

FEDERAL ACQUISITION CIRCULAR

March 19, 2010

Number 2005-39

Federal Acquisition Circular (FAC) 2005-39 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 2005-39 is effective March 19, 2010, except for Items III, IV, and VI which are effective April 19, 2010.

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FAC 2005-39 LIST OF SUBJECTS

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FAC 2005-39 SUMMARY OF ITEMS

Federal Acquisition Circular (FAC) 2005-39 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Extend Use of Simplified Acquisition Procedures for Certain Commercial Items (FAR Case 2009-035)

This final rule amends the FAR to implement section 816 of the National Defense Authorization Act for Fiscal Year 2010. The rule extends for two more years the commercial items test program in subpart 13.5. The program was to expire January 1, 2010.

Replacement pages: 13.5-1 and 13.5-2.

Item II—Clarification of Submission of Cost or Pricing Data on Non-Commercial Modifications of Commercial Items (FAR Case 2008-012)

This final rule adopts, with minor changes, the interim rule published in the Federal Register at 74 FR 11826 on March 19, 2009. The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are issuing a final rule amending the FAR to harmonize the thresholds for cost or pricing data on non-commercial modifications of commercial items to reflect the Truth In Negotiation Act (TINA) threshold for cost and pricing data.

The Councils are hereby implementing a requirement of the National Defense Authorization Act (NDAA) for FY 2008. Specifically, section 814 of the NDAA requires the harmonization of the threshold for cost or pricing data on non-commercial modifications of commercial items with the TINA threshold for cost and pricing data. By linking the threshold for cost or pricing data on non-commercial modifications of commercial items with the TINA threshold at FAR 15.403-4, whenever the TINA threshold is adjusted the threshold for cost or pricing data on non-commercial modifications of commercial items will be automatically adjusted as well.

Replacement pages: 15.4-1 and 15.4-2.

**Item III—Use of Standard Form 26 - Award/Contract
(FAR Case 2008-040)**

This final rule modifies the instructions for use of the Standard Form 26, Award/Contract, at FAR subparts 15.5 and 53.2 to clarify that block 18 of the form should not be used to award a negotiated procurement. No change is made to existing policy or procedures.

Replacement pages: 15.5-3 and 15.5-4; and 53.2-1 and 53.2-2.

**Item IV—Enhanced Competition for Task and Delivery Order
Contracts—Section 843 of the Fiscal Year 2008 National Defense
Authorization Act (FAR Case 2008-006)**

This final rule adopts, with changes, the interim rule published in the Federal Register at 73 FR 54008 on September 17, 2008. The FAR subpart 16.5 is amended to implement section 843 of the Fiscal Year 2008 National Defense Authorization Act (Pub. L. 110-181). The provisions of section 843 include (1) Limitation on single award task- or delivery-order contracts greater than \$100 million; (2) Enhanced competition for task and delivery orders in excess of \$5 million; and (3) Protest on orders on the grounds that the order increases the scope, period, maximum value of the contract under which the order is issued; or valued in excess of \$10 million. Several changes are made to the FAR as result of public comments on the interim rule. FAR 16.503 is amended to clarify that a requirements contract is awarded to one contractor. FAR 16.504(c)(1)(ii)(D)(3)(ii) is amended to clarify that the head of the agency determination to award a single-source architect-engineer task- or delivery-order contract over \$100 million is not required. The Councils also revised FAR 16.504(c)(1)(ii)(D)(3) to read that the requirement for a determination for a single award contract greater than \$100 million is in addition to any applicable requirements of FAR subpart 6.3. This change is made to clarify that the determination for a single award task- or delivery-order contract greater than \$100 million is required in addition to the Justification and Approval (J&A) required by FAR subpart 6.3 when a procurement will be conducted as other than full and open competition.

Replacement pages: 16.5-1 thru 16.5-4.

