

# **FEDERAL ACQUISITION CIRCULAR**

November 18, 2016

Number 2005-92  
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Loose-leaf pages

Federal Acquisition Circular (FAC) 2005-92 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 2005-92 is effective November 18, 2016 except for Items I and II, which are effective December 19, 2016.



## FAC 2005-92 List of Subjects

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## FAC 2005-92 SUMMARY OF ITEMS

Federal Acquisition Circular (FAC) 2005-92 amends the Federal Acquisition Regulation (FAR) as specified below:

### **Item I—Public Disclosure of Greenhouse Gas Emissions and Reduction Goals—Representation (FAR Case 2015-024)**

This final rule amends the FAR to establish an annual representation requirement to indicate whether or not and where contractors publicly disclose greenhouse gas emissions and greenhouse gas emission reduction goals or targets. This representation is optional for contractors that received less than \$7.5 million in contract awards from the Government during the previous Federal fiscal year. The information obtained from these representations will assist agencies in developing strategies to engage with contractors to reduce supply chain emissions, as directed in the Executive Order 13693, Planning for Federal Sustainability in the Next Decade.

**Replacement pages:** THE PAGES WILL BE POSTED ON THEIR EFFECTIVE DATE OF December 19, 2016.

### **Item II—Removal of Regulations Relating to Telegraphic Communication (FAR Case 2015-035)**

This rule amends the FAR to delete the use of "telegram," "telegraph," and related terms. The objective is to delete reference to obsolete technologies no longer in use and replace with references to electronic communications. In addition, conforming changes are made covering expedited notice of termination and change orders.

The rule is not anticipated to have a significant economic impact on small business entities, as the rule provides recognition of current options for transmitting documents between the Government and contractors. The rule also revises the means of disseminating contract termination documents between the Government and contractors; however, this change only affects the Government's responsibility for transmitting termination notices.

**Replacement pages:** THE PAGES WILL BE POSTED ON THEIR EFFECTIVE DATE OF December 19, 2016.

### **Item III-Technical Amendments**

Editorial changes are made at FAR 2.101, 7.105, 19.1506, 34.000, 34.005-2, 34.201, 34.203, 42.709, 52.234-2, 52.234-3, and 52.234-4.

**Replacement pages:** pp. 2.1-7 and 2.1-8; 7.1-7 and 7.1-8; 19.15-1 thru 19.15-4; TOC 34-1 and 34-2; 34.1-1 and 34.1-2; 34.2-1 and 34.2-2; TOC 42-1 and 42-2; 42.7-5 thru 47.7-8; TOC 52-7 and 52-8; 52.2-239 and 52.2- 240; Matrix 52.3-25 thru 52.3-28.

**FAC 2005-92 FILING INSTRUCTIONS**

**NOTE:** The FAR is segmented by subparts. The FAR page numbers reflect FAR Subparts. For example, "2.1-7" is page 7 of subpart 2.1.

Remove Pages

2.1-7 and 2.1-8

7.1-5 and 7.1-6

19.15-1 thru 19.15-4

TOC

pp. 34-1 and 34-2  
34.1-1 and 34.1-2  
34.2-1 and 34.2-2

TOC

pp. 42-1 and 42-2  
42.7-5 thru 42.7-8

TOC

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52.2-239 and 52.2-240

Remove Pages

Matrix

52.3-25 thru 52.3-28

Insert Pages

2.1-7 and 2.1-8

7.1-5 and 7.1-6

19.15-1 thru 19.15-4

TOC

pp. 34-1 and 34-2  
34.1-1 and 34.1-2  
34.2-1 and 34.2-2

TOC

pp. 42-1 and 42-2  
42.7-5 thru 42.7-8

TOC

pp. 52-7 and 52-8  
52.2-239 and 52.2-240

Insert Pages

Matrix

52.3-25 thru 52.3-28

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“Drug-free workplace” means the site(s) for the performance of work done by the contractor in connection with a specific contract where employees of the contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Earned value management system” means a project management tool that effectively integrates the project scope of work with cost, schedule and performance elements for optimum project planning and control. The qualities and operating characteristics of an earned value management system are described in Electronic Industries Alliance Standard 748 (EIA-748), Earned Value Management Systems. (See OMB Circular A-11, Part 7.)

“Economically disadvantaged women-owned small business (EDWOSB) concern”—(see definition of “Women-Owned Small Business (WOSB) Program” in this section).

“Effective date of termination” means the date on which the notice of termination requires the contractor to stop performance under the contract. If the contractor receives the termination notice after the date fixed for termination, then the effective date of termination means the date the contractor receives the notice.

“Electronic and information technology (EIT)” has the same meaning as “information technology” except EIT also includes any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term EIT, includes, but is not limited to, telecommunication products (such as telephones), information kiosks and transaction machines, worldwide websites, multimedia, and office equipment (such as copiers and fax machines).

“Electronic commerce” means electronic techniques for accomplishing business transactions including electronic mail or messaging, World Wide Web technology, electronic bulletin boards, purchase cards, electronic funds transfer, and electronic data interchange.

“Electronic data interchange (EDI)” means a technique for electronically transferring and storing formatted information between computers utilizing established and published formats and codes, as authorized by the applicable Federal Information Processing Standards.

“Electronic Funds Transfer (EFT)” means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Automated Clearing House transfers, Fedwire transfers, and transfers made at automatic teller machines and point-of-sale terminals. For purposes of compliance with [31 U.S.C. 3332](#) and implementing regulations at 31 CFR Part 208, the term “electronic funds transfer” includes a Governmentwide commercial purchase card transaction.

