as the Bonds Statute. The Direct Writing Company has applied to the Reinsuring Company named above to be reinsured and countersecured in the amount shown opposite the name of the Reinsuring Company (referred to as the "Amount of this Reinsurance"), or for whatever amount less than the "Amount of this Reinsurance" the Direct Writing Company is liable to pay under or by virtue of the performance bond.</p> <p>(b) For a sum mutually agreed upon, paid by the Direct Writing Company to the Reinsuring Company which acknowledges its receipt, the parties to this Agreement covenant and agree to the terms and conditions of the agreement.</p>			
<p><b>TERMS AND CONDITIONS:</b></p> <p>(a) The purpose and intent of this agreement is to guarantee and indemnify the United States against loss under the performance and to the extent of the "Amount of this Reinsurance," or any sum less than the "Amount of this Reinsurance" that is owing and unpaid by the Direct Writing Company to the United States under the performance bond.</p> <p>(b) If the Direct Writing Company fails to pay any default under the performance bond equal to or in excess of the "Amount of this Reinsurance," the Reinsuring Company covenants and agrees to pay to the United States, the obligee on the performance bond, the "Amount of this Reinsurance." If the Direct Writing Company fails to pay to the United States any default for a sum less than the "Amount of this Reinsurance" the Reinsuring Company covenants and agrees to pay to the United States the full amount of the default, or so much thereof that is not paid to the United States by the Direct Writing Company.</p> <p>(c) If there is a default on the performance bond for the "Amount of this Reinsurance," or more, the Reinsuring Company and the Direct Writing Company hereby covenant and agree that the United States may bring suit against the Reinsuring Company for the "Amount of this Reinsurance" or, in case the amount of the default is for less than the "Amount of this Reinsurance," for the full amount of the default.</p>			
<p><b>WITNESS:</b></p> <p>The Direct Writing Company and the Reinsuring Company, respectively, have caused this Agreement to be signed and impressed with their respective corporate seals by officers possessing power to sign this instrument, and to be duly attested by officers empowered thereto, on the day and date above written opposite their respective names.</p>			
*Items 1, 2, 4D - Furnish legal name, business address and ZIP Code.		(Over)	
<p>AUTHORIZED FOR LOCAL REPRODUCTION Previous edition is usable</p>		<p><b>STANDARD FORM 273 (REV. 4-2013)</b> Prescribed by GSA - FAR (48 CFR) 53.228(h)</p>	

# Standard Form 273 (Back)

5. DIRECT WRITING COMPANY		
5A(1) SIGNATURE	(2) ATTEST: SIGNATURE	<i>Corporate Seal</i>
5B(1) NAME AND TITLE <i>(Typed)</i>	(2) NAME AND TITLE <i>(Typed)</i>	
6. REINSURING COMPANY		
6A (1) SIGNATURE	(2) ATTEST: SIGNATURE	<i>Corporate Seal</i>
6B(1) NAME AND TITLE <i>(Typed)</i>	(2) NAME AND TITLE <i>(Typed)</i>	

### INSTRUCTIONS

This form is to be used in cases where it is desired to cover the excess of a Direct Writing Company's underwriting limitation by reinsurance instead of co-insurance on Bonds Statute performance bonds running to the United States. See FAR (48 CFR) 28.202-1 and 53.228(h).

Execute and file this form as follows:

Original and copies (as specified by the bond-approving officer), signed and sealed, shall accompany the bond or be filed within the time period shown in the bid or proposal.

One copy, signed and sealed, shall accompany the Direct Writing Company's quarterly Schedule of Excess Risks filed with the Department of the Treasury.

Other copies may be prepared for the use of the Direct Writing Company and Reinsuring Company. Each Reinsuring Company should use a separate form.

# Standard Form 274

**REINSURANCE AGREEMENT FOR A BONDS STATUTE PAYMENT BOND**  
(See instruction on reverse)

OMB Control Number:  
9000-0045  
Expiration Date: 6/30/2016

PAPERWORK REDUCTION ACT STATEMENT: Public reporting burden for this collection of information is estimated to average 60 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to U.S. General Services Administration, Regulatory Secretariat (MVCB)/IC 9000-0045, Office of Governmentwide Acquisition Policy, 1800 F Street, NW, Washington, DC 20405.

1. DIRECT WRITING COMPANY*		1A. DATE DIRECT WRITING COMPANY EXECUTES THIS AGREEMENT	
		1B. STATE OF INCORPORATION	
2. REINSURING COMPANY*		2A. AMOUNT OF THIS REINSURANCE \$	
		2B. DATE REINSURING COMPANY EXECUTES THIS AGREEMENT	
		2C. STATE OF INCORPORATION	
3. DESCRIPTION OF CONTRACT		4. DESCRIPTION OF BOND	
3A. AMOUNT OF CONTRACT		4A. PENAL SUM OF BOND	
3B. CONTRACT DATE	3C. CONTRACT NO.	4B. DATE OF BOND	4C. BOND NO.
3D. DESCRIPTION OF CONTRACT		4D. PRINCIPAL*	
3E. CONTRACTING AGENCY		4E. STATE OF INCORPORATION (If Corporate Principal)	

**AGREEMENT:**

(a) The Direct Writing Company named above is bound as a surety on the payment bond described above, wherein the above described is the principal, for the protection of all persons supplying labor and material on the contract described above, which is for the construction, alteration, or repair of a public building or public work of the United States. The payment bond is for the use of persons supplying labor or material, and is furnished to the United States under 40 U.S.C. chapter 31, subchapter III, Bonds, known as the Bonds Statute. The Direct Writing Company has applied to the Reinsuring Company named above to be reinsured and countersecured in the amount above opposite the name of the Reinsuring Company (referred to as "Amount of this Reinsurance"), or for whatever amount less than the "Amount of this Reinsurance" the Direct Writing Company is liable to pay under or by virtue of the payments bond.

(b) For a sum mutually agreed upon, paid by the Direct Writing Company to the Reinsuring Company which acknowledges its receipt, the parties to this Agreement covenant and agree to the terms and conditions of this agreement.