**Item V—Trade Agreements—Costa Rica, Oman, and Peru
(FAR Case 2008-036)**

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have adopted as final, without change, an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Dominican Republic—Central America—United States Free Trade Agreement with respect to Costa Rica, the United States-Oman Free Trade Agreement, and the United States-Peru Trade Promotion Agreement.

This final rule allows contracting officers to purchase the goods and services of Costa Rica, Oman, and Peru without application of the Buy American Act if the acquisition is subject to the applicable trade agreements. The threshold for supplies and services is \$67,826 for the CAFTA-DR (Costa Rica) and \$194,000 for the Oman and Peru free trade agreements (FTAs). The threshold for construction is \$7,443,000 for the CAFTA-DR and the Peru FTA and \$8,817,449 for the Oman FTA. This rule converts the interim rule to a final rule without change.

Replacement pages: None.

Item VI—Payments Under Fixed-Price Architecture and Engineering Contracts (FAR Case 2008-015)

This rule amends the clause at FAR 52.232-10 Payments Under Fixed-Price Architect-Engineer Contracts, to revise and clarify the retainage requirements. The contracting officer can withhold up to 10 percent of the payment due in any billing period when the contracting officer determines that such a withholding is necessary to protect the Government's interest and ensure satisfactory completion of the contract. However, withholding the entire 10 percent is not required, and no withholding is required if the contractor's performance has been satisfactory. The changes clarify that retainage is optional and any amounts retained should not be held over beyond the satisfactory completion of the instant contract.

Replacement pages: 52.2-201 and 52.2-202.

Item VII—Technical Amendment

Editorial change made at FAR 14.202-4(a)(3).

Replacement pages: 14.2-5 and 14.2-6.

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FAC 2005-39 FILING INSTRUCTIONS

NOTE: The FAR is segmented by subparts. The FAR page numbers reflect FAR subparts. For example, "13.5-1" is page one of subpart 13.5.

Remove Pages

13.5-1 and 13.5-2

14.2-5 and 14.2-6

15.4-1 and 15.4-2

Insert Pages

13.5-1 and 13.5-2

14.2-5 and 14.2-6

15.4-1 and 15.4-2

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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 \$5.5 million (\$11 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. 253\(g\)](#) and 253a and 253b).

(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, 2012. 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. 428a](#), the simplified acquisition procedures authorized by this test program may be used for acquisitions that do not exceed \$11 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; and

(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 (section 4202 of the Clinger-Cohen Act of 1996) or the authority of the Services Acquisition Reform Act of 2003 ([41 U.S.C. 428a](#)).

(2) Justifications and approvals are required under this subpart only for sole source (including brand name) acquisitions.

(i) For a proposed contract exceeding \$100,000, but not exceeding \$550,000, 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 \$550,000, but not exceeding \$11.5 million, the competition advocate 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 \$11.5 million but not exceeding \$57 million or, for DoD, NASA, and the Coast Guard, not exceeding \$78.5 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 \$57 million or, for DoD, NASA, and the Coast Guard, \$78.5 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.

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(3) Bid samples may be examined for any required characteristic, whether or not such characteristic is adequately described in the specification, if listed in accordance with paragraph (d)(1)(ii) of this section.

(4) Bids will be rejected as nonresponsive if the sample fails to conform to each of the characteristics listed in the invitation.

(b) *When to use.* The use of bid samples would be appropriate for products that must be suitable from the standpoint of balance, facility of use, general “feel,” color, pattern, or other characteristics that cannot be described adequately in the specification. However, when more than a minor portion of the characteristics of the product cannot be adequately described in the specification, products should be acquired by two-step sealed bidding or negotiation, as appropriate.

(c) *Justification.* The reasons why acceptable products cannot be acquired without the submission of bid samples shall be set forth in the contract file, except where the submission is required by the formal specifications (Federal, Military, or other) applicable to the acquisition.

(d) *Requirements for samples in invitations for bids.*
(1) Invitations for bids shall—

(i) State the number and, if appropriate, the size of the samples to be submitted and otherwise fully describe the samples required; and

(ii) List all the characteristics for which the samples will be examined.