“Electronic Funds Transfer (EFT) indicator” means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see subpart [32.11](#)) for the same entity.

“End product” means supplies delivered under a line item of a Government contract, except for use in [part 25](#) and the associated clauses at [52.225-1](#), [52.225-3](#), and [52.225-5](#), see the definitions in [25.003](#), [52.225-1\(a\)](#), [52.225-3\(a\)](#), and [52.225-5\(a\)](#).

“Energy-efficient product”— (1) Means a product that—

- (i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

- (ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy’s Federal Energy Management Program.

(2) As used in this definition, the term “product” does not include any energy-consuming product or system designed or procured for combat or combat-related missions ([42 U.S.C. 8259b](#)).

“Energy-efficient standby power devices” means products that use—

- (1) External standby power devices, or that contain an internal standby power function; and

- (2) No more than one watt of electricity in their standby power consuming mode or meet recommended low standby levels as designated by the Department of Energy Federal Energy Management Program.

“Energy-savings performance contract” means a contract that requires the contractor to—

- (1) Perform services for the design, acquisition, financing, installation, testing, operation, and where appropriate, maintenance and repair, of an identified energy conservation measure or series of measures at one or more locations;

- (2) Incur the costs of implementing the energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel in exchange for a predetermined share of the value of the energy savings directly resulting from implementation of such measures during the term of the contract; and

- (3) Guarantee future energy and cost savings to the Government.

“Environmentally preferable” means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

“Excess personal property” means any personal property under the control of a Federal agency that the agency head determines is not required for its needs or for the discharge of its responsibilities.

“Executive agency” means an executive department, a military department, or any independent establishment within the meaning of [5 U.S.C. 101](#), [102](#), and [104\(1\)](#), respectively, and any wholly owned Government corporation within the meaning of [31 U.S.C. 9101](#).

“Facilities capital cost of money” means “cost of money as an element of the cost of facilities capital” as used at 48 CFR 9904.414—Cost Accounting Standard—Cost of Money as an Element of the Cost of Facilities Capital.

“Federal agency” means any executive agency or any independent establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, the Architect of the Capitol, and any activities under the Architect’s direction).

“Federally-controlled facilities” means—

(1) Federally-owned buildings or leased space, whether for single or multi-tenant occupancy, and its grounds and approaches, all or any portion of which is under the jurisdiction, custody or control of a department or agency;

(2) Federally-controlled commercial space shared with non-government tenants. For example, if a department or agency leased the 10th floor of a commercial building, the Directive applies to the 10th floor only;

(3) Government-owned, contractor-operated facilities, including laboratories engaged in national defense research and production activities; and

(4) Facilities under a management and operating contract, such as for the operation, maintenance, or support of a Government-owned or Government-controlled research, development, special production, or testing establishment.

“Federally-controlled information system” means an information system ([44 U.S.C. 3502\(8\)](#)) used or operated by a Federal agency, or a contractor or other organization on behalf of the agency ([44 U.S.C. 3544\(a\)\(1\)\(A\)](#)).

“Federally Funded Research and Development Centers (FFRDC’s)” means activities that are sponsored under a broad charter by a Government agency (or agencies) for the purpose of performing, analyzing, integrating, supporting, and/or managing basic or applied research and/or development, and that receive 70 percent or more of their financial support from the Government; and—

(1) A long-term relationship is contemplated;

(2) Most or all of the facilities are owned or funded by the Government; and

(3) The FFRDC has access to Government and supplier data, employees, and facilities beyond that common in a normal contractual relationship.

“Final indirect cost rate” means the indirect cost rate established and agreed upon by the Government and the contractor as not subject to change. It is usually established after the close of the contractor’s fiscal year (unless the parties decide upon a different period) to which it applies. For cost-reimbursement research and development contracts with educational institutions, it may be predetermined; that is, established for a future period on the basis of cost experience with similar contracts, together with supporting data.

“First article” means a preproduction model, initial production sample, test sample, first lot, pilot lot, or pilot models.

“First article testing” means testing and evaluating the first article for conformance with specified contract requirements before or in the initial stage of production.

“F.o.b.” means free on board. This term is used in conjunction with a physical point to determine—

(1) The responsibility and basis for payment of freight charges; and

(2) Unless otherwise agreed, the point where title for goods passes to the buyer or consignee.

“F.o.b. destination” means free on board at destination; *i.e.*, the seller or consignor delivers the goods on seller’s or consignor’s conveyance at destination. Unless the contract provides otherwise, the seller or consignor is responsible for the cost of shipping and risk of loss. For use in the clause at [52.247-34](#), see the definition at [52.247-34\(a\)](#).

“F.o.b. origin” means free on board at origin; *i.e.*, the seller or consignor places the goods on the conveyance. Unless the contract provides otherwise, the buyer or consignee is responsible for the cost of shipping and risk of loss. For use in the clause at [52.247-29](#), see the definition at [52.247-29\(a\)](#).

“F.o.b.”... (For other types of F.o.b., see [47.303](#)).

“Forward pricing rate agreement” means a written agreement negotiated between a contractor and the Government to make certain rates available during a specified period for use in pricing contracts or modifications. These rates represent reasonable projections of specific costs that are not easily estimated for, identified with, or generated by a specific contract, contract end item, or task. These projections may include rates for such things as labor, indirect costs, material obsolescence and usage, spare parts provisioning, and material handling.

