

FEDERAL ACQUISITION CIRCULAR

January 31, 2011

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Looseleaf Pages

Federal Acquisition Circular (FAC) 2005-48 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 2005-48 is effective December 30, 2010, except for Items I, II, and III, which are effective January 31, 2011.

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FAC 2005-48 FILING INSTRUCTIONS

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1.106

FAR segment	OMB Control Number	FAR segment	OMB Control Number
52.219-10	9000-0006	52.227-22	9000-0090
52.219-22	9000-0150	52.227-23	9000-0090
52.219-23	9000-0150	52.228-1	9000-0045
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52.222-25	1215-0072	52.232-6	9000-0070
52.222-26	1215-0072	52.232-7	9000-0070
52.222-27	1215-0072	52.232-8	9000-0070
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52.225-9	9000-0141		9000-0060
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52.225-18	9000-0161	52.236-19	9000-0064
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52.227-18	9000-0090	52.243-3	9000-0026
52.227-19	9000-0090	52.243-4	9000-0026
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		52.245-1	9000-0075

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52.245-9	9000-0075	SF 274	9000-0045
52.246-2	9000-0077	SF 275	9000-0045
52.246-3	9000-0077	SF 330	9000-0157
52.246-4	9000-0077	SF 1403	9000-0011
52.246-5	9000-0077	SF 1404	9000-0011
52.246-6	9000-0077	SF 1405	9000-0011
52.246-7	9000-0077	SF 1406	9000-0011
52.246-8	9000-0077	SF 1407	9000-0011
52.246-10	9000-0077	SF 1408	9000-0011
52.246-12	9000-0077	SF 1413	9000-0014
52.246-15	9000-0077	SF 1416	9000-0045
52.247-2	9000-0053	SF 1418	9000-0045
52.247-29	9000-0061	SF 1428	9000-0075
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52.249-11	9000-0028		
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1.107 Certifications.

In accordance with Section 29 of the Office of Federal Procurement Policy Act ([41 U.S.C. 425](#)), as amended by Section 4301 of the Clinger-Cohen Act of 1996 (Public Law 104-106), a new requirement for a certification by a contractor or offeror may not be included in this chapter unless—

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

(b) Written justification for such certification is provided to the Administrator for Federal Procurement Policy by the Federal Acquisition Regulatory Council, and the Administrator approves in writing the inclusion of such certification requirement.

1.108 FAR conventions.

The following conventions provide guidance for interpreting the FAR:

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

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

Subpart 4.6—Contract Reporting

4.600 Scope of subpart.

This subpart prescribes uniform reporting requirements for the Federal Procurement Data System (FPDS).

4.601 Definitions.

As used in this subpart—

“*Contract action*” means any oral or written action that results in the purchase, rent, or lease of supplies or equipment, services, or construction using appropriated dollars over the micro-purchase threshold, or modifications to these actions regardless of dollar value. Contract action does not include grants, cooperative agreements, other transactions, real property leases, requisitions from Federal stock, training authorizations, or other non-FAR based transactions.

“*Contract action report (CAR)*” means contract action data required to be entered into the Federal Procurement Data System (FPDS).

“*Definitive contract*” means any contract that must be reported to FPDS other than an indefinite delivery vehicle. This definition is only for FPDS, and is not intended to apply to [Part 16](#).

“*Entitlement program*” means a Federal program that guarantees a certain level of benefits to persons or other entities who meet requirements set by law, such as Social Security, farm price supports, or unemployment benefits.

“*Generic DUNS number*” means a DUNS number assigned to a category of vendors not specific to any individual or entity.

“*Indefinite delivery vehicle (IDV)*” means an indefinite delivery contract or agreement that has one or more of the following clauses:

- (1) [52.216-18](#), Ordering.
- (2) [52.216-19](#), Order Limitations.
- (3) [52.216-20](#), Definite Quantity.
- (4) [52.216-21](#), Requirements.
- (5) [52.216-22](#), Indefinite Quantity.
- (6) Any other clause allowing ordering.

4.602 General.

(a) The FPDS provides a comprehensive web-based tool for agencies to report contract actions. The resulting data provides—

- (1) A basis for recurring and special reports to the President, the Congress, the Government Accountability Office, Federal executive agencies, and the general public;
- (2) A means of measuring and assessing the effect of Federal contracting on the Nation’s economy and the extent to which small, veteran-owned small, service-disabled veteran-

owned small, HUBZone small, small disadvantaged, women-owned small business concerns, and AbilityOne nonprofit agencies operating under the Javits-Wagner-O’Day Act, are sharing in Federal contracts; and

(3) A means of measuring and assessing the effect of other policy and management initiatives (e.g., performance based acquisitions and competition).

(b) FPDS does not provide reports for certain acquisition information used in the award of a contract action (e.g., subcontracting data, funding data, or accounting data).

(c) The FPDS Web site, <https://www.fpds.gov>, provides instructions for submitting data. It also provides—

- (1) A complete list of departments, agencies, and other entities that submit data to the FPDS;
- (2) Technical and end-user guidance;
- (3) A computer-based tutorial; and
- (4) Information concerning reports not generated in FPDS.

4.603 Policy.

(a) In accordance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282), all Federal award data must be publicly accessible.

(b) Executive agencies shall use FPDS to maintain publicly available information about all contract actions exceeding the micro-purchase threshold, and any modifications to those actions that change previously reported contract action report data, regardless of dollar value.