**TERMS AND CONDITIONS:**

The purpose and intent of this agreement is (a) to guarantee and indemnify the persons who have furnished or supplied labor or material in the prosecution of the work provided for in the contract referred to above (hereinafter referred to as "laborers and materialmen," the term "materialmen" including persons having a direct contractual relation with a subcontractor but no contractual relationship expressed or implied with the contractor who has furnished the said payment bond) against loss under the payment bond to the extent of the "Amount of this Reinsurance," or for any sum less than the "Amount of this Reinsurance," that is owing and unpaid by the Direct Writing Company to the "laborers and materialmen" on the payment bond; and (b) to make the "laborers and materialmen" obligees under this Reinsurance Agreement to the same extent as if their respective names were written herein.

**THEREFORE:**

1. The Reinsuring Company covenants and agrees -

(a) To pay the "Amount of this Reinsurance" to the "laborers and materialmen" in the event of the Direct Writing Company's failure to pay to the "laborers and materialmen" any default under the payment bond equal to or in excess of the "Amount of this Reinsurance;" and

(b) To pay (1) the full amount to the "laborers and materialmen," or (2) the amount not paid to them by the Direct Writing Company; in case the Direct Writing Company fails to pay the "laborers and materialmen" any default under the payment bond less than the "Amount of this Reinsurance."

\*Items 1, 2, 4D - furnished legal name, business address and ZIP Code. (Over)

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Previous edition is usable

STANDARD FORM 274 (REV. 4-2013)  
Prescribed by GSA - FAR (48 CFR) 53.228(i)

# Standard Form 274 (Back)

2. The Reinsuring Company and the Direct Writing Company covenant and agree that, in the case of default on the payment bond for the "Amount of this Reinsurance," or more, the persons given a "right of action" or a "right to sue" on the payment bond by 40 U.S.C. 3133 may bring suit against the Reinsuring Company in the United States District Court for the district in which the contract described above is to be performed and executed for the "Amount of this Reinsurance" or, if the amount of the default is for less than the "Amount of this Reinsurance," for whatever the full amount of the default may be. The Reinsuring Company further covenants and agrees to comply with all requirements necessary to give such court jurisdiction, and to consent to determination of matters arising under this Reinsurance Agreement in accordance with the law and practice of the court. It is expressly understood by the parties that the rights, powers, and privileges given in this paragraph to persons are in addition to or supplemental to or in accordance with other rights, powers, and privileges which they might have under the statutes of the United States, any States, or the other laws of either, and should not be construed as limitations.

3. The Reinsuring Company and the Direct Writing Company further covenant and agree that the Reinsuring Company designates the process agent, appointed by the Direct Writing Company in the district in which the contract is to be performed and executed, as an agent to accept service of process in any suit instituted on this Reinsurance Agreement, and that the process agent shall send, by registered mail, to the Reinsuring Company at its principal place of business shown above, a copy of the process.

4. The Reinsuring Company and the Direct Writing Company further covenant and agree that this Reinsurance Agreement is an integral part of the payment bond.

WITNESS:

The Direct Writing Company and the Reinsuring Company, respectively, have caused this Agreement to be signed and impressed with their respective corporate seals by officers possessing the power to sign this instrument, and to be duly attested to by officers empowered thereto, on the day and date in Item 1A written opposite their respective names.

### 5. DIRECT WRITING COMPANY

5A. (1) SIGNATURE	(2) ATTEST SIGNATURE	<i>Corporate Seal</i>
5B. (1) NAME AND TITLE ( <i>Typed</i> )	(2) NAME AND TITLE ( <i>Typed</i> )	

### 6. REINSURING COMPANY

6A. (1) SIGNATURE	(2) ATTEST SIGNATURE	<i>Corporate Seal</i>
6B. (1) NAME AND TITLE ( <i>Typed</i> )	(2) NAME AND TITLE ( <i>Typed</i> )	

### INSTRUCTIONS

This form is to be used in cases where it is desired to cover the excess of a Direct Writing Company's underwriting limitation by reinsurance instead of co-insurance on Bonds Statute payment bonds running to the United States. See FAR (48 CFR) 28.202-1 and 53.228(i).

Execute and file this form as follows:

Original and copies (as specified by the bond-approving officer), signed and sealed, shall accompany the bond or be filed within the time period shown in bid or proposal.

One copy, signed and sealed, shall accompany the Direct Writing Company's quarterly Schedule of Excess Risks filled with the Department of Treasury.

Other copies may be prepared for the use of the Direct Writing Company and Reinsuring Company. Each Reinsuring Company should use a separate form.

# Standard Form 308

Request For Wage Determination And Response To Request <small>(Construction Wage Rate Requirements Statute and Related Statutes)</small>	U.S. Department of Labor <small>Wage and Hour Division</small>	CHECK OR LIST CRAFTS NEEDED <small>(Attach continuation sheet if needed)</small>
<p><b>FOR DEPARTMENT OF LABOR USE</b></p> <p>Response To Request  <input type="checkbox"/> Use area determination issued for this area</p> <p><input type="checkbox"/> The attached decision noted below is applicable to this project</p> <p>Decision Number _____</p> <p>Date of Decision _____</p> <p>Expires _____</p> <p>Supersedes Decision Number _____</p> <p>Approved _____</p>	<p style="text-align: center;">Mail Your Request To:                  U.S. Department of Labor                  Wage and Hour Division                  Branch of Construction Contract Wage Determinations                  Washington, D.C. 20210</p> <p>Requesting Officer (Typed name and signature) _____</p> <p>Department, Agency, or Bureau _____ Phone Number _____</p> <p>Date of Request _____ Estimated Advertising Date _____ Estimated Bid Opening Date _____</p> <p>Prior Decision Number (if any) _____ Estimated \$ Value of Contract  <input type="checkbox"/> Under 1/2 Mil <input type="checkbox"/> 1 to 5 Mil <input type="checkbox"/> Highway  <input type="checkbox"/> 1/2 to 1 Mil <input type="checkbox"/> Over 5 Mil <input type="checkbox"/> Resid. <input type="checkbox"/> Heavy</p> <p>Address to which wage determination should be mailed. (Print or type)                  _____</p> <p>Location of Project (City, County, State, Zip Code)                  _____</p> <p>Description of Work (Be specific) (Print or type)                  _____</p>	<p>Asbestos workers _____</p> <p>Boilermakers _____</p> <p>Bricklayers _____</p> <p>Carpenters _____</p> <p>Cement masons _____</p> <p>Electricians _____</p> <p>Glaziers _____</p> <p>Ironworkers _____</p> <p>Laborers (Specify classes) _____</p> <p>Lathers _____</p> <p>Marble &amp; tile setters, terrazzo workers _____</p> <p>Painters _____</p> <p>Piledrivers _____</p> <p>Plasterers _____</p> <p>Plumbers _____</p> <p>Roofers _____</p> <p>Sheet metal workers _____</p> <p>Soft floor layers _____</p> <p>Steamfitters _____</p> <p>Welders-rate for craft _____</p> <p>Truck drivers _____</p> <p>Power equipment operators (Specify types) _____</p> <p>Other Crafts _____</p>
<p>Standard Form 308 (Rev. 2/2013)                  U.S. Department of Labor -29 CFR Part 1</p>		