“Forward pricing rate recommendation” means a rate set unilaterally by the administrative contracting officer for use by the Government in negotiations or other contract actions when forward pricing rate agreement negotiations have not been completed or when the contractor will not agree to a forward pricing rate agreement.

cations, 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 Electronic Industries Alliance Standard 748 (EIA-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.* (i) For acquisitions dealing with classified matters, discuss how adequate security will be established, maintained, and monitored (see [subpart 4.4](#)).

(ii) For information technology acquisitions, discuss how agency information security requirements will be met.

(iii) 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](#)).

(iv) For acquisitions that may require Federal contract information to reside in or transit through contractor information systems, discuss compliance with [subpart 4.19](#).

(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 consolidation, bundling, or substantial bundling.****7.107-1 General.**

(a) If the requirement is considered both consolidated and bundled, the agency shall follow the guidance regarding bundling in [7.107-3](#) and [7.107-4](#).

(b) The requirements of this section [7.107](#) do not apply—

(1) If a cost comparison analysis will be performed in accordance with OMB Circular A-76 (except [7.107-4](#) still applies);

(2) To orders placed under single-agency task-order contracts or delivery-order contracts, when the requirement was considered in determining that the consolidation or bundling of the underlying contract was necessary and justified; or

(3) To requirements for which there is a mandatory source (see [8.002](#) or [8.003](#)), including supplies and services that are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Dis-

abled or the Schedule of Products issued by Federal Prison Industries, Inc. This exception does not apply—

(i) When the requiring agency obtains a waiver in accordance with [8.604](#) or an exception in accordance with [8.605](#) or [8.706](#); or

(ii) When optional acquisitions of supplies and services permitted under [8.713](#) are included.

**7.107-2 Consolidation.**

(a) Consolidation may provide substantial benefits to the Government. However, because of the potential impact on small business participation, before conducting an acquisition that is a consolidation of requirements with an estimated total dollar value exceeding \$2 million, the senior procurement executive or chief acquisition officer shall make a written determination that the consolidation is necessary and justified in accordance with [15 U.S.C. 657g](#), after ensuring that—

(1) Market research has been conducted;

(2) Any alternative contracting approaches that would involve a lesser degree of consolidation have been identified;

(3) The determination is coordinated with the agency's Office of Small Disadvantaged Business Utilization or the Office of Small Business Programs;

(4) Any negative impact by the acquisition strategy on contracting with small business concerns has been identified; and

(5) Steps are taken to include small business concerns in the acquisition strategy.

(b) The senior procurement executive or chief acquisition officer may determine that the consolidation is necessary and justified if the benefits of the acquisition would substantially exceed the benefits that would be derived from each of the alternative contracting approaches identified under paragraph (a)(2) of this subsection, including benefits that are quantifiable in dollar amounts as well as any other specifically identified benefits.

(c) Such benefits may include cost savings or price reduction and, regardless of whether quantifiable in dollar amounts—

(1) Quality improvements that will save time or improve or enhance performance or efficiency;

(2) Reduction in acquisition cycle times;

(3) Better terms and conditions; or

(4) Any other benefit.

(d) *Benefits.* (1) Benefits that are quantifiable in dollar amounts are substantial if individually, in combination, or in the aggregate the anticipated financial benefits are equivalent to—

(i) Ten percent of the estimated contract or order value (including options) if the value is \$94 million or less; or

(ii) Five percent of the estimated contract or order value (including options) or \$9.4 million, whichever is greater, if the value exceeds \$94 million.



## Subpart 19.15—Women-Owned Small Business 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; and

(2) May set aside acquisitions exceeding the micro-purchase threshold for competition restricted to EDWOSB concerns or WOSB concerns eligible under the WOSB Program when the acquisition—

(i) Is assigned a NAICS code in which SBA has determined that WOSB concerns are underrepresented in Federal procurement; or

(ii) Is assigned a NAICS code in which SBA has determined that WOSB concerns are 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 Women-Owned Small Business Program sole source awards.

(a) A contracting officer shall consider a contract award to an EDWOSB concern on a sole source basis (see

[6.302-5\(b\)\(7\)](#)) before considering small business set-asides (see [19.203](#) and [subpart 19.5](#)) provided none of the exclusions at [19.1504](#) apply and—

(1) The acquisition is assigned a NAICS code in which SBA has determined that WOSB concerns are underrepresented in Federal procurement;

(2) The contracting officer does not have a reasonable expectation that offers would be received from two or more EDWOSB concerns; and

(3) The conditions in paragraph (c) of this section exist.

(b) A contracting officer shall consider a contract award to a WOSB concern (including EDWOSB concerns) eligible under the WOSB Program on a sole source basis (see [6.302-5\(b\)\(7\)](#)) before considering small business set-asides (see [19.203](#) and [subpart 19.5](#)) provided none of the exclusions at [19.1504](#) apply and—

(1) The acquisition is assigned a NAICS code in which SBA has determined that WOSB concerns are substantially underrepresented in Federal procurement;

(2) The contracting officer does not have a reasonable expectation that offers would be received from two or more WOSB concerns (including EDWOSB concerns); and

(3) The conditions in paragraph (c) of this section exist.

(c)(1) The anticipated award price of the contract, including options, will not exceed—

(i) \$6.5 million for a requirement within the NAICS codes for manufacturing; or

(ii) \$4 million for a requirement within any other NAICS codes.

(2) The EDWOSB concern or WOSB concern has been determined to be a responsible contractor with respect to performance.