(2) If bid samples are required, see [14.201-6\(o\)](#).

(e) *Waiver of requirement for bid samples.* (1) The requirement for furnishing bid samples may be waived when a bidder offers a product previously or currently being contracted for or tested by the Government and found to comply with specification requirements conforming in every material respect with those in the current invitation for bids. When the requirement may be waived, see [14.201-6\(o\)\(2\)](#).

(2) Where samples required by a Federal, Military, or other formal specification are not considered necessary and a waiver of the sample requirements of the specification has been authorized, a statement shall be included in the invitation that notwithstanding the requirements of the specification, samples will not be required.

(f) *Unsolicited samples.* Bid samples furnished with a bid that are not required by the invitation generally will not be considered as qualifying the bid and will be disregarded. However, the bid sample will not be disregarded if it is clear from the bid or accompanying papers that the bidder’s intention was to qualify the bid. (See [14.404-2\(d\)](#) if the qualification does not conform to the solicitation.)

(g) *Handling bid samples.* (1) Samples that are not destroyed in testing shall be returned to bidders at their request and expense, unless otherwise specified in the invitation.

(2) Disposition instructions shall be requested from bidders and samples disposed of accordingly.

(3) Samples ordinarily will be returned collect to the address from which received if disposition instructions are not received within 30 days. Small items may be returned by mail, postage prepaid.

(4) Samples that are to be retained for inspection purposes in connection with deliveries shall be transmitted to the inspecting activity concerned, with instructions to retain the sample until completion of the contract or until disposition instructions are furnished.

(5) Where samples are consumed or their usefulness is impaired by tests, they will be disposed of as scrap unless the bidder requests their return.

14.202-5 Descriptive literature.

(a) *Policy.* Contracting officers must not require bidders to furnish descriptive literature unless it is needed before award to determine whether the products offered meet the specification and to establish exactly what the bidder proposes to furnish.

(b) *Justification.* The contracting officer must document in the contract file the reasons why product acceptability cannot be determined without the submission of descriptive literature, except when the contract specifications require submission.

(c) *Requirements of invitation for bids.* (1) The invitation must clearly state—

(i) What descriptive literature the bidders must furnish;

(ii) The purpose for requiring the literature;

(iii) The extent of its consideration in the evaluation of bids; and

(iv) The rules that will apply if a bidder fails to furnish the literature before bid opening or if the literature provided does not comply with the requirements of the invitation.

(2) If bidders must furnish descriptive literature, see [14.201-6\(p\)](#).

(d) *Waiver of requirement for descriptive literature.*
(1) The contracting officer may waive the requirement for descriptive literature if—

(i) The bidder states in the bid that the product being offered is the same as a product previously or currently being furnished to the contracting activity; and

(ii) The contracting officer determines that the product offered by the bidder complies with the specification requirements of the current invitation for bids. When the contracting officer waives the requirement, see [14.201-6\(p\)\(2\)](#).

(2) When descriptive literature is not necessary and a waiver of literature requirements of a specification has been authorized, the contracting officer must include a statement in the invitation that, despite the requirements of the specifications, descriptive literature will not be required.

(3) If the solicitation provides for a waiver, a bidder may submit a bid on the basis of either the descriptive literature fur-

nished with the bid or a previously furnished product. If the bid is submitted on one basis, the bidder may not have it considered on the other basis after bids are opened.

(e) *Unsolicited descriptive literature.* If descriptive literature is furnished when it is not required by the invitation for bids, the procedures set forth in [14.202-4\(f\)](#) must be followed.

14.202-6 Final review of invitations for bids.

Each invitation for bids shall be thoroughly reviewed before issuance to detect and correct discrepancies or ambiguities that could limit competition or result in the receipt of nonresponsive bids. Contracting officers are responsible for the reviews.

14.202-7 Facsimile bids.