(c) Agencies awarding assisted acquisitions or direct acquisitions must report these actions and identify the Funding Agency Code from the applicable agency codes maintained by the National Institute of Standards and Technology (NIST) using NIST Special Publication 800-87, “Codes for the Identification of Federal and Federally Assisted Organizations,” at <http://csrc.nist.gov/publications/nistpubs/800-87/sp800-87-Final.pdf>.

(d) Agencies exempt from the FAR are encouraged to report contract actions in FPDS.

(e) Agencies awarding contract actions with a mix of appropriated and nonappropriated funding shall only report the full appropriated portion of the contract action in FPDS.

4.604 Responsibilities.

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

(b)(1) The responsibility for the submission and accuracy of the individual contract action report (CAR) resides with the contracting officer who awarded the contract action.

(2) When a contract writing system is integrated with FPDS, the CAR must be confirmed for accuracy prior to release of the contract award.

(3) When a contract writing system is not integrated with FPDS, the CAR must be submitted to FPDS within three business days after contract award.

(4) For any action awarded in accordance with FAR [6.302-2](#) or pursuant to any of the authorities listed at FAR [Subpart 18.2](#), the CAR must be submitted to FPDS within 30 days after contract award.

(5) When the contracting office receives written notification that a contractor has changed its size status in accordance with the clause at [52.219-28](#), Post-Award Small Business Program Rerepresentation, the contracting officer must submit a modification contract action report to ensure that the updated size status is entered in FPDS-NG.

(c) The chief acquisition officer of each agency required to report its contract actions must submit to the General Services Administration (GSA), in accordance with FPDS guidance, by January 5, an annual certification of whether, and to what degree, agency CAR data for the preceding fiscal year is complete and accurate.

4.605 Procedures.

(a) *Procurement Instrument Identifier (PIID)*. Agencies must have in place a process that ensures that each PIID reported to FPDS is unique, Governmentwide, and will remain so for at least 20 years from the date of contract award. Agencies must submit their proposed identifier format to the FPDS Program Management Office, which maintains a registry of the agency unique identifiers on the FPDS website, and must validate their use in all transactions. The PIID shall consist of alpha characters in the first positions to indicate the agency, followed by alphanumeric characters identifying bureaus, offices, or other administrative subdivisions. Other pertinent PIID instructions can be found at <https://www.fpds.gov>.

(b) *Data Universal Numbering System (DUNS)*. The contracting officer must identify and report a DUNS number (Contractor Identification Number) for the successful offeror on a contract action. The DUNS number reported must identify the successful offeror's name and address as stated in the offer and resultant contract, and as registered in the Central Contractor Registration (CCR) database in accordance with the clause at [52.204-7](#), Central Contractor Registration. The contracting officer must ask the offeror to provide its DUNS number by using either the provision at [52.204-6](#), Data Universal Numbering System (DUNS) Number, the clause at [52.204-7](#), Central Contractor Registration, or the provision at [52.212-1](#), Instructions to Offerors—Commercial Items.

(1) Notwithstanding the inclusion of the provision at [52.204-6](#) in the associated solicitation or except as provided in paragraph (b)(2) of this section, the contracting officer shall use one of the generic DUNS numbers identified in CCR to report corresponding contract actions if the contract action is—

(i) With contractors located outside the United States and its outlying areas as defined in [2.101](#) who do not have a DUNS number, and the contracting officer determines it is impractical to obtain a DUNS number;

(ii) With students who do not have DUNS numbers;

(iii) With dependents of veterans, Foreign Service Officers, and military members assigned overseas who do not have DUNS numbers; or

(iv) For classified or national security.

(2) In accordance with agency procedures, authorized generic DUNS numbers found at <https://www.fpds.gov> may be used to report contract actions when—

(i) Specific public identification of the contracted party could endanger the mission, contractor, or recipients of the acquired goods or services; or

(ii) The agency determines it is impractical to obtain a DUNS number.

(c) The contracting officer, when entering data in FPDS, shall use the instructions at <https://www.fpds.gov> to identify any action funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

4.606 Reporting Data.

(a) *Actions required to be reported to FPDS*. (1) As a minimum, agencies must report the following contract actions over the micro-purchase threshold, regardless of solicitation process used, and agencies must report any modification to these contract actions that change previously reported contract action data, regardless of dollar value:

(i) Definitive contracts, including purchase orders and imprest fund buys over the micro-purchase threshold awarded by a contracting officer.

(ii) Indefinite delivery vehicle (identified as an "IDV" in FPDS). Examples of IDVs include the following:

(A) Task and Delivery Order Contracts (see [Subpart 16.5](#)), including—

(1) Government-wide acquisition contracts.

(2) Multi-agency contracts.

(B) GSA Federal supply schedules.

(C) Blanket Purchase Agreements (see [13.303](#)).

(D) Basic Ordering Agreements (see [16.703](#)).

(E) Any other agreement or contract against which individual orders or purchases may be placed.

(iii) All calls and orders awarded under the indefinite delivery vehicles identified in paragraph (a)(1)(ii) of this section.

(2) The GSA Office of Charge Card Management will provide the Government purchase card data, at a minimum annually, and GSA will incorporate that data into FPDS for reports.

(3) Agencies may use the FPDS Express Reporting capability for consolidated multiple action reports for a vendor when it would be overly burdensome to report each action

individually. When used, Express Reporting should be done at least monthly.