(3) The award can be made at a fair and reasonable price.

(d) The SBA has the right to appeal the contracting officer’s decision not to make a sole source award to either an EDWOSB concern or WOSB concern eligible under the WOSB program.

**19.1507 Contract clauses.**

(a) The contracting officer shall insert the clause [52.219-29](#), Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-owned Small Business Concerns, in solicitations and contracts for acquisitions that are set aside or reserved for, or awarded on a sole source basis to, EDWOSB concerns under [19.1505\(b\)](#) or [19.1506\(a\)](#). This includes multiple-award contracts when orders may be set aside for EDWOSB concerns as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#).

(b) The contracting officer shall insert the clause [52.219-30](#), Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program, in solicitations and contracts for acquisitions that are set aside or reserved for, or awarded on a sole source basis to WOSB concerns under [19.1505\(c\)](#) or [19.1506\(b\)](#). This includes multiple-award contracts when orders may be set aside for WOSB concerns eligible under the WOSB Program as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#).

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**PART 34—MAJOR SYSTEM ACQUISITION**

*Sec.*

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- 34.005-3 Concept exploration contracts.
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**Subpart 34.1—Testing, Qualification and Use of Industrial Resources Developed Under Title III, Defense Production Act**

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**34.000 Scope of part.**

This part describes acquisition policies and procedures for use in acquiring major systems consistent with OMB Circular No. A-109; and the use of an Earned Value Management System in acquisitions designated as major acquisitions consistent with OMB Circular A-11, Part 7.

**34.001 Definition.**

“Effective competition,” as used in this part, is a market condition that exists when two or more contractors, acting independently, actively contend for the Government’s business in a manner that ensures that the Government will be offered the lowest cost or price alternative or best technical design meeting its minimum needs.

**34.002 Policy.**

The policies of this part are designed to ensure that agencies acquire major systems in the most effective, economical, and timely manner. Agencies acquiring major systems shall—

(a) Promote innovation and full and open competition as required by [Part 6](#) in the development of major system concepts by—

(1) Expressing agency needs and major system acquisition program objectives in terms of the agency’s mission and not in terms of specified systems to satisfy needs, and

(2) Focusing agency resources and special management attention on activities conducted in the initial stage of major programs; and

(b) Sustain effective competition between alternative system concepts and sources for as long as it is beneficial.

**34.003 Responsibilities.**

(a) As required by A-109, the agency head or designee shall establish written procedures for its implementation.

(b) The agency procedures shall identify the key decision points of each major system acquisition and the agency official(s) for making those decisions.

(c) Systems acquisitions normally designated as major are those programs that, as determined by the agency head, (1) are directed at and critical to fulfilling an agency mission need, (2) entail allocating relatively large resources for the particular agency, and (3) warrant special management attention, including specific agency-head decisions. The agency procedures may establish additional criteria, as specified in A-109, for designating major programs system acquisitions.

**34.004 Acquisition strategy.**

The program manager, as specified in agency procedures, shall develop an acquisition strategy tailored to the particular major system acquisition program. This strategy is the program manager’s overall plan for satisfying the mission need

in the most effective, economical, and timely manner. The strategy shall be in writing and prepared in accordance with the requirements of [Subpart 7.1](#), except where inconsistent with this part, and shall qualify as the acquisition plan for the major system acquisition, as required by that subpart.

**34.005 General requirements.****34.005-1 Competition.**

(a) The program manager shall, throughout the acquisition process, promote full and open competition and sustain effective competition between alternative major system concepts and sources, as long as it is economically beneficial and practicable to do so. Notice of the proposed acquisition shall be given the broadest and most effective circulation practicable throughout the business, academic, and Government communities. Foreign contractors, technology, and equipment may be considered when it is feasible and permissible to do so.

(b) The contracting officer should time solicitation issuance and contract award to maintain continuity of concept development during the transition from with-drawing concept proposer to new contractor.

**34.005-2 Mission-oriented solicitation.**

(a) Before issuing the solicitation, whenever practicable and consistent with agency procedures, the contracting officer should take the actions outlined in paragraphs (a)(1) and (2):

(1) Advance notification of the acquisition should be given the widest practicable dissemination, including publicizing through the Governmentwide point of entry (see [Subpart 5.2](#)) and should be sent to as wide a selection of potential sources as practicable, including smaller and newer firms, Government laboratories, federally funded research and development centers, educational institutions and other not-for-profit organizations, and, if it would be beneficial and is not prohibited, foreign sources.

(2) If appropriate, hold a presolicitation conference (see [15.201](#)) and/or send copies of the proposed solicitation to all prospective offerors for their comments. After evaluation of these comments, the solicitation should be revised, if appropriate.

(b) The contracting officer shall send the final solicitation to all prospective offerors. It shall—

(1) Describe the nature of the need in terms of mission capabilities required, without reference to any specific systems to satisfy the need;

(2) Indicate, and explain when appropriate, the schedule, capability, and cost objectives and any known constraints in the acquisition;

(3) Provide, or indicate how access can be obtained to, all Government data related to the acquisition;

(4) Include selection requirements consistent with the acquisition strategy; and

(5) Clearly state that each offeror is free to propose its own technical approach, main design features, subsystems, and alternatives to schedule, cost, and capability goals.

(6) Require the use of an Earned Value Management System that complies with the guidelines of Electronic Industries Alliance Standard 748 (EIA-748) (current version at time of solicitation). See [34.201](#) for earned value management systems and reporting requirements.