(a) Unless prohibited or otherwise restricted by agency procedures, contracting officers may authorize facsimile bids (see [14.201-6\(v\)](#)). In determining whether or not to authorize facsimile bids, the contracting officer shall consider factors such as—

- (1) Anticipated bid size and volume;
- (2) Urgency of the requirement;
- (3) Frequency of price changes;
- (4) Availability, reliability, speed, and capacity of the receiving facsimile equipment; and
- (5) Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding facsimile bids, and ensuring their timely delivery to the bids opening location.

(b) If facsimile bids are authorized, contracting officers may, after the date set for bid opening, request the apparently successful offeror to provide the complete, original signed bid.

14.202-8 Electronic bids.

In accordance with [Subpart 4.5](#), contracting officers may authorize use of electronic commerce for submission of bids. If electronic bids are authorized, the solicitation shall specify the electronic commerce method(s) that bidders may use.

14.203 Methods of soliciting bids.

14.203-1 Transmittal to prospective bidders.

Invitations for bids or presolicitation notices must be provided in accordance with [5.102](#). When a contracting office is located in the United States, any solicitation sent to a prospective bidder located outside the United States shall be sent by electronic data interchange or air mail if security classification permits.

14.203-2 Dissemination of information concerning invitations for bids.

Procedures concerning display of invitations for bids in a public place, information releases to newspapers and trade journals, paid advertisements, and synopsis through the Governmentwide point of entry (GPE) are set forth in [5.101](#) and [Subpart 5.2](#).

14.203-3 Master solicitation.

The master solicitation is provided to potential sources who are requested to retain it for continued and repetitive use. Individual solicitations must reference the date of the current master solicitation and identify any changes. The contracting officer must—

- (a) Make available copies of the master solicitation on request; and
- (b) Provide the cognizant contract administration activity a current copy of the master solicitation.

14.204 Records of invitations for bids and records of bids.

(a) Each contracting office shall retain a record of each invitation that it issues and each abstract or record of bids. Contracting officers shall review and utilize the information available in connection with subsequent acquisitions of the same or similar items.

(b) The file for each invitation shall show the distribution that was made and the date the invitation was issued. The names and addresses of prospective bidders who requested the invitation and were not included on the original solicitation list shall be added to the list and made a part of the record.

14.205 Presolicitation notices.

In lieu of initially forwarding complete bid sets, the contracting officer may send presolicitation notices to concerns. The notice shall—

- (a) Specify the final date for receipt of requests for a complete bid set;
- (b) Briefly describe the requirement and furnish other essential information to enable concerns to determine whether they have an interest in the invitation; and

(c) Normally not include drawings, plans, and specifications. The return date of the notice must be sufficiently in advance of the mailing date of the invitation for bids to permit an accurate estimate of the number of bid sets required. Bid sets shall be sent to concerns that request them in response to the notice.

14.206 [Reserved]

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. 254b\(h\)\(2\)](#)).

15.402 Pricing policy.

Contracting officers must—

(a) Purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer must not obtain more information than is necessary. To the extent that cost or pricing data are not required by [15.403-4](#), the contracting officer must generally use the following order of preference in determining the type of information required:

(1) No additional information from the offeror, if the price is based on adequate price competition, except as provided by [15.403-3\(b\)](#).

(2) Information other than cost or pricing data:

(i) Information related to prices (e.g., established catalog or market prices or previous contract prices), relying first on information available within the Government; second, on information obtained from sources other than the offeror; and, if necessary, on information obtained from the offeror. When obtaining information from the offeror is necessary, unless an exception under [15.403-1\(b\)\(1\)](#) or (2) applies, such information submitted by the offeror shall include, at a minimum, appropriate information on the prices at which the same or similar items have been sold previously, adequate for evaluating the reasonableness of the price.

(ii) Cost information, that does not meet the definition of cost or pricing data at [2.101](#).

(3) *Cost or pricing data.* The contracting officer should use every means available to ascertain whether a fair and reasonable price can be determined before requesting cost or pricing data. Contracting officers must not require unnecessarily the submission of cost or pricing data, because it leads to increased proposal preparation costs, generally extends acquisition lead time, and consumes additional contractor and Government resources.