(b) *Reporting Other Actions.* Agencies may submit actions other than those listed at paragraph (a)(1) of this section, and must contact the FPDS Program Office at integrated.acquisition@gsa.gov if they desire to submit any of the following types of activity:

(1) Transactions at or below the micro-purchase threshold, except as provided in paragraph (a)(2) of this section.

(2) Any non-appropriated fund (NAF) or NAF portion of a contract action using a mix of appropriated and nonappropriated funding.

(3) Lease and supplemental lease agreements for real property.

(4) Resale activity (*i.e.*, commissary or exchange activity).

(5) Revenue generating arrangements (*i.e.*, concessions).

(6) Training expenditures not issued as orders or contracts.

(7) Grants and entitlement actions.

(8) Interagency agreements, also known as interservice level agreements, memoranda of understanding, or memoranda of agreement.

(9) Letters of obligation used in the A-76 process.

(c) *Actions not reported.* The following types of contract actions are not to be reported to FPDS:

(1) Imprest fund transactions below the micro-purchase threshold, including those made via the Government purchase

card (unless specific agency procedures prescribe reporting these actions).

(2) Orders from GSA stock and the GSA Global Supply Program.

(3) Purchases made at GSA or AbilityOne service stores, as these items stocked for resale have already been reported by GSA.

(4) Purchases made using non-appropriated fund activity cards, chaplain fund cards, individual Government personnel training orders, and Defense Printing orders.

(5) Actions that, pursuant to other authority, will not be entered in FPDS (*e.g.*, reporting of the information would compromise national security).

(d) Agencies not subject to the FAR may be required by other authority (*e.g.*, statute or OMB) to report certain information to FPDS.

4.607 Solicitation Provisions.

(a) Insert the provision at [52.204-6](#), Data Universal Numbering System (DUNS) Number, in solicitations that—

(1) Are expected to result in a requirement for the generation of a CAR (see [4.606\(a\)\(1\)](#)); and

(2) Do not contain the clause at [52.204-7](#), Central Contractor Registration.

(b) Insert the provision at [52.204-5](#), Women-Owned Business (Other Than Small Business), in all solicitations that—

(1) Are not set aside for small business concerns;

(2) Exceed the simplified acquisition threshold; and

(3) Are for contracts that will be performed in the United States or its outlying areas.

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Subpart 4.12—Representations and Certifications

4.1200 Scope.

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

- (a) Eliminate the administrative burden for contractors of submitting the same information to various contracting offices; and
- (b) Establish a common source for this information to procurement offices across the Government.

4.1201 Policy.

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

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

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

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

4.1202 Solicitation provision and contract clause.

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

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

- (a) [52.203-2](#), Certificate of Independent Price Determination.
- (b) [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.
- (c) [52.204-3](#), Taxpayer Identification.
- (d) [52.204-5](#), Women-Owned Business (Other Than Small Business).
- (e) [52.209-5](#), Certification Regarding Responsibility Matters.
- (f) [52.209-2](#), Prohibition on Contracting with Inverted Domestic Corporations-Representation.
- (g) [52.214-14](#), Place of Performance—Sealed Bidding.
- (h) [52.215-6](#), Place of Performance.
- (i) [52.219-1](#), Small Business Program Representations (Basic & Alternate I).
- (j) [52.219-2](#), Equal Low Bids.
- (k) [52.219-22](#), Small Disadvantaged Business Status (Basic & Alternate I).
- (l) [52.222-18](#), Certification Regarding Knowledge of Child Labor for Listed End Products.
- (m) [52.222-22](#), Previous Contracts and Compliance Reports.
- (n) [52.222-25](#), Affirmative Action Compliance.
- (o) [52.222-38](#), Compliance with Veterans’ Employment Reporting Requirements.
- (p) [52.222-48](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.
- (q) [52.222-52](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.
- (r) [52.223-1](#), Biobased Product Certification.
- (s) [52.223-4](#), Recovered Material Certification.
- (t) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Items (Alternate I only).
- (u) [52.223-13](#), Certification of Toxic Chemical Release Reporting.
- (v) [52.225-2](#), Buy American Act Certificate.
- (w) [52.225-4](#), Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate (Basic, Alternate I & II).
- (x) [52.225-6](#), Trade Agreements Certificate.
- (y) [52.225-20](#), Prohibition on Conducting Restricted Business Operations in Sudan—Certification.
- (z) [52.225-25](#), Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification.
- (aa) [52.226-2](#), Historically Black College or University and Minority Institution Representation.
- (bb) [52.227-6](#), Royalty Information (Basic & Alternate I).
- (cc) [52.227-15](#), Representation of Limited Rights Data and Restricted Computer Software.

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Subpart 4.13—Personal Identity Verification

4.1300 Scope of subpart.

This subpart provides policy and procedures associated with Personal Identity Verification as required by—

(a) Federal Information Processing Standards Publication (FIPS PUB) Number 201, “Personal Identity Verification of Federal Employees and Contractors”; and

(b) Office of Management and Budget (OMB) Guidance M-05-24, dated August 5, 2005, “Implementation of Homeland Security Presidential Directive (HSPD) 12-Policy for a Common Identification Standard for Federal Employees and Contractors.”