(c) To the extent practicable, the solicitation shall not reference or mandate Government specifications or standards, unless the agency is mandating a subsystem or other component as approved under agency procedure.

### 34.005-3 Concept exploration contracts.

Whenever practicable, contracts to be performed during the concept exploration phase shall be for relatively short periods, at planned dollar levels. These contracts are to refine the proposed concept and to reduce the concept's technical uncertainties. The scope of work for this phase of the program shall be consistent with the Government's planned budget for the phase. Follow-on contracts for such tasks in the exploration phase shall be awarded as long as the concept approach remains promising, the contractor's progress is acceptable, and it is economically practicable to do so.

### 34.005-4 Demonstration contracts.

Whenever practicable, contracts for the demonstration phase should provide for contractors to submit, by the end of the phase, priced proposals, totally funded by the Government, for full-scale development. The contracting officer should provide contractors with operational test conditions, performance criteria, life cycle cost factors, and any other selection criteria necessary for the contractors to prepare their proposals.

### 34.005-5 Full-scale development contracts.

Whenever practicable, the full-scale development contracts should provide for the contractors to submit priced proposals for production that are based on the latest quantity, schedule, and logistics requirements and other considerations that will be used in making the production decision.

### 34.005-6 Full production.

Contracts for full production of successfully tested major systems selected from the full-scale development phase may be awarded if the agency head—

- (a) Reaffirms the mission need and program objectives; and
- (b) Grants approval to proceed with production.

## Subpart 34.1—Testing, Qualification and Use of Industrial Resources Developed Under Title III, Defense Production Act

### 34.100 Scope of subpart.

This subpart prescribes policies and procedures for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under section 301, 302, or 303 of the Defense Production Act ([50 U.S.C. App. 2091-2093](#)). Title III of the Defense Production Act authorizes various forms of Government assistance to encourage expansion of production capacity and supply of industrial resources essential to national defense.

### 34.101 Definitions.

“Item of supply,” as used in this subpart, means any individual part, component, subassembly, assembly, or subsystem integral to a major system, and other property which may be replaced during the service life of the system. The term includes spare parts and replenishment parts, but does not include packaging or labeling associated with shipment or identification of an “item.”

### 34.102 Policy.

It is the policy of the Government, as required by Section 126 of Public Law 102-558, to pay for any testing and qualification required for the use or incorporation of the industrial resources manufactured or developed with assistance provided under Title III of the Defense Production Act of 1950.

### 34.103 Testing and qualification.

(a) Contractors receiving requests from a Title III project contractor for testing and qualification of a Title III industrial resource shall refer such requests to the contracting officer. The contracting officer shall evaluate the request in accordance with agency procedures to determine whether: (1) the Title III industrial resource is being or potentially may be used in the development or manufacture of a major system or item of supply; and (2) for major systems in production, remaining quantities to be acquired are sufficient to justify incurring the cost of testing and qualification. In evaluating this request, the contracting officer shall consult with the Defense Production Act Office, Title III Program, located at:

Wright Patterson Air Force Base  
OH 45433-7739.

(b) If the determination at [34.103\(a\)](#) is affirmative, the contracting officer shall modify the contract to require the contractor to test the Title III industrial resource for qualification.

**Subpart 34.2—Earned Value Management System**

**34.201 Policy.**

(a) An Earned Value Management System (EVMS) is required for major acquisitions for development, in accordance with OMB Circular A-11. The Government may also require an EVMS for other acquisitions, in accordance with agency procedures.

(b) If the offeror proposes to use a system that has not been determined to be in compliance with the Electronic Industries Alliance Standard 748 (EIA-748), Earned Value Management Systems, the offeror shall submit a comprehensive plan for compliance with these EVMS standards. Offerors shall not be eliminated from consideration for contract award because they do not have an EVMS that complies with these standards.

(c) As a minimum, contracting officers shall require contractors to submit EVMS monthly reports for those contracts for which an EVMS applies.

(d) EVMS requirements will be applied to subcontractors using the same rules as applied to the prime contractor.

(e) When an offeror is required to provide an EVMS plan as part of its proposal, the contracting officer will determine the adequacy of the proposed EVMS plan prior to contract award.

**34.202 Integrated Baseline Reviews.**

(a) When an EVMS is required, the Government will conduct an Integrated Baseline Review (IBR).

(b) The purpose of the IBR is to verify the technical content and the realism of the related performance budgets, resources, and schedules. It should provide a mutual understanding of the inherent risks in offerors’/ contractors’ performance plans and the underlying management control systems, and it should formulate a plan to handle these risks.

(c) The IBR is a joint assessment by the offeror or contractor, and the Government, of the—

(1) Ability of the project’s technical plan to achieve the objectives of the scope of work;

(2) Adequacy of the time allocated for performing the defined tasks to successfully achieve the project schedule objectives;

(3) Ability of the Performance Measurement Baseline (PMB) to successfully execute the project and attain cost objectives, recognizing the relationship between budget resources, funding, schedule, and scope of work;

(4) Availability of personnel, facilities, and equipment when required, to perform the defined tasks needed to execute the program successfully; and

(5) The degree to which the management process provides effective and integrated technical/schedule/cost planning and baseline control.

(d) The timing and conduct of the IBR shall be in accordance with agency procedures. If a pre-award IBR will be conducted, the solicitation must include the procedures for conducting the IBR and address whether offerors will be reimbursed for the associated costs. If permitted, reimbursement of offerors’ pre-award IBR costs is governed by the provisions of FAR [Part 31](#).