(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 cost or pricing data.

15.403-1 Prohibition on obtaining cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(a) Cost or pricing data shall not be obtained for acquisitions at or below the simplified acquisition threshold.

(b) *Exceptions to cost or pricing data requirements.* The contracting officer shall not require submission of cost or pricing data to support any action (contracts, subcontracts, or modifications) (but may require information other than cost or pricing data to support a determination of price reasonableness 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 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, is reasonable, and is 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 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 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, the contracting officer must require submission of cost or pricing data.

(ii) In accordance with section 868 of Pub. L. 110-417:

(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. 254b](#) 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 cost or pricing data.

(B) For acquisitions funded by DoD, NASA, or the Coast Guard, such modifications of a commercial item are exempt from the requirement for submission of 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 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 the Coast Guard, such modifications of a commercial item are not exempt from the requirement for submission of cost or pricing data on the basis of the exemption provided for at FAR [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 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 \$16 million, is exempt from the requirements for cost or pricing data ([41 U.S.C. 428a](#)).

(4) *Waivers.* The head of the contracting activity (HCA) may, without power of delegation, waive the requirement for submission of 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 cost or pricing data. For example, if cost or pricing data were furnished on previous production buys and the contracting officer determines such data are sufficient, when combined with updated information, a waiver may be granted. If the HCA has waived the requirement for submission of cost or pricing data, the contractor or higher-tier subcontractor to whom the waiver relates shall be considered as having been required to provide cost or pricing data. Consequently, award of any lower-tier subcontract expected to exceed the cost or pricing data threshold requires the submission of 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.

FAC 2005-39 FILING INSTRUCTIONS

NOTE: The following pages reflect FAR final rule amendments. Please do not file until their effective date of April 19, 2010.

Remove Pages

15.5-3 and 15.5-4

16.5-1 thru 16.5-4

52.2-201 and 52.2-202

53.2-1 and 53.2-2

Insert Pages

15.5-3 and 15.5-4

16.5-1 thru 16.5-4

52.2-201 and 52.2-202

53.2-1 and 53.2-2

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tion, applicable regulations, and other applicable authorities were followed.

(e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing shall not reveal any information prohibited from disclosure by [24.202](#) or exempt from release under the Freedom of Information Act ([5 U.S.C. 552](#)) including—

- (1) Trade secrets;
- (2) Privileged or confidential manufacturing processes and techniques;
- (3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and
- (4) The names of individuals providing reference information about an offeror's past performance.

(f) An official summary of the debriefing shall be included in the contract file.

15.507 Protests against award.

(a) Protests against award in negotiated acquisitions shall be handled in accordance with [Part 33](#). Use of agency protest procedures that incorporate the alternative dispute resolution provisions of Executive Order 12979 is encouraged for both preaward and postaward protests.

(b) If a protest causes the agency, within 1 year of contract award, to—

(1) Issue a new solicitation on the protested contract award, the contracting officer shall provide the information in

paragraph (c) of this section to all prospective offerors for the new solicitation; or

(2) Issue a new request for revised proposals on the protested contract award, the contracting officer shall provide the information in paragraph (c) of this section to offerors that were in the competitive range and are requested to submit revised proposals.

(c) The following information will be provided to appropriate parties:

(1) Information provided to unsuccessful offerors in any debriefings conducted on the original award regarding the successful offeror's proposal; and

(2) Other nonproprietary information that would have been provided to the original offerors.

15.508 Discovery of mistakes.

Mistakes in a contractor's proposal that are disclosed after award shall be processed substantially in accordance with the procedures for mistakes in bids at [14.407-4](#).

15.509 Forms.

[Optional Form 307](#), Contract Award, [Standard Form \(SF\) 26](#), Award/Contract, or [SF 33](#), Solicitation, Offer and Award, may be used to award negotiated contracts in which the signature of both parties on a single document is appropriate. Note however, if using the [SF 26](#) for a negotiated procurement, block 18 is not to be used. If these forms are not used, the award document shall incorporate the agreement and award language from the [OF 307](#).