4.1301 Policy.

(a) Agencies must follow FIPS PUB Number 201 and the associated OMB implementation guidance for personal identity verification for all affected contractor and subcontractor personnel when contract performance requires contractors to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

(b) Agencies must include their implementation of FIPS PUB 201 and OMB Guidance M-05-24 in solicitations and contracts that require the contractor to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system.

(c) Agencies must designate an official responsible for verifying contractor employee personal identity.

(d)(1) Agency procedures for the return of Personal Identity Verification (PIV) products shall ensure that Government contractors account for all forms of Government-provided identification issued to Government contractor employees under a contract, *i.e.*, the PIV cards or other similar badges, and shall ensure that contractors return such identification to the issuing agency as soon as any of the following occurs, unless otherwise determined by the agency:

(i) When no longer needed for contract performance.

(ii) Upon completion of a contractor employee’s employment.

(iii) Upon contract completion or termination.

(2) The contracting officer may delay final payment under a contract if the contractor fails to comply with these requirements.

4.1302 Acquisition of approved products and services for personal identity verification.

(a) In order to comply with FIPS PUB 201, agencies must purchase only approved personal identity verification products and services.

(b) Agencies may acquire the approved products and services from the GSA, Federal Supply Schedule 70, Special Item Number (SIN) 132-62, HSPD-12 Product and Service Components, in accordance with ordering procedures outlined in FAR [Subpart 8.4](#).

(c) When acquiring personal identity verification products and services not using the process in paragraph (b) of this section, agencies must ensure that the applicable products and services are approved as compliant with FIPS PUB 201 including—

(1) Certifying the products and services procured meet all applicable Federal standards and requirements;

(2) Ensuring interoperability and conformance to applicable Federal standards for the lifecycle of the components; and

(3) Maintaining a written plan for ensuring ongoing conformance to applicable Federal standards for the lifecycle of the components.

(d) For more information on personal identity verification products and services see <http://www.idmanagement.gov>.

4.1303 Contract clause.

The contracting officer shall insert the clause at [52.204-9](#), Personal Identity Verification of Contractor Personnel, in solicitations and contracts when contract performance requires contractors to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. The clause shall not be used when contractors require only intermittent access to Federally-controlled facilities.

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Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

12.300 Scope of subpart.

This subpart establishes provisions and clauses to be used when acquiring commercial items.

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

(a) In accordance with Section 8002 of Public Law 103-355 ([41 U.S.C. 264](#), note), contracts for the acquisition of commercial items shall, to the maximum extent practicable, include only those clauses—

(1) Required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or

(2) Determined to be consistent with customary commercial practice.

(b) Insert the following provisions in solicitations for the acquisition of commercial items, and clauses in solicitations and contracts for the acquisition of commercial items:

(1) *The provision at [52.212-1](#), Instructions to Offerors—Commercial Items.* This provision provides a single, streamlined set of instructions to be used when soliciting offers for commercial items and is incorporated in the solicitation by reference (see Block 27a, [SF 1449](#)). The contracting officer may tailor these instructions or provide additional instructions tailored to the specific acquisition in accordance with [12.302](#).

(2) *The provision at [52.212-3](#), Offeror Representations and Certifications—Commercial Items.* This provision provides a single, consolidated list of representations and certifications for the acquisition of commercial items and is attached to the solicitation for offerors to complete. This provision may not be tailored except in accordance with [Subpart 1.4](#). Use the provision with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard. Use the provision with its Alternate II in solicitations for acquisitions for which small disadvantaged business procurement mechanisms are authorized on a regional basis.

(3) *The clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items.* This clause includes terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practices and is incorporated in the solicitation and contract by reference (see Block 27, [SF 1449](#)). Use this clause with its Alternate I when a time-and-materials or labor-hour contract will be awarded. The contracting officer may tailor this clause in accordance with [12.302](#).

(4) *The clause at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.* This clause incorporates by reference only those clauses required to implement provisions of law or Executive orders applicable to the acquisition of commercial

items. The contracting officer shall attach this clause to the solicitation and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in [52.212-5](#)(b) or (c) are applicable to the specific acquisition. Some of the clauses require fill-in; the fill-in language should be inserted as directed by [52.104](#)(d). When cost information is obtained pursuant to [Part 15](#) to establish the reasonableness of prices for commercial items, the contracting officer shall insert the clauses prescribed for this purpose in an addendum to the solicitation and contract. This clause may not be tailored.

(i) Use the clause with its Alternate I when the head of the agency has waived the examination of records by the Comptroller General in accordance with [25.1001](#).

(ii)(A) If the acquisition will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), the contracting officer shall use the clause with its Alternate II.

(B) (1) In the case of a bilateral contract modification that will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify applicability of Alternate II to that modification.

(2) In the case of a task- or delivery-order contract in which not all orders will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify the task or delivery orders to which Alternate II applies.

(C) The contracting officer may not use Alternate I when Alternate II applies.

(c) When the use of evaluation factors is appropriate, the contracting officer may—

(1) Insert the provision at [52.212-2](#), Evaluation—Commercial Items, in solicitations for commercial items (see [12.602](#)); or

(2) Include a similar provision containing all evaluation factors required by [13.106](#), [Subpart 14.2](#) or [Subpart 15.3](#), as an addendum (see [12.302](#)(d)).

(d) *Other required provisions and clauses.* (1) Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the acquisition of commercial items.

(2) Insert the clause at [52.225-19](#), Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, as prescribed in [25.301-4](#).

(3) Insert the provision at [52.209-7](#), Information Regarding Responsibility Matters, as prescribed in [9.104-7](#)(b).