**34.203 Solicitation provisions and contract clause.**

(a) The contracting officer shall insert a provision that is substantially the same as the provision at FAR [52.234-2](#), Notice of Earned Value Management System-Preaward Integrated Baseline Review, in solicitations for contracts that require the contractor to use an Earned Value Management System (EVMS) and for which the Government requires an Integrated Baseline Review (IBR) prior to award.

(b) The contracting officer shall insert a provision that is substantially the same as the provision at [52.234-3](#), Notice of Earned Value Management System-Postaward Integrated Baseline Review, in solicitations for contracts that require the contractor to use an Earned Value Management System (EVMS) and for which the Government requires an Integrated Baseline Review (IBR) after contract award.

(c) The contracting officer shall insert a clause that is substantially the same as the clause at FAR [52.234-4](#), Earned Value Management System, in solicitations and contracts that require a contractor to use an EVMS.

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**PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

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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.

(8) The OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix III, provides additional guidance on how long predetermined rates may be used.

#### **42.705-4 State and local governments.**

The OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix V, concerning cost principles for state and local governments (see Subpart [31.6](#)) establishes the cognizant agency concept and the 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 and approved by the cognizant agency for indirect costs 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 the OMB Uniform Guidance at 2 CFR part 200, subpart E and appendix IV; but see appendix VIII for nonprofit organizations exempt from subpart E.)

#### **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 Penalties for unallowable costs.

##### 42.709-0 Scope.

(a) This section implements [10 U.S.C. 2324\(a\)](#) through (d) and [41 U.S.C. 4303](#). 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 \$750,000, 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 con-

tractor'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 conference, indicating that audit work on a specific final indirect cost proposal has begun);

(b) The amount of the unallowable costs under the proposal which are subject to the penalty is \$10,000 or less (*i.e.*, if the amount of expressly or previously determined unallowable costs which would be allocated to the contracts specified in [42.709-0](#)(b) is \$10,000 or less); or

(c) The contractor demonstrates, to the cognizant contracting officer's satisfaction, that—

(1) It has established policies and personnel training and an internal control and review system that provide assurance that unallowable costs subject to penalties are precluded from being included in the contractor's final indirect cost rate proposals (*e.g.*, the types of controls required for satisfactory participation in the Department of Defense sponsored self-governance programs, specific accounting controls over indirect costs, compliance tests which demonstrate that the controls are effective, and Government audits which have not disclosed recurring instances of expressly unallowable costs); and

(2) The unallowable costs subject to the penalty were inadvertently incorporated into the proposal; *i.e.*, their inclusion resulted from an unintentional error, notwithstanding the exercise of due care.

#### **42.709-6 Contract clause.**

Use the clause at [52.242-3](#), Penalties for Unallowable Costs, in all solicitations and contracts over \$750,000 except fixed-price contracts without cost incentives or any firm-fixed-price contract for the purchase of commercial items. Generally, covered contracts are those which contain one of the clauses at [52.216-7](#), [52.216-16](#), or [52.216-17](#), or a similar clause from an executive agency's supplement to the FAR.

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# FAC 2005–92 NOVEMBER 18, 2016

## FEDERAL ACQUISITION REGULATION

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- 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]
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- 52.247-38 F.o.b. Inland Carrier, Point of Exportation.
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- 52.247-41 C.& f. Destination.
- 52.247-42 C.i.f. Destination.
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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-Preaward Integrated Baseline Review.**

As prescribed in [34.203](#)(a) use the following provision:

NOTICE OF EARNED VALUE MANAGEMENT SYSTEM-  
PREAWARD INTEGRATED BASELINE REVIEW (NOV 2016)

(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 Electronic Industries Alliance Standard 748 (EIA-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 EIA-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-Postaward Integrated Baseline Review.**

As prescribed in [34.203](#)(b) use the following provision:

NOTICE OF EARNED VALUE MANAGEMENT SYSTEM-  
POSTAWARD INTEGRATED BASELINE REVIEW  
(NOV 2016)

(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 Electronic Industries Alliance Standard 748 (EIA-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 EIA-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 (NOV 2016)

(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 Electronic Industries Alliance Standard 748 (EIA-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 EIA-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,*