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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 section 303K of the Federal Property and Administrative Services Act of 1949, 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 \$100 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 \$11.5 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\(b\)\(6\)](#)) 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 \$100 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 \$100 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 \$11.5 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; but see [16.505\(a\)\(10\)](#) for orders funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub L. 111-5).

(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) When acquiring information technology and related services, consider the use of modular contracting to reduce program risk (see [39.103\(a\)](#)).

(5) Orders may be placed by using any medium specified in the contract.

(6) 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\(e\)](#)).

(7) 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\(b\)](#)).

(8) In accordance with section 1427(b) of Public Law 108-136, 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.

(9) (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 this subpart expires on May 27, 2011. ([10 U.S.C. 2304a\(d\)](#) and [2304c\(d\)](#), and [41 U.S.C. 253h\(d\)](#) and [253j\(d\)](#)).

(10) 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](#).

(11) 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 Central Contractor Registration (CCR) 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. In addition, 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 and the order does not exceed \$5 million. 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 \$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

ing Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(f) *Audit.* At any time before final payment under this contract, the Contracting Officer may request audit of the vouchers and supporting documentation. Each payment previously made shall be subject to reduction to the extent of amounts, on preceding vouchers, that are found by the Contracting Officer or authorized representative not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. Upon receipt and approval of the voucher designated by the Contractor as the “completion voucher” and supporting documentation, and upon compliance by the Contractor with all terms of this contract (including, without limitation, terms relating to patents and the terms of paragraph (g) of this clause), the Government shall promptly pay any balance due the Contractor. The completion voucher, 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.

(g) *Assignment and 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:

(1) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible of exact statement by the Contractor.

(2) 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.

(3) 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.

(h) *Interim payments on contracts for other than services.*

(1) Interim payments made prior to the final payment under the contract are contract financing payments. Contract financing payments are not subject to the interest penalty provisions of the Prompt Payment Act.

(2) The designated payment office will make interim payments for contract financing on the _____ [Contracting Officer insert day as prescribed by agency head; if not prescribed, insert “30th”] day after the designated billing office receives a proper payment request. In the event that the Government requires an audit or other review of a specific 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.

(i) *Interim payments on contracts for services.* For interim payments made prior to the final payment under this contract, 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.

(End of clause)

Alternate I (Feb 2007). If a labor-hour contract is contemplated, the Contracting Officer shall add the following paragraph (j) to the basic clause:

(j) The terms of this clause that govern reimbursement for materials furnished are considered to have been deleted.

52.232-8 Discounts for Prompt Payment.

As prescribed in [32.111\(b\)\(1\)](#), insert the following clause:

DISCOUNTS FOR PROMPT PAYMENT (FEB 2002)

(a) Discounts for prompt payment will not be considered in the evaluation of offers. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the offeror. As an alternative to offering a discount for prompt payment in conjunction with the offer, offerors awarded contracts may include discounts for prompt payment on individual invoices.

(b) In connection with any discount offered for prompt payment, time shall be computed from the date of the invoice. If the Contractor has not placed a date on the invoice, the due date shall be calculated from the date the designated billing office receives a proper invoice, provided the agency annotates such invoice with the date of receipt at the time of receipt. 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, for an electronic funds transfer, the specified payment date. When the discount date falls on a Saturday, Sunday, or legal holiday when Federal Government offices are closed and Government business is not expected to

be conducted, payment may be made on the following business day.

(End of clause)

52.232-9 Limitation on Withholding of Payments.

As prescribed in [32.111](#)(b)(2), insert a clause substantially as follows, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a supply contract, service contract, time-and-materials contract, labor-hour contract, or research and development 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:

LIMITATION ON WITHHOLDING OF PAYMENTS (APR 1984)

If more than one clause or Schedule term of this contract authorizes the temporary withholding of amounts otherwise payable to the Contractor for supplies delivered or services performed, the total of the amounts withheld at any one time shall not exceed the greatest amount that may be withheld under any one clause or Schedule term at that time; *provided*, that this limitation shall not apply to—

- (a) Withholdings pursuant to any clause relating to wages or hours of employees;
- (b) Withholdings not specifically provided for by this contract;
- (c) The recovery of overpayments; and
- (d) Any other withholding for which the Contracting Officer determines that this limitation is inappropriate.