(4)(i) Insert the clause at [52.209-9](#), Updates of Publicly Available Information Regarding Responsibility Matters, as prescribed in [9.104-7\(c\)](#).

(ii) Use the clause with its Alternate I as prescribed in [9.104-7\(c\)\(2\)](#).

(e) *Discretionary use of FAR provisions and clauses.* The contracting officer may include in solicitations and contracts by addendum other FAR provisions and clauses when their use is consistent with the limitations contained in [12.302](#). For example:

(1) The contracting officer may include appropriate clauses when an indefinite-delivery type of contract will be used. The clauses prescribed at [16.506](#) may be used for this purpose.

(2) The contracting officer may include appropriate provisions and clauses when the use of options is in the Government's interest. The provisions and clauses prescribed in [17.208](#) may be used for this purpose. If the provision at [52.212-2](#) is used, paragraph (b) provides for the evaluation of options.

(3) The contracting officer may use the provisions and clauses contained in [Part 23](#) regarding the use of products containing recovered materials and biobased products when appropriate for the item being acquired.

(4) When setting aside under the Stafford Act ([Subpart 26.2](#)), include the provision at [52.226-3](#), Disaster or Emergency Area Representation, in the solicitation. The representation in this provision is not in the Online Representations and Certifications Application (ORCA) Database.

(f) Agencies may supplement the provisions and clauses prescribed in this part (to require use of additional provisions and clauses) only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items or as may be approved by the agency senior procurement executive, or the individual responsible for representing the agency on the FAR Council, without power of delegation.

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

(a) *General.* The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, commercial market practices for a wide range of potential Government acquisitions of commercial items. However, because of the broad range of commercial items acquired by the Government, variations in commercial practices, and the relative volume of the Government's acquisitions in the specific market, contracting officers may, within the limitations of this subpart, and after conducting appropriate market research, tailor the provision at [52.212-1](#), Instructions to Offerors—Commercial Items, and the clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items, to adapt to the market conditions for each acquisition.

(b) *Tailoring 52.212-4, Contract Terms and Conditions—Commercial Items.* The following paragraphs of the clause at

[52.212-4](#), Contract Terms and Conditions—Commercial Items, implement statutory requirements and shall not be tailored—

- (1) Assignments;
- (2) Disputes;
- (3) Payment (except as provided in [Subpart 32.11](#));
- (4) Invoice;
- (5) Other compliances; and
- (6) Compliance with laws unique to Government contracts.

(c) *Tailoring inconsistent with customary commercial practice.* The contracting officer shall not tailor any clause or otherwise include any additional terms or conditions in a solicitation or contract for commercial items in a manner that is inconsistent with customary commercial practice for the item being acquired unless a waiver is approved in accordance with agency procedures. The request for waiver must describe the customary commercial practice found in the marketplace, support the need to include a term or condition that is inconsistent with that practice and include a determination that use of the customary commercial practice is inconsistent with the needs of the Government. A waiver may be requested for an individual or class of contracts for that specific item.

(d) Tailoring shall be by addenda to the solicitation and contract. The contracting officer shall indicate in Block 27a of the [SF 1449](#) if addenda are attached. These addenda may include, for example, a continuation of the schedule of supplies/services to be acquired from blocks 18 through 21 of the [SF 1449](#); a continuation of the description of the supplies/services being acquired; further elaboration of any other item(s) on the [SF 1449](#); any other terms or conditions necessary for the performance of the proposed contract (such as options, ordering procedures for indefinite-delivery type contracts, warranties, contract financing arrangements, etc.).

12.303 Contract format.

Solicitations and contracts for the acquisition of commercial items prepared using this [Part 12](#) shall be assembled, to the maximum extent practicable, using the following format:

- (a) [Standard Form \(SF\) 1449](#);
- (b) Continuation of any block from [SF 1449](#), such as—
 - (1) Block 10 if a price evaluation adjustment for small disadvantaged business concerns is applicable (the contracting officer shall indicate the percentage(s) and applicable line item(s)), if an incentive subcontracting clause is used (the contracting officer shall indicate the applicable percentage);
 - (2) Block 18B for remittance address;
 - (3) Block 19 for contract line item numbers;
 - (4) Block 20 for schedule of supplies/services; or
 - (5) Block 25 for accounting data;
- (c) Contract clauses—
 - (1) [52.212-4](#), Contract Terms and Conditions—Commercial Items, by reference (see [SF 1449](#) block 27a);
 - (2) Any addendum to [52.212-4](#); and

- (3) [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes and Executive orders;
- (d) Any contract documents, exhibits or attachments; and
- (e) Solicitation provisions—
 - (1) [52.212-1](#), Instructions to Offerors—Commercial Items, by reference (see [SF 1449](#), Block 27a);

- (2) Any addendum to [52.212-1](#);
- (3) [52.212-2](#), Evaluation—Commercial Items, or other description of evaluation factors for award, if used; and
- (4) [52.212-3](#), Offeror Representations and Certifications—Commercial Items.

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Subpart 12.6—Streamlined Procedures for Evaluation and Solicitation for Commercial Items

12.601 General.

This subpart provides optional procedures for (a) streamlined evaluation of offers for commercial items; and (b) streamlined solicitation of offers for commercial items for use where appropriate. These procedures are intended to simplify the process of preparing and issuing solicitations, and evaluating offers for commercial items consistent with customary commercial practices.