# Standard Form 330

## ARCHITECT-ENGINEER QUALIFICATIONS

OMB No.: 9000-0157  
Expires: 10/31/2014

**PAPERWORK REDUCTION ACT STATEMENT:** Public reporting burden for this collection of information is estimated to average 29 hours (25 hours for part 1 and 4 hours for Part 2) per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to U.S. General Services Administration, Regulatory Secretariat (MVCB)/C 9000-0157, Office of Governmentwide Acquisition Policy, 1800 F Street, NW, Washington, DC 20405.

### PURPOSE

Federal agencies use this form to obtain information from architect-engineer (A-E) firms about their professional qualifications. Federal agencies select firms for A-E contracts on the basis of professional qualifications as required by 40 U.S.C. chapter 11, Selection of Architects Engineers, and Part 36 of the Federal Acquisition Regulation (FAR).

The Selection of Architects and Engineers statute requires the public announcement of requirements for A-E services (with some exceptions provided by other statutes), and the selection of at least three of the most highly qualified firms based on demonstrated competence and professional qualifications according to specific criteria published in the announcement. The Act then requires the negotiation of a contract at a fair and reasonable price starting first with the most highly qualified firm.

The information used to evaluate firms is from this form and other sources, including performance evaluations, any additional data requested by the agency, and interviews with the most highly qualified firms and their references.

pages submitted in Part I in response to a public announcement for a particular project. Carefully comply with any agency instructions when preparing and submitting this form. Be as concise as possible and provide only the information requested by the agency.

### DEFINITIONS

**Architect-Engineer Services:** Defined in FAR 2.101.

**Branch Office:** A geographically distinct place of business or subsidiary office of a firm that has a key role on the team.

**Discipline:** Primary technical capabilities of key personnel, as evidenced by academic degree, professional registration, certification, and/or extensive experience.

**Firm:** Defined in FAR 36.102.

**Key Personnel:** Individuals who will have major contract responsibilities and/or provide unusual or unique expertise.

### GENERAL INSTRUCTIONS

Part I presents the qualifications for a specific contract.

Part II presents the general qualifications of a firm or a specific branch office of a firm. Part II has two uses:

1. An A-E firm may submit Part II to the appropriate central, regional or local office of each Federal agency to be kept on file. A public announcement is not required for certain contracts, and agencies may use Part II as a basis for selecting at least three of the most highly qualified firms for discussions prior to requesting submission of Part I. Firms are encouraged to update Part II on file with agency offices, as appropriate, according to FAR Part 36. If a firm has branch offices, submit a separate Part II for each branch office seeking work.

2. Prepare a separate Part II for each firm that will be part of the team proposed for a specific contract and submitted with Part I. If a firm has branch offices, submit a separate Part II for each branch office that has a key role on the team.

### INDIVIDUAL AGENCY INSTRUCTIONS

Individual agencies may supplement these instructions. For example, they may limit the number of projects or number of

### SPECIFIC INSTRUCTIONS

#### Part I - Contract-Specific Qualifications

##### Section A. Contract Information.

1. **Title and Location.** Enter the title and location of the contract for which this form is being submitted, exactly as shown in the public announcement or agency request.

2. **Public Notice Date.** Enter the posted date of the agency's notice on the Federal Business Opportunity website (FedBizOpps), other form of public announcement or agency request for this contract.

3. **Solicitation or Project Number.** Enter the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request for this contract.

##### Section B. Architect-Engineer Point of Contact.

4-8. **Name, Title, Name of Firm, Telephone Number, Fax (Facsimile) Number and E-mail (Electronic Mail) Address.** Provide information for a representative of the prime contractor or joint venture that the agency can contact for additional information.

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## Section C. Proposed Team.

9-11. Firm Name, Address, and Role in This Contract. Provide the contractual relationship, name, full mailing address, and a brief description of the role of each firm that will be involved in performance of this contract. List the prime contractor or joint venture partners first. If a firm has branch offices, indicate each individual branch office that will have a key role on the team. The named subcontractors and outside associates or consultants must be used, and any change must be approved by the contracting officer. (See FAR Part 52 Clause "Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)") Attach an additional sheet in the same format as Section C if needed.

## Section D. Organizational Chart of Proposed Team.

As an attachment after Section C, present an organizational chart of the proposed team showing the names and roles of all key personnel listed in Section E and the firm they are associated with as listed in Section C.

## Section E. Resumes of Key Personnel Proposed for This Contract.

Complete this section for each key person who will participate in this contract. Group by firm, with personnel of the prime contractor or joint venture partner firms first. The following blocks must be completed for each resume:

12. Name. Self-explanatory.

13. Role in This Contract. Self-explanatory.

14. Years Experience. Total years of relevant experience (block 14a), and years of relevant experience with current firm, but not necessarily the same branch office (block 14b).

15. Firm Name and Location. Name, city and state of the firm where the person currently works, which must correspond with one of the firms (or branch office of a firm, if appropriate) listed in Section C.

16. Education. Provide information on the highest relevant academic degree(s) received. Indicate the area(s) of specialization for each degree.

17. Current Professional Registration. Provide information on current relevant professional registration(s) in a State or possession of the United States, Puerto Rico, or the District of Columbia according to FAR Part 36.

18. Other Professional Qualifications. Provide information on any other professional qualifications relating to this contract, such as education, professional registration, publications, organizational memberships, certifications, training, awards, and foreign language capabilities.