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			
<a href="#">52.232-10</a> Payments under Fixed-Price Architect-Engineer Contracts.	<a href="#">32.111(c)(1)</a>	C	Yes															A								
<a href="#">52.232-11</a> Extras.	<a href="#">32.111(c)(2)</a>	C	Yes	I	A				A						A						A	A	A			
<a href="#">52.232-12</a> Advance Payments.	<a href="#">32.412(a)</a>	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	<a href="#">32.412(b)</a>	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	<a href="#">32.412(c)</a>	C	No	I		A		A		A		A		A	A		A	A	A	A	A		A			
Alternate III	<a href="#">32.412(d)</a>	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate IV	<a href="#">32.412(e)</a>	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate V	<a href="#">32.412(f)</a>	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.232-13</a> Notice of Progress Payments.	<a href="#">32.502-3(a)</a>	P	Yes	L	A		A		A						A	A		A	A	A	A					
<a href="#">52.232-14</a> Notice of Availability of Progress Payments Exclusively for Small Business Concerns.	<a href="#">32.502-3(b)(2)</a>	P	Yes	L	A		A		A		A				A	A			A	A	A					
<a href="#">52.232-15</a> Progress Payments Not Included.	<a href="#">32.502-3(c)</a>	P	Yes	M	A		A		A					A	A			A	A	A						
<a href="#">52.232-16</a> Progress Payments.	<a href="#">32.502-4(a)</a>	C	Yes	I	A		A		A		A	A		A	A			A	A	A	A					
Alternate I	<a href="#">32.502-4(b)</a>	C	Yes	I	A		A		A		A	A		A	A			A	A	A	A					
Alternate II (See Note 1.)	<a href="#">32.502-4(c)</a>	C	Yes	I																						
Alternate III	<a href="#">32.502-4(d)</a>	C	Yes	I																	A					
<a href="#">52.232-17</a> Interest.	<a href="#">32.611(a)</a> and <a href="#">(b)</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A		
<a href="#">52.232-18</a> Availability of Funds.	<a href="#">32.706-1(a)</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.232-19</a> Availability of Funds for the Next Fiscal Year.	<a href="#">32.706-1(b)</a>	C	No	I					A	A											A				A	
<a href="#">52.232-20</a> Limitation of Cost.	<a href="#">32.706-2(a)</a>	C	Yes	I		A		A		A					A	A	A		A	A	A				A	
<a href="#">52.232-22</a> Limitation of Funds.	<a href="#">32.706-2(b)</a>	C	Yes	I		A		A		A					A	A	A		A	A	A					
<a href="#">52.232-23</a> Assignment of Claims.	<a href="#">32.806(a)(1)</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	<a href="#">32.806(a)(2)</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.232-24</a> Prohibition of Assignment of Claims.	<a href="#">32.806(b)</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.232-25</a> Prompt Payment.	<a href="#">32.908(c)</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	<a href="#">32.908(c)(3)</a>	C	Yes	I				A		A				A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.232-26</a> Prompt Payment for Fixed-Price Architect-Engineer Contracts.	<a href="#">32.908(a)</a>	C	Yes	I																						
<a href="#">52.232-27</a> Prompt Payment for Construction Contracts.	<a href="#">32.908(b)</a>	C	Yes	I								R	R													
<a href="#">52.232-28</a> Invitation to Propose Performance-Based Payments.	<a href="#">32.1005(b)(1)</a>	P	No	L	A		A		A		A							A	A	A	A	A		A		
Alternate I	<a href="#">32.1005(b)(2)</a>	P	No	L	A		A		A		A							A	A	A	A	A		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	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
<a href="#">52.232-29</a> Terms for Financing of Purchases of Commercial Items.	<a href="#">32.206(b)(2)</a>	C	No	I	A				A														A
<a href="#">52.232-30</a> Installment Payments for Commercial Items.	<a href="#">32.206(g)</a>	C	Yes	I	A				A														A
<a href="#">52.232-31</a> Invitation to Propose Financing Terms.	<a href="#">32.205(b)</a> <a href="#">32.206</a>	P	No	L	A				A														
<a href="#">52.232-32</a> Performance-Based Payments.	<a href="#">32.1005</a>	C	No	I	A				A														
<a href="#">52.232-33</a> Payment by Electronic Funds Transfer—System for Award Management.	<a href="#">32.1110(a)(1)</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.232-34</a> Payment by Electronic Funds Transfer—Other than System for Award Management.	<a href="#">32.1110(a)(2)</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.232-35</a> Designation of Office for Government Receipt of Electronic Funds Transfer Information.	<a href="#">32.1110(c)</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.232-36</a> Payment by Third Party.	<a href="#">32.1110(d)</a> and <a href="#">(e)(3)</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.232-37</a> Multiple Payment Arrangements.	<a href="#">32.1110(e)</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.232-38</a> Submission of Electronic Funds Transfer Information with Offer.	<a href="#">32.1110(g)</a>	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.232-39</a> Unenforceability of Unauthorized Obligations.	<a href="#">32.706-3</a>	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	
<a href="#">52.232-40</a> Providing Accelerated Payments to Small Business Subcontractors	<a href="#">32.009-2</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.233-1</a> Disputes.	<a href="#">33.215</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	<a href="#">33.215</a>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
<a href="#">52.233-2</a> Service of Protest.	<a href="#">33.106(a)</a>	P	No	L	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	
<a href="#">52.233-3</a> Protest after Award.	<a href="#">33.106(b)</a>	C	Yes	I	R		R		R		R		R	R	A	R	A	A	R	A	R	R	
Alternate I	<a href="#">33.106(b)</a>	C	Yes	I		R		R		R		R		A		A	A		A		A		
<a href="#">52.233-4</a> Applicable Law for Breach of Contract Claim.	<a href="#">33.215(b)</a>	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
<a href="#">52.234-1</a> Industrial Resources Developed Under Title III, Defense Production.	<a href="#">34.104</a>	C	N	I	A	A	A	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	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC
<a href="#">52.234-2</a> Notice of Earned Value Management System-Preaward Integrated Baseline Review.✓	<a href="#">34.203(a)</a>	P	N	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.234-3</a> Notice of Earned Value Management System - Postaward Integrated Baseline Review.✓	<a href="#">34.203(b)</a>	P	N	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.234-4</a> Earned Value Management System.	<a href="#">34.203(c)</a>	C	Y	H	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.236-1</a> Performance of Work by the Contractor.	<a href="#">36.501(b)</a>	C	Yes							A												
<a href="#">52.236-2</a> Differing Site Conditions.	<a href="#">36.502</a>	C	Yes							A					A						O	
<a href="#">52.236-3</a> Site Investigation and Conditions Affecting the Work.	<a href="#">36.503</a>	C	Yes							A					A						O	
<a href="#">52.236-4</a> Physical Data.	<a href="#">36.504</a>	C	No							A											A	
<a href="#">52.236-5</a> Material and Workmanship.	<a href="#">36.505</a>	C	Yes							R	R										A	
<a href="#">52.236-6</a> Superintendence by the Contractor.	<a href="#">36.506</a>	C	Yes							A					A						O	
<a href="#">52.236-7</a> Permits and Responsibilities.	<a href="#">36.507</a>	C	Yes							R	R				A						A	
<a href="#">52.236-8</a> Other Contracts.	<a href="#">36.508</a>	C	Yes							A					A						O	
<a href="#">52.236-9</a> Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.	<a href="#">36.509</a>	C	Yes							A					A						O	
<a href="#">52.236-10</a> Operations and Storage Areas.	<a href="#">36.510</a>	C	Yes							A					A						O	
<a href="#">52.236-11</a> Use and Possession Prior to Completion.	<a href="#">36.511</a>	C	Yes							A											O	
<a href="#">52.236-12</a> Cleaning Up.	<a href="#">36.512</a>	C	Yes							A					A						O	
<a href="#">52.236-13</a> Accident Prevention.	<a href="#">36.513</a>	C	Yes							A					A						O	
Alternate I	<a href="#">36.513</a>	C	Yes							A					A						O	
<a href="#">52.236-14</a> Availability and Use of Utility Services.	<a href="#">36.514</a>	C	Yes							A					A						A	
<a href="#">52.236-15</a> Schedules for Construction Contracts.	<a href="#">36.515</a>	C	Yes								O											
<a href="#">52.236-16</a> Quantity Surveys.	<a href="#">36.516</a>	C	Yes								O										O	
Alternate I	<a href="#">36.516</a>	C	Yes								O											
<a href="#">52.236-17</a> Layout of Work.	<a href="#">36.517</a>	C	Yes								A										A	
<a href="#">52.236-18</a> Work Oversight in Cost-Reimbursement Construction Contracts.	<a href="#">36.518</a>	C	Yes									R										
<a href="#">52.236-19</a> Organization and Direction of the Work.	<a href="#">36.519</a>	C	Yes										R									