12.602 Streamlined evaluation of offers.

(a) When evaluation factors are used, the contracting officer may insert a provision substantially the same as the provision at [52.212-2](#), Evaluation—Commercial Items, in solicitations for commercial items or comply with the procedures in [13.106](#) if the acquisition is being made using simplified acquisition procedures. When the provision at [52.212-2](#) is used, paragraph (a) of the provision shall be tailored to the specific acquisition to describe the evaluation factors and relative importance of those factors. However, when using the simplified acquisition procedures in [Part 13](#), contracting officers are not required to describe the relative importance of evaluation factors.

(b) Offers shall be evaluated in accordance with the criteria contained in the solicitation. For many commercial items, the criteria need not be more detailed than technical (capability of the item offered to meet the agency need), price and past performance. Technical capability may be evaluated by how well the proposed products meet the Government requirement instead of predetermined subfactors. Solicitations for commercial items do not have to contain subfactors for technical capability when the solicitation adequately describes the item’s intended use. A technical evaluation would normally include examination of such things as product literature, product samples (if requested), technical features and warranty provisions. Past performance shall be evaluated in accordance with the procedures in [13.106](#) or [Subpart 15.3](#), as applicable. The contracting officer shall ensure the instructions provided in the provision at [52.212-1](#), Instructions to Offerors—Commercial Items, and the evaluation criteria provided in the provision at [52.212-2](#), Evaluation—Commercial Items, are in agreement.

(c) Select the offer that is most advantageous to the Government based on the factors contained in the solicitation. Fully document the rationale for selection of the successful offeror including discussion of any trade-offs considered.

12.603 Streamlined solicitation for commercial items.

(a) When a written solicitation will be issued, the contracting officer may use the following procedure to reduce the time

required to solicit and award contracts for the acquisition of commercial items. This procedure combines the synopsis required by [5.203](#) and the issuance of the solicitation into a single document.

(b) When using the combined synopsis/solicitation procedure, the [SF 1449](#) is not used for issuing the solicitation.

(c) To use these procedures, the contracting officer shall—

(1) Prepare the synopsis as described at [5.207](#).

(2) In the Description, include the following additional information:

(i) The following statement:

This is a combined synopsis/solicitation for commercial items prepared in accordance with the format in [Subpart 12.6](#), as supplemented with additional information included in this notice. This announcement constitutes the only solicitation; proposals are being requested and a written solicitation will not be issued.

(ii) The solicitation number and a statement that the solicitation is issued as an invitation to bid (IFB), request for quotation (RFQ) or request for proposal (RFP).

(iii) A statement that the solicitation document and incorporated provisions and clauses are those in effect through Federal Acquisition Circular _____.

(iv) A notice regarding any set-aside and the associated NAICS code and small business size standard.

(v) A list of contract line item number(s) and items, quantities and units of measure, (including option(s), if applicable).

(vi) Description of requirements for the items to be acquired.

(vii) Date(s) and place(s) of delivery and acceptance and FOB point.

(viii) A statement that the provision at [52.212-1](#), Instructions to Offerors—Commercial, applies to this acquisition and a statement regarding any addenda to the provision.

(ix) A statement regarding the applicability of the provision at [52.212-2](#), Evaluation—Commercial Items, if used, and the specific evaluation criteria to be included in paragraph (a) of that provision. If this provision is not used, describe the evaluation procedures to be used.

(x) A statement advising offerors to include a completed copy of the provision at [52.212-3](#), Offeror Representations and Certifications—Commercial Items, with its offer.

(xi) A statement that the clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items, applies to this acquisition and a statement regarding any addenda to the clause.

(xii) A statement that the clause at [52.212-5](#), Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items, applies to this acquisition and a statement regarding which, if any, of the

additional FAR clauses cited in the clause are applicable to the acquisition.

(xiii) A statement regarding any additional contract requirement(s) or terms and conditions (such as contract financing arrangements or warranty requirements) determined by the contracting officer to be necessary for this acquisition and consistent with customary commercial practices.

(xiv) A statement regarding the Defense Priorities and Allocations System (DPAS) and assigned rating, if applicable.

(xv) The date, time and place offers are due.

(xvi) The name and telephone number of the individual to contact for information regarding the solicitation.

(3) Allow response time for receipt of offers as follows:

(i) Because the synopsis and solicitation are contained in a single document, it is not necessary to publicize a separate synopsis 15 days before the issuance of the solicitation.

(ii) When using the combined synopsis and solicitation, contracting officers must establish a response time in accordance with [5.203\(b\)](#) (but see [5.203\(h\)](#)).

(4) Publicize amendments to solicitations in the same manner as the initial synopsis and solicitation.

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

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within the time limits and in strict accordance with the procedures contained in Subpart C of 13 CFR 134. It is within the discretion of the SBA Judge whether to accept an appeal from a size determination. If the Judge decides not to consider such an appeal, the Judge will issue an order denying review and specifying the reasons for the decision. The SBA will inform the contracting officer of its ruling on the appeal. The SBA decision, if received before award, will apply to the pending acquisition. SBA rulings received after award shall not apply to that acquisition.