19. Relevant Projects. Provide information on up to five projects in which the person had a significant role that demonstrates the person's capability relevant to her/his proposed role in this contract. These projects do not necessarily have to be any of the projects presented in Section F for the project team if the person was not involved in any of those projects or the person worked on other projects that were more relevant than the team projects in Section F. Use the check box provided to indicate if the project was performed with any office of the current firm. If any of the professional services or construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description and Specific Role (block (3)).

## Section F. Example Projects Which Best Illustrate Proposed Team's Qualifications for This Contract.

Select projects where multiple team members worked together, if possible, that demonstrate the team's capability to perform work similar to that required for this contract. Complete one Section F for each project. Present ten projects, unless otherwise specified by the agency. Complete the following blocks for each project:

20. Example Project Key Number. Start with "1" for the first project and number consecutively.

21. Title and Location. Title and location of project or contract. For an indefinite delivery contract, the location is the geographic scope of the contract.

22. Year Completed. Enter the year completed of the professional services (such as planning, engineering study, design, or surveying), and/or the year completed of construction, if applicable. If any of the professional services or the construction projects are not complete, leave Year Completed blank and indicate the status in Brief Description of Project and Relevance to This Contract (block 24).

23a. Project Owner. Project owner or user, such as a government agency or installation, an institution, a corporation or private individual.

23b. Point of Contact Name. Provide name of a person associated with the project owner or the organization which contracted for the professional services, who is very familiar with the project and the firm's (or firms') performance.

23c. Point of Contact Telephone Number Self-explanatory.

24. Brief Description of Project and Relevance to This Contract. Indicate scope, size, cost, principal elements and special features of the project. Discuss the relevance of the example project to this contract. Enter any other information requested by the agency for each example project.

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25. Firms from Section C Involved with This Project. Indicate which firms (or branch offices, if appropriate) on the project team were involved in the example project, and their roles. List in the same order as Section C.

**Section G. Key Personnel Participation in Example Projects.**

This matrix is intended to graphically depict which key personnel identified in Section E worked on the example projects listed in Section F. Complete the following blocks (see example below).

26. and 27. Names of Key Personnel and Role in This Contract. List the names of the key personnel and their proposed roles in this contract in the same order as they appear in Section E.

28. Example Projects Listed in Section F. In the column under each project key number (see block 29) and for each key person, place an "X" under the project key number for participation in the same or similar role.

29. Example Projects Key. List the key numbers and titles of the example projects in the same order as they appear in Section F.

**Section H. Additional Information.**

30. Use this section to provide additional information specifically requested by the agency or to address selection criteria that are not covered by the information provided in Sections A-G.

**Section I. Authorized Representative.**

31. and 32. Signature of Authorized Representative and Date. An authorized representative of a joint venture or the prime contractor must sign and date the completed form. Signing attests that the information provided is current and factual, and that all firms on the proposed team agree to work on the project. Joint ventures selected for negotiations must make available a statement of participation by a principal of each member of the joint venture.

33. Name and Title. Self-explanatory.

**SAMPLE ENTRIES FOR SECTION G (MATRIX)**

26. NAMES OF KEY PERSONNEL (From Section E, Block 12)	27. ROLE IN THIS CONTRACT (From Section E, Block 13)	28. EXAMPLE PROJECTS LISTED IN SECTION F (Fill in "Example Projects Key" section below first, before completing table. Place "X" under project key number for participation in same or similar role.)									
		1	2	3	4	5	6	7	8	9	10
Jane A. Smith	Chief Architect	X		X							
Joseph B. Williams	Chief Mech. Engineer	X	X	X	X						
Tara C. Donovan	Chief Elec. Engineer	X	X		X						

**29. EXAMPLE PROJECTS KEY**

NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)	NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)
1	Federal Courthouse, Denver, CO	6	XYZ Corporation Headquarters, Boston, MA
2	Justin J. Wilson Federal Building, Baton Rouge, LA	7	Founder's Museum, Newport RI

# Standard Form 330 (Page 4 of Instructions)

## Part II - General Qualifications

See the "General Instructions" on page 1 for firms with branch offices. Prepare Part II for the specific branch office seeking work if the firm has branch offices.

1. Solicitation Number. If Part II is submitted for a specific contract, insert the agency's solicitation number and/or project number, if applicable, exactly as shown in the public announcement or agency request.

2a-2e. Firm (or Branch Office) Name and Address. Self-explanatory.

3. Year Established. Enter the year the firm (or branch office, if appropriate) was established under the current name.

4. DUNS Number. Insert the Data Universal Numbering System number issued by Dun and Bradstreet Information Services. Firms must have a DUNS number. See FAR Part 4.6.

### 5. Ownership.

a. Type. Enter the type of ownership or legal structure of the firm (sole proprietor, partnership, corporation, joint venture, etc.).

b. Small Business Status. Refer to the North American Industry Classification System (NAICS) code in the public announcement, and indicate if the firm is a small business according to the current size standard for that NAICS code (for example, Engineering Services (part of NAICS 541330), Architectural Services (NAICS 541310), Surveying and Mapping Services (NAICS 541370)). The small business categories and the internet website for the NAICS codes appear in FAR Part 19. Contact the requesting agency for any questions. Contact your local U.S. Small Business Administration office for any questions regarding Business Status.

6a-6c. Point of Contact. Provide this information for a representative of the firm that the agency can contact for additional information. The representative must be empowered to speak on contractual and policy matters.

7. Name of Firm. Enter the name of the firm if Part II is prepared for a branch office.

8a-8c. Former Firm Names. Indicate any other previous names for the firm (or branch office) during the last six years. Insert the year that this corporate name change was

effective and the associated DUNS Number. This information is used to review past performance on Federal contracts.

9. Employees by Discipline. Use the relevant disciplines and associated function codes shown at the end of these instructions and list in the same numerical order. After the listed disciplines, write in any additional disciplines and leave the function code blank. List no more than 20 disciplines. Group remaining employees under "Other Employees" in column b. Each person can be counted only once according to his/her primary function. If Part II is prepared for a firm (including all branch offices), enter the number of employees by disciplines in column c(1). If Part II is prepared for a branch office, enter the number of employees by discipline in column c(2) and for the firm in column c(1).