(End of clause)

52.232-10 Payments under Fixed-Price Architect-Engineer Contracts.

As prescribed in [32.111](#)(c)(1), insert the following clause:

PAYMENTS UNDER FIXED-PRICE ARCHITECT-ENGINEER CONTRACTS (APR 2010)

(a) Estimates shall be made monthly of the amount and value of the work and services performed by the Contractor under this contract which meet the standards of quality established under this contract. The estimates, along with any supporting data required by the Contracting Officer, shall be prepared by the Contractor and submitted along with its voucher.

(b) After receipt of each substantiated voucher, the Government shall pay the voucher as approved by the Contracting Officer or authorized representative. The Contracting Officer shall require a withholding from amounts due under paragraph (a) of this clause of up to 10 percent only if the Contracting Officer determines that such a withholding is necessary to protect the Government's interest and ensure sat-

isfactory completion of the contract. The amount withheld shall be determined based upon the Contractor's performance record under this contract. Whenever the Contracting Officer determines that the work is substantially complete and that the amount retained is in excess of the amount adequate for the protection of the Government, the Contracting Officer shall release the excess amount to the Contractor.

(c) Upon satisfactory completion by the Contractor and final acceptance by the Contracting Officer of all the work done by the Contractor under the "Statement of Architect-Engineer Services", the Contractor will be paid the unpaid balance of any money due for work under the statement, including all withheld amounts.

(d) Before final payment under the contract, or before settlement upon termination of the contract, and as a condition precedent thereto, the Contractor shall execute and deliver to the Contracting Officer a release of all claims against the Government arising under or by virtue of this contract, other than any claims that are specifically excepted by the Contractor from the operation of the release in amounts stated in the release.

(e) Notwithstanding any other provision in this contract, and specifically paragraph (b) of this clause, 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.

(End of clause)

52.232-11 Extras.

As prescribed in [32.111](#)(c)(2), insert the following clause, appropriately modified with respect to payment due dates in accordance with agency regulations, in solicitations and contracts when a fixed-price supply contract, fixed-price service contract, or transportation contract is contemplated:

EXTRAS (APR 1984)

Except as otherwise provided in this contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

(End of clause)

52.232-12 Advance Payments.

As prescribed in [32.412](#)(a), insert the following clause:

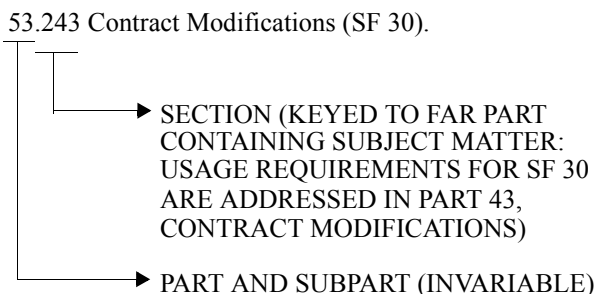
ADVANCE PAYMENTS (MAY 2001)

(a) *Requirements for payment.* Advance payments will be made under this contract (1) upon submission of properly certified invoices or vouchers by the Contractor, and approval by

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 [Subpart 4.4](#) 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. 3/2005), *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. 3/2005), *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. 3/2005) *Solicitation/Contract/Order for Commercial Items* prescribed in [53.212](#), [OF 347](#) (Rev. 4/06), *Order for Supplies or Services*, and [OF 348](#) (Rev. 4/06), *Order for Supplies or Services—Schedule Continuation*. [SF 1449](#), [OF](#)'s [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](#) (4/08), *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](#) (4/08), *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](#) (4/08), *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](#).