(j) A protest that is not timely, even though received before award, shall be forwarded to the SBA Government Contracting Area Office (see paragraph (c)(1) of this section), with a notation on it that the protest is not timely. The protester shall be notified that the protest cannot be considered on the instant acquisition but has been referred to SBA for its consideration in any future actions. A protest received by a contracting officer after award of a contract shall be forwarded to the SBA Government Contracting Area Office with a notation that award has been made. The protester shall be notified that the award has been made and that the protest has been forwarded to SBA for its consideration in future actions.

(k) When a concern is found to be other than small under a protest concerning a size status rerepresentation made in accordance with the clause at [52.219-28](#), Post-Award Small Business Program Rerepresentation, a contracting officer may permit contract performance to continue, issue orders, or exercise option(s), because the contract remains a valid contract.

19.303 Determining North American Industry Classification System (NAICS) codes and size standards.

(a) The contracting officer shall determine the appropriate NAICS code and related small business size standard and include them in solicitations above the micro-purchase threshold.

(b) If different products or services are required in the same solicitation, the solicitation shall identify the appropriate small business size standard for each product or service.

(c) The contracting officer's determination is final unless appealed as follows:

(1) An appeal from a contracting officer's NAICS code designation and the applicable size standard must be served and filed within 10 calendar days after the issuance of the initial solicitation. SBA's Office of Hearings and Appeals (OHA) will dismiss summarily an untimely NAICS code appeal.

(2)(i) The appeal petition must be in writing and must be addressed to the—

Office of Hearings and Appeals
Small Business Administration

Suite 5900, 409 3rd Street, SW
Washington, DC 20416

(ii) There is no required format for the appeal; however, the appeal must include—

(A) The solicitation or contract number and the name, address, and telephone number of the contracting officer;

(B) A full and specific statement as to why the size determination or NAICS code designation is allegedly erroneous and argument supporting the allegation; and

(C) The name, address, telephone number, and signature of the appellant or its attorney.

(3) The appellant must serve the appeal petition upon—

(i) The SBA official who issued the size determination;

(ii) The contracting officer who assigned the NAICS code to the acquisition;

(iii) The business concern whose size status is at issue;

(iv) All persons who filed protests; and

(v) SBA's Office of General Counsel.

(4) Upon receipt of a NAICS code appeal, OHA will notify the contracting officer by a notice and order of the date OHA received the appeal, the docket number, and Judge assigned to the case. The contracting officer's response to the appeal, if any, must include argument and evidence (see 13 CFR Part 134), and must be received by OHA within 10 calendar days from the date of the docketing notice and order, unless otherwise specified by the Administrative Judge. Upon receipt of OHA's docketing notice and order, the contracting officer must immediately send to OHA a copy of the solicitation relating to the NAICS code appeal.

(5) After close of record, OHA will issue a decision and inform the contracting officer. If OHA's decision is received by the contracting officer before the date the offers are due, the decision shall be final and the solicitation must be amended to reflect the decision, if appropriate. OHA's decision received after the due date of the initial offers shall not apply to the pending solicitation but shall apply to future solicitations of the same products or services.

19.304 Disadvantaged business status.

(a) To be eligible to receive a benefit as a prime contractor based on its disadvantaged status, a concern, at the time of its offer, must either be certified as a small disadvantaged business (SDB) concern or have a completed SDB application pending at the SBA or a Private Certifier (see [19.001](#)).

(b) The contracting officer may accept an offeror's representation that it is an SDB concern for general statistical purposes. The provision at [52.219-1](#), Small Business Program Representations, or [52.212-3\(c\)\(4\)](#), Offeror Representations and Certifications-Commercial Items, is used to collect SDB data for general statistical purposes.

(c) The provision at [52.219-22](#), Small Disadvantaged Business Status, or [52.212-3\(c\)\(8\)](#), Offeror Representations and Certifications-Commercial Items, is used to obtain SDB status when the prime contractor may receive a benefit based on its disadvantaged status. The mechanisms that may provide benefits on the basis of disadvantaged status as a prime contractor are a price evaluation adjustment for SDB concerns (see [Subpart 19.11](#)), and an evaluation factor or subfactor for SDB participation (see [19.1202](#)).

(1) If the apparently successful offeror has represented that it is currently certified as an SDB, the contracting officer may confirm that the concern is identified as a small disadvantaged business concern by accessing SBA's database (PRO-Net) or by contacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

(2) If the apparently successful offeror has represented that its SDB application is pending at the SBA or a Private Certifier, and its position as the apparently successful offeror is due to the application of the price evaluation adjustment, the contracting officer shall follow the procedure in paragraph (d) of this section.

(d) Notifications to SBA of potential awards to offerors with pending SDB applications.

(1) The contracting officer shall notify the—

Small Business Administration
Assistant Administrator for SDBCE
409 Third Street, SW
Washington, DC 20416.

The notification shall contain the name of the apparently successful offeror, and the names of any other offerors that have represented that their applications for SDB status are pending at the SBA or a Private Certifier and that could receive the award due to the application of a price evaluation adjustment if the apparently successful offeror is determined not to be an SDB by the SBA.

(2) The SBA will, within 15 calendar days after receipt of the notification, determine the disadvantaged status of the apparently successful offeror and, as appropriate, any other offerors referred by the contracting officer and will notify the contracting officer.

(3) If the contracting officer does not receive an SBA determination within 15 calendar days after the SBA's receipt of the notification, the contracting officer shall presume that the apparently successful offeror, and any other offerors referred by the contracting officer, are not disadvantaged, and shall make award accordingly, unless the contracting officer grants an extension to the 15-day response period. No written determination is required for the contracting officer to make award at any point following the expiration of the 15-day response period.