10. Profile of Firm's Experience and Annual Average Revenue for Last 5 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the experience categories which most accurately reflect the firm's technical capabilities and project experience. Use the relevant experience categories and associated profile codes shown at the end of these instructions, and list in the same numerical order. After the listed experience categories, write in any unlisted relevant project experience categories and leave the profile codes blank. For each type of experience, enter the appropriate revenue index number to reflect the professional services revenues received annually (averaged over the last 5 years) by the firm or branch office for performing that type of work. A particular project may be identified with one experience category or it may be broken into components, as best reflects the capabilities and types of work performed by the firm. However, do not double count the revenues received on a particular project.

11. Annual Average Professional Services Revenues of Firm for Last 3 Years. Complete this block for the firm or branch office for which this Part II is prepared. Enter the appropriate revenue index numbers to reflect the professional services revenues received annually (averaged over the last 3 years) by the firm or branch office. Indicate Federal work (performed directly for the Federal Government, either as the prime contractor or subcontractor), non-Federal work (all other domestic and foreign work, including Federally-assisted projects), and the total. If the firm has been in existence for less than 3 years, see the definition for "Annual Receipts" under FAR 19.101.

12. Authorized Representative. An authorized representative of the firm or branch office must sign and date the completed form. Signing attests that the information provided is current and factual. Provide the name and title of the authorized representative who signed the form.

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List of Disciplines (Function Codes)

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Code	Description	Code	Description
01	Acoustical Engineer	32	Hydraulic Engineer
02	Administrative	33	Hydrographic Surveyor
03	Aerial Photographer	34	Hydrologist
04	Aeronautical Engineer	35	Industrial Engineer
05	Archeologist	36	Industrial Hygienist
06	Architect	37	Interior Designer
07	Biologist	38	Land Surveyor
08	CADD Technician	39	Landscape Architect
09	Cartographer	40	Materials Engineer
10	Chemical Engineer	41	Materials Handling Engineer
11	Chemist	42	Mechanical Engineer
12	Civil Engineer	43	Mining Engineer
13	Communications Engineer	44	Oceanographer
14	Computer Programmer	45	Photo Interpreter
15	Construction Inspector	46	Photogrammetrist
16	Construction Manager	47	Planner: Urban/Regional
17	Corrosion Engineer	48	Project Manager
18	Cost Engineer/Estimator	49	Remote Sensing Specialist
19	Ecologist	50	Risk Assessor
20	Economist	51	Safety/Occupational Health Engineer
21	Electrical Engineer	52	Sanitary Engineer
22	Electronics Engineer	53	Scheduler
23	Environmental Engineer	54	Security Specialist
24	Environmental Scientist	55	Soils Engineer
25	Fire Protection Engineer	56	Specifications Writer
26	Forensic Engineer	57	Structural Engineer
27	Foundation/Geotechnical Engineer	58	Technician/Analyst
28	Geodetic Surveyor	59	Toxicologist
29	Geographic Information System Specialist	60	Transportation Engineer
30	Geologist	61	Value Engineer
31	Health Facility Planner	62	Water Resources Engineer

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## List of Experience Categories (Profile Codes)

Code	Description	Code	Description
A01	Acoustics, Noise Abatement	E01	Ecological & Archeological Investigations
A02	Aerial Photography; Airborne Data and Imagery Collection and Analysis	E02	Educational Facilities; Classrooms
A03	Agricultural Development; Grain Storage; Farm Mechanization	E03	Electrical Studies and Design
A04	Air Pollution Control	E04	Electronics
A05	Airports; Navajids; Airport Lighting; Aircraft Fueling	E05	Elevators; Escalators; People-Movers
A06	Airports; Terminals and Hangars; Freight Handling	E06	Embassies and Chanceries
A07	Arctic Facilities	E07	Energy Conservation; New Energy Sources
A08	Animal Facilities	E08	Engineering Economics
A09	Anti-Terrorism/Force Protection	E09	Environmental Impact Studies, Assessments or Statements
A10	Asbestos Abatement	E10	Environmental and Natural Resource Mapping
A11	Auditoriums & Theaters	E11	Environmental Planning
A12	Automation; Controls; Instrumentation	E12	Environmental Remediation
B01	Barracks; Dormitories	E13	Environmental Testing and Analysis
B02	Bridges	F01	Fallout Shelters; Blast-Resistant Design
C01	Cartography	F02	Field Houses; Gyms; Stadiums
C02	Cemeteries ( <i>Planning &amp; Relocation</i> )	F03	Fire Protection
C03	Charting: Nautical and Aeronautical	F04	Fisheries; Fish ladders
C04	Chemical Processing & Storage	F05	Forensic Engineering
C05	Child Care/Development Facilities	F06	Forestry & Forest products
C06	Churches; Chapels	G01	Garages; Vehicle Maintenance Facilities; Parking Decks
C07	Coastal Engineering	G02	Gas Systems (Propane; Natural, Etc.)
C08	Codes; Standards; Ordinances	G03	Geodetic Surveying: Ground and Air-borne
C09	Cold Storage; Refrigeration and Fast Freeze	G04	Geographic Information System Services: Development, Analysis, and Data Collection
C10	Commercial Building ( <i>low rise</i> ); Shopping Centers	G05	Geospatial Data Conversion: Scanning, Digitizing, Compilation, Attributing, Scribing, Drafting
C11	Community Facilities	G06	Graphic Design
C12	Communications Systems; TV; Microwave	H01	Harbors; Jetties; Piers, Ship Terminal Facilities
C13	Computer Facilities; Computer Service	H02	Hazardous Materials Handling and Storage
C14	Conservation and Resource Management	H03	Hazardous, Toxic, Radioactive Waste Remediation
C15	Construction Management	H04	Heating; Ventilating; Air Conditioning
C16	Construction Surveying	H05	Health Systems Planning
C17	Corrosion Control: Cathodic Protection; Electrolysis	H06	Highrise; Air-Rights-Type Buildings
C18	Cost Estimating; Cost Engineering and Analysis; Parametric Costing; Forecasting	H07	Highways; Streets; Airfield Paving; Parking Lots
C19	Cryogenic Facilities	H08	Historical Preservation
D01	Dams ( <i>Concrete; Arch</i> )	H09	Hospital & Medical Facilities
D02	Dams ( <i>Earth; Rock</i> ); Dikes; Levees	H10	Hotels; Motels
D03	Desalinization ( <i>Process &amp; Facilities</i> )	H11	Housing ( <i>Residential, Multi-Family; Apartments; Condominiums</i> )
D04	Design-Build - Preparation of Requests for Proposals	H12	Hydraulics & Pneumatics
D05	Digital Elevation and Terrain Model Development	H13	Hydrographic Surveying
D06	Digital Orthophotography		
D07	Dining Halls; Clubs; Restaurants		
D08	Dredging Studies and Design		