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		
<a href="#">52.236-21</a> Specifications and Drawings for Construction.	<a href="#">36.521</a>	C	Yes									A						A					O		
Alternate I	<a href="#">36.521</a>	C	Yes									A						A					O		
Alternate II	<a href="#">36.521</a>	C	Yes									A						A					O		
<a href="#">52.236-22</a> Design Within Funding Limitations.	<a href="#">36.609-1(c)</a>	C	Yes															A					O		
<a href="#">52.236-23</a> Responsibility of the Architect-Engineer Contractor.	<a href="#">36.609-2(b)</a>	C	Yes															A							
<a href="#">52.236-24</a> Work Oversight in Architect-Engineer Contracts.	<a href="#">36.609-3</a>	C	Yes															A							
<a href="#">52.236-25</a> Requirements for Registration of Designers.	<a href="#">36.609-4</a>	C	Yes															A							
<a href="#">52.236-26</a> Preconstruction Conference.	<a href="#">36.522</a>	C	Yes	I								A						A							
<a href="#">52.236-27</a> Site Visit (Construction).	<a href="#">36.523</a>	P	Yes	L								A						A							
Alternate I	<a href="#">36.523</a>	P	Yes	L								A						A							
<a href="#">52.236-28</a> Preparation of Proposals—Construction.	<a href="#">36.520</a>	P	Yes	K								R	R												
<a href="#">52.237-1</a> Site Visit.	<a href="#">37.110(a)</a>	P	Yes	L			A	A	A	A				A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.237-2</a> Protection of Government Buildings, Equipment, and Vegetation.	<a href="#">37.110(b)</a>	C	Yes	I			A	A	A	A				A	A	A	A	A	A	A	A	A	A	A	A
<a href="#">52.237-3</a> Continuity of Services.	<a href="#">37.110(c)</a>	C	Yes	I					O	O													O		
<a href="#">52.237-4</a> Payment by Government to Contractor.	<a href="#">37.304(a)</a>	C	Yes	I														A						A	
Alternate I	<a href="#">37.304(a)</a>	C	Yes	I														A						A	
<a href="#">52.237-5</a> Payment by Contractor to Government.	<a href="#">37.304(b)</a>	C	Yes	I														A						A	
<a href="#">52.237-6</a> Incremental Payment by Contractor to Government.	<a href="#">37.304(c)</a>	C	Yes	I														A						A	
<a href="#">52.237-7</a> Indemnification and Medical Liability Insurance.	<a href="#">37.403</a>	C	Yes	I					A	A				A							A			O	
<a href="#">52.237-8</a> Restriction on Severance Payments to Foreign Nationals.	<a href="#">37.113-2(a)</a>	P	Yes	K		A		A		A				A	A	A	A	A	A		A	A			
<a href="#">52.237-9</a> Waiver of Limitation on Severance Payments to Foreign Nationals.	<a href="#">37.113-2(b)</a>	C	Yes	I		A		A		A				A	A	A	A	A	A		A	A			
<a href="#">52.237-10</a> Identification of Uncompensated Overtime.	<a href="#">37.115-3</a>	P	Yes	L					A	A				A											
<a href="#">52.237-11</a> Accepting and Dispensing of \$1 Coin.	<a href="#">37.116-2</a>	C	Yes	I	A	A				A	A			A						A	A			A	A