# Standard Form 330 (Page 7 of Instructions)

## List of Experience Categories (Profile Codes)

Code	Description	Code	Description
I01	Industrial Buildings; Manufacturing Plants	P09	Product, Machine Equipment Design
I02	Industrial Processes; Quality Control	P10	Pneumatic Structures, Air-Support Buildings
I03	Industrial Waste Treatment	P11	Postal Facilities
I04	Intelligent Transportation Systems	P12	Power Generation, Transmission, Distribution
I05	Interior Design; Space Planning	P13	Public Safety Facilities
I06	Irrigation; Drainage	R01	Radar; Sonar; Radio & Radar Telescopes
J01	Judicial and Courtroom Facilities	R02	Radio Frequency Systems & Shieldings
L01	Laboratories; Medical Research Facilities	R03	Railroad; Rapid Transit
L02	Land Surveying	R04	Recreation Facilities (Parks, Marinas, Etc.)
L03	Landscape Architecture	R05	Refrigeration Plants/Systems
L04	Libraries; Museums; Galleries	R06	Rehabilitation (Buildings; Structures; Facilities)
L05	Lighting (Interior; Display; Theater, Etc.)	R07	Remote Sensing
L06	Lighting (Exteriors; Streets; Memorials; Athletic Fields, Etc.)	R08	Research Facilities
M01	Mapping Location/Addressing Systems	R09	Resources Recovery; Recycling
M02	Materials Handling Systems; Conveyors; Sorters	R10	Risk Analysis
M03	Metallurgy	R11	Rivers; Canals; Waterways; Flood Control
M04	Microclimatology; Tropical Engineering	R12	Roofing
M05	Military Design Standards	S01	Safety Engineering; Accident Studies; OSHA Studies
M06	Mining & Mineralogy	S02	Security Systems; Intruder & Smoke Detection
M07	Missile Facilities (Silos; Fuels; Transport)	S03	Seismic Designs & Studies
M08	Modular Systems Design; Pre-Fabricated Structures or Components	S04	Sewage Collection, Treatment and Disposal
N01	Naval Architecture; Off-Shore Platforms	S05	Soils & Geologic Studies; Foundations
N02	Navigation Structures; Locks	S06	Solar Energy Utilization
N03	Nuclear Facilities; Nuclear Shielding	S07	Solid Wastes; Incineration; Landfill
O01	Office Buildings; Industrial Parks	S08	Special Environments; Clean Rooms, Etc.
O02	Oceanographic Engineering	S09	Structural Design; Special Structures
O03	Ordnance; Munitions; Special Weapons	S10	Surveying; Platting; Mapping; Flood Plain Studies
P01	Petroleum Exploration; Refining	S11	Sustainable Design
P02	Petroleum and Fuel (Storage and Distribution)	S12	Swimming Pools
P03	Photogrammetry	S13	Storm Water Handling & Facilities
P04	Pipelines (Cross-Country - Liquid & Gas)	T01	Telephone Systems ( <i>Rural; Mobile; Intercom, Etc.</i> )
P05	Planning (Community, Regional, Areawide and State)	T02	Testing & Inspection Services
P06	Planning (Site, Installation, and Project)	T03	Traffic & Transportation Engineering
P07	Plumbing & Piping Design	T04	Topographic Surveying and Mapping
P08	Prisons & Correctional Facilities	T05	Towers ( <i>Self-Supporting &amp; Guyed Systems</i> )
		T06	Tunnels & Subways

# Standard Form 330 (Page 8 of Instructions)

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## List of Experience Categories (Profile Codes)

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<b>Code</b>	<b>Description</b>
U01	Unexploded Ordnance Remediation
U02	Urban Renewals; Community Development
U03	Utilities (Gas and Steam)
V01	Value Analysis; Life-Cycle Costing
W01	Warehouses & Depots
W02	Water Resources; Hydrology; Ground Water
W03	Water Supply; Treatment and Distribution
W04	Wind Tunnels; Research/Testing Facilities Design
Z01	Zoning; Land Use Studies



# Standard Form 330 (Page 1)

## ARCHITECT - ENGINEER QUALIFICATIONS

### PART I - CONTRACT-SPECIFIC QUALIFICATIONS

#### A. CONTRACT INFORMATION

1. TITLE AND LOCATION *(City and State)*

2. PUBLIC NOTICE DATE

3. SOLICITATION OR PROJECT NUMBER

#### B. ARCHITECT-ENGINEER POINT OF CONTACT

4. NAME AND TITLE

5. NAME OF FIRM

6. TELEPHONE NUMBER

7. FAX NUMBER

8. E-MAIL ADDRESS

#### C. PROPOSED TEAM

*(Complete this section for the prime contractor and all key subcontractors.)*

	<i>(Check)</i>				9. FIRM NAME	10. ADDRESS	11. ROLE IN THIS CONTRACT
	PRIME	J-V	PARTNER	SUBCONTRACTOR			
a.					<input type="checkbox"/> CHECK IF BRANCH OFFICE		
b.					<input type="checkbox"/> CHECK IF BRANCH OFFICE		
c.					<input type="checkbox"/> CHECK IF BRANCH OFFICE		
d.					<input type="checkbox"/> CHECK IF BRANCH OFFICE		
e.					<input type="checkbox"/> CHECK IF BRANCH OFFICE		
f.					<input type="checkbox"/> CHECK IF BRANCH OFFICE		

#### D. ORGANIZATIONAL CHART OF PROPOSED TEAM

*(Attached)*

# Standard Form 330 (Page 2)

## E. RESUMES OF KEY PERSONNEL PROPOSED FOR THIS CONTRACT

*(Complete one Section E for each key person.)*

12. NAME	13. ROLE IN THIS CONTRACT	14. YEARS EXPERIENCE	
		a. TOTAL	b. WITH CURRENT FIRM
15. FIRM NAME AND LOCATION <i>(City and State)</i>			
16. EDUCATION <i>(DEGREE AND SPECIALIZATION)</i>		17. CURRENT PROFESSIONAL REGISTRATION <i>(STATE AND DISCIPLINE)</i>	
18. OTHER PROFESSIONAL QUALIFICATIONS <i>(Publications, Organizations, Training, Awards, etc.)</i>			

## 19. RELEVANT PROJECTS

(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION <i>(if applicable)</i>
a. (3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION <i>(if applicable)</i>
b. (3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION <i>(if applicable)</i>
c. (3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION <i>(if applicable)</i>
d. (3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	
(1) TITLE AND LOCATION <i>(City and State)</i>	(2) YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION <i>(if applicable)</i>
e. (3) BRIEF DESCRIPTION <i>(Brief scope, size, cost, etc.)</i> AND SPECIFIC ROLE	<input type="checkbox"/> Check if project performed with current firm	

# Standard Form 330 (Page 3)

<b>F. EXAMPLE PROJECTS WHICH BEST ILLUSTRATE PROPOSED TEAM'S QUALIFICATIONS FOR THIS CONTRACT</b> <i>(Present as many projects as requested by the agency, or 10 projects, if not specified. Complete one Section F for each project.)</i>	20. EXAMPLE PROJECT KEY NUMBER
---	--------------------------------

21. TITLE AND LOCATION <i>(City and State)</i>	22. YEAR COMPLETED	
	PROFESSIONAL SERVICES	CONSTRUCTION <i>(If applicable)</i>

23. PROJECT OWNER'S INFORMATION

a. PROJECT OWNER	b. POINT OF CONTACT NAME	c. POINT OF CONTACT TELEPHONE NUMBER
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24. BRIEF DESCRIPTION OF PROJECT AND RELEVANCE TO THIS CONTRACT *(Include scope, size, and cost)*

25. FIRMS FROM SECTION C INVOLVED WITH THIS PROJECT

(1) FIRM NAME	(2) FIRM LOCATION <i>(City and State)</i>	(3) ROLE
a.		
b.		
c.		
d.		
e.		
f.		

# Standard Form 330 (Page 4)

**G. KEY PERSONNEL PARTICIPATION IN EXAMPLE PROJECTS**

26. NAMES OF KEY PERSONNEL (From Section E, Block 12)	27. ROLE IN THIS CONTRACT (From Section E, Block 13)	28. EXAMPLE PROJECTS LISTED IN SECTION F (Fill in "Example Projects Key" section below before completing table. Place "X" under project key number for participation in same or similar role.)									
		1	2	3	4	5	6	7	8	9	10

**29. EXAMPLE PROJECTS KEY**

NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)	NO.	TITLE OF EXAMPLE PROJECT (FROM SECTION F)
1		6	
2		7	
3		8	
4		9	
5		10	

# Standard Form 330 (Page 5)

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**H. ADDITIONAL INFORMATION**

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30. PROVIDE ANY ADDITIONAL INFORMATION REQUESTED BY THE AGENCY. ATTACH ADDITIONAL SHEETS AS NEEDED.

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**I. AUTHORIZED REPRESENTATIVE**

The foregoing is a statement of facts.

31. SIGNATURE

32. DATE

33. NAME AND TITLE

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STANDARD FORM 330 (REV. 3/2013) PAGE 5



# Standard Form 1093

**SCHEDULE OF WITHHOLDINGS UNDER THE CONSTRUCTION WAGE RATE  
REQUIREMENTS STATUTE (40 U.S.C. CHAPTER 31, SUBCHAPTER IV, §3144)  
AND/OR  
THE CONTRACT WORK HOURS AND SAFETY STANDARDS STATUTE (40 U.S.C.  
CHAPTER 37, §3703)**

U.S. GOVERNMENT ACCOUNTABILITY OFFICE  
Office of General Counsel  
Davis-Bacon Group  
WASHINGTON, DC 20548

Contractor or subcontractor charged  
with violations \_\_\_\_\_

Prime contractor \_\_\_\_\_

Contract No. \_\_\_\_\_, \_\_\_\_\_  
(Date)

Report concerning irregularities transmitted to--  
\_\_\_\_\_, \_\_\_\_\_  
(Date)

Deducted from amounts otherwise due the contractor, for deposit to the account "05X6022," covering wages due  
the employees whose names, social security numbers, and current addresses are listed on the attached schedule, are  
withholdings pursuant to the following laws:

Construction Wage		
Rate Requirements	_____	\$ _____
Statute		
Contract Work Hours and Safety Standards Statute	_____	\$ _____
Total	_____	\$ _____

Forwarded herewith is check No. \_\_\_\_\_, dated \_\_\_\_\_  
for \$ \_\_\_\_\_

\_\_\_\_\_  
(Disbursing officer or other administrative official)

STANDARD FORM 1093 (REV. 2/2013)





# Standard Form 1413

STATEMENT AND ACKNOWLEDGMENT					OMB No.: 9000-0014 Expires: 6/30/2014	
<p>PAPERWORK REDUCTION ACT STATEMENT: Public reporting burden for this collection of information is estimated to average .05 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to U.S. General Services Administration, Regulatory Secretariat (MVCB)/IC 9000-0014, Office of Governmentwide Acquisition Policy, 1800 F Street, NW, Washington, DC 20405.</p>						
PART I - STATEMENT OF PRIME CONTRACTOR						
1. PRIME CONTRACT NO.		2. DATE SUBCONTRACT AWARDED		3. SUBCONTRACT NUMBER		
4. PRIME CONTRACTOR				5. SUBCONTRACTOR		
a. NAME				a. NAME		
b. STREET ADDRESS				b. STREET ADDRESS		
c. CITY		d. STATE	e. ZIP CODE	c. CITY		e. ZIP CODE
6. The prime contract <input type="checkbox"/> does, <input type="checkbox"/> does not contain the clause entitled "Contract Work Hours and Safety Standards Act -- Overtime Compensation."						
7. The prime contractor states that under the contract shown in Item 1, a subcontract was awarded on the date shown in Item 2 to the subcontractor identified in item 5 by the following firm:						
a. NAME OF AWARDING FIRM						
b. DESCRIPTION OF WORK BY SUBCONTRACTOR						
8. PROJECT				9. LOCATION		
10a. NAME OF PERSON SIGNING			11. BY (Signature)		12. DATE SIGNED	
10b. TITLE OF PERSON SIGNING						
PART II - ACKNOWLEDGMENT OF SUBCONTRACTOR						
13. The subcontractor acknowledges that the following clauses of the contract shown in Item 1 are included in this subcontract:						
Contract Work Hours and Safety Standards Act - Overtime Compensation (If included in prime contract see Block 6)			Construction Wage Rate Requirements Apprentices and Trainees			
Payrolls and Basic Records			Compliance with Copeland Act Requirements			
Withholding of Funds			Subcontracts (Labor Standards)			
Disputes Concerning Labor Standards			Contract Termination - Debarment			
Compliance with Construction Wage Rate Requirements and Related Regulations			Certification of Eligibility			
14. NAME(S) OF ANY INTERMEDIATE SUBCONTRACTORS, IF ANY						
A				C		
B				D		
15a. NAME OF PERSON SIGNING			16. BY (Signature)		17. DATE SIGNED	
15b. TITLE OF PERSON SIGNING						
AUTHORIZED FOR LOCAL REPRODUCTION PREVIOUS EDITION IS NOT USABLE			STANDARD FORM 1413 (REV. 4/2013) Prescribed by GSA/FAR (48 CFR) 53.222(e)			



# Standard Form 1444

AUTHORIZED FOR LOCAL REPRODUCTION				
<b>REQUEST FOR AUTHORIZATION OF ADDITIONAL CLASSIFICATION AND RATE</b>			CHECK APPROPRIATE BOX <input type="checkbox"/> SERVICE CONTRACT <input type="checkbox"/> CONSTRUCTION CONTRACT	OMB Number: <b>9000-0089</b> Expiration Date: <b>7/31/2014</b>
PAPERWORK REDUCTION ACT STATEMENT: Public reporting burden for this collection of information is estimated to average .5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to U.S. General Services Administration, Regulatory Secretariat (MVCB)/IC 9000-0089, Office of Governmentwide Acquisition Policy, 1800 F Street, NW, Washington, DC 20405.				
<b>INSTRUCTIONS:</b> THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16, KEEP A PENDING COPY, AND SUBMIT THE REQUEST, IN QUADRUPPLICATE, TO THE CONTRACTING OFFICER.				
1. <b>TO:</b> ADMINISTRATOR, WAGE AND HOUR DIVISION U.S. DEPARTMENT OF LABOR WASHINGTON, D.C. 20210			2. <b>FROM:</b> (REPORTING OFFICE)	
3. CONTRACTOR			4. DATE OF REQUEST	
5. CONTRACT NUMBER	6. DATE BID OPENED (SEALED BIDDING)	7. DATE OF AWARD	8. DATE CONTRACT WORK STARTED	9. DATE OPTION EXERCISED (IF APPLICABLE) (SERVICE CONTRACT ONLY)
10. SUBCONTRACTOR (IF ANY)				
11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED)				
12. LOCATION (CITY, COUNTY AND STATE)				
13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION				
NUMBER:		DATED:		
a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); DUTIES; AND RATIONALE FOR PROPOSED CLASSIFICATIONS (Service contracts only) <i>(Use reverse or attach additional sheets, if necessary)</i>		b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS	
14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (IF ANY)		15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE		
16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE		TITLE	CHECK APPROPRIATE BOX-REFERENCING BLOCK 13. <input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE	
<b>TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE - SEE FAR 22.1019 (SERVICE CONTRACT LABOR STANDARDS) OR FAR 22.406-3 (CONSTRUCTION WAGE RATE REQUIREMENTS))</b>				
<input type="checkbox"/> THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.				
<input type="checkbox"/> THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED. <i>(Send 3 copies to the Department of Labor)</i>				
SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE		TITLE AND COMMERCIAL TELEPHONE NUMBER	DATE SUBMITTED	
PREVIOUS EDITION IS USABLE				
<b>STANDARD FORM 1444</b> (REV. 4/2013) Prescribed by GSA-FAR (48 CFR) 53.222(f)				



# Standard Form 1446

## LABOR STANDARDS INVESTIGATION SUMMARY SHEET

REPORTING OFFICE	CONTRACT NUMBER	CONTRACT AMOUNT	DATE OF CONTRACT
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TYPE OF CONTRACT  
 FIXED PRICE                       CPFF                       OTHER (Specify)

CONTRACTOR'S NAME AND ADDRESS (Include ZIP Code)	EMPLOYER'S NAME AND ADDRESS (Include ZIP Code) (If other than prime contractor)
--	--

PROJECT AND LOCATION

DESCRIPTION OF WORK

BASIS FOR INVESTIGATION

WAGE DETERMINATION NUMBER	WAGE DETERMINATION DATE
---------------------------	-------------------------

### NATURE AND EXTENT OF VIOLATION

NO. EMPLOYEES INVOLVED	ARE VIOLATIONS CONSIDERED WILLFUL? <input type="checkbox"/> Yes <input type="checkbox"/> No	COPELAND ACT VIOLATIONS <input type="checkbox"/> Yes <input type="checkbox"/> No
CONSTRUCTION WAGE RATE REQUIREMENTS STATUTE UNDERPAYMENTS \$	CWHSS* UNDERPAYMENTS \$	CWHSS * LAW VIOLATIONS \$

### CORRECTIVE ACTIONS TAKEN

RESTITUTION MADE <input type="checkbox"/> Yes <input type="checkbox"/> No	AMOUNT OF RESTITUTION \$	CONTRACTORS PAYMENT WITHHELD <input type="checkbox"/> Yes <input type="checkbox"/> No
WITHHELD FOR CONSTRUCTION WAGE RATE REQUIREMENTS STATUTE VIOLATIONS \$	WITHHELD FOR CWHSS* UNDERPAYMENTS \$	WITHHELD FOR CWHSS* VIOLATIONS \$

REMARKS

### PREPARED BY

DATE	TITLE	SIGNATURE
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\*Contract Work Hours and Safety Standards Statute