(4) When the contracting officer makes a written determination that award must be made to protect the public inter-

est, the contracting officer may proceed to contract award without notifying SBA or before receiving a determination of SDB status from SBA during the 15-day response period. In both cases, the contracting officer shall presume that the apparently successful offeror, or any other offeror referred to the SBA whose SDB application is pending, is not an SDB and shall make award accordingly.

19.305 Protesting a representation of disadvantaged business status.

(a) This section applies to protests of a small business concern's disadvantaged status as a prime contractor. Protests of a small business concern's disadvantaged status as a subcontractor are processed under [19.703\(a\)\(2\)](#). Protests of a concern's size as a prime contractor are processed under [19.302](#). Protests of a concern's size as a subcontractor are processed under [19.703\(b\)](#). An offeror, the contracting officer, or the SBA may protest the apparently successful offeror's representation of disadvantaged status if the concern is eligible to receive a benefit based on its disadvantaged status (see [Subpart 19.11](#) and [19.1202](#).)

(b) An offeror, excluding an offeror determined by the contracting officer to be non-responsive or outside the competitive range, or an offeror that SBA has previously found to be ineligible for the requirement at issue, may protest the apparently successful offeror's representation of disadvantaged status by filing a protest in writing with the contracting officer. SBA regulations concerning protests are contained in 13 CFR 124, Subpart B. The protest—

(1) Must be filed within the times specified in [19.302\(d\)\(1\)](#); and

(2) Must contain specific facts or allegations supporting the basis of protest.

(c) The contracting officer or the SBA may protest in writing a concern's representation of disadvantaged status at any time following bid opening or notification of intended award.

(1) If a contracting officer's protest is based on information provided by a party ineligible to protest directly or ineligible to protest under the timeliness standard, the contracting officer must be persuaded by the evidence presented before adopting the grounds for protest as his or her own.

(2) The SBA may protest a concern's representation of disadvantaged status by filing directly with its Assistant Administrator for Small Disadvantaged Business Certification and Eligibility and notifying the contracting officer.

(d) The contracting officer shall return premature protests to the protestor. A protest is considered to be premature if it is submitted before bid opening or notification of intended award. SBA normally will not consider a postaward protest. SBA may consider a postaward protest in its discretion where it determines that an SDB determination after award is meaningful (*e. g.*, where the contracting officer agrees to terminate the contract if the protest is sustained).

Subpart 19.5—Set-Asides for Small Business

19.501 General.

(a) The purpose of small business set-asides is to award certain acquisitions exclusively to small business concerns. A “set-aside for small business” is the reserving of an acquisition exclusively for participation by small business concerns. A small business set-aside may be open to all small businesses. A small business set-aside of a single acquisition or a class of acquisitions may be total or partial.

(b) The determination to make a small business set-aside may be unilateral or joint. A unilateral determination is one that is made by the contracting officer. A joint determination is one that is recommended by the Small Business Administration (SBA) procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) and concurred in by the contracting officer.

(c) For acquisitions exceeding the simplified acquisition threshold, the requirement to set aside an acquisition for HUBZone small business concerns (see [19.1305](#)) takes priority over the requirement to set aside the acquisition for small business concerns.

(d) The small business reservation and set-asides requirements at [19.502-2](#) do not preclude award of a contract to a service-disabled veteran-owned small business concern under [Subpart 19.14](#).

(e) The contracting officer shall review acquisitions to determine if they can be set aside for small business, giving consideration to the recommendations of agency personnel having cognizance of the agency’s small business programs. The contracting officer shall document why a small business set-aside is inappropriate when an acquisition is not set aside for small business, unless a HUBZone or service-disabled veteran-owned small business set-aside or HUBZone or service-disabled veteran-owned small business sole source award is anticipated. If the acquisition is set aside for small business based on this review, it is a unilateral set-aside by the contracting officer. Agencies may establish threshold levels for this review depending upon their needs.

(f) At the request of an SBA procurement center representative, (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) the contracting officer shall make available for review at the contracting office (to the extent of the SBA representative’s security clearance) all proposed acquisitions in excess of the micro-purchase threshold that have not been unilaterally set aside for small business.

(g) To the extent practicable, unilateral determinations initiated by a contracting officer shall be used as the basis for small business set-asides rather than joint determinations by an SBA procurement center representative and a contracting officer.

(h) All solicitations involving set-asides must specify the applicable small business size standard and NAICS code (see [19.303](#)).

(i) Except as authorized by law, a contract may not be awarded as a result of a small business set-aside if the cost to the awarding agency exceeds the fair market price.

19.502 Setting aside acquisitions.

19.502-1 Requirements for setting aside acquisitions.

(a) The contracting officer shall set aside an individual acquisition or class of acquisitions for competition among small businesses when—

(1) It is determined to be in the interest of maintaining or mobilizing the Nation’s full productive capacity, war or national defense programs; or

(2) Assuring that a fair proportion of Government contracts in each industry category is placed with small business concerns; and the circumstances described in [19.502-2](#) or [19.502-3\(a\)](#) exist.

(b) This requirement does not apply to purchases of \$3,000 or less (\$15,000 or less for acquisitions as described in [13.201\(g\)\(1\)](#)), or purchases from required sources of supply under [Part 8](#) (e.g., Committee for Purchase From People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts).

19.502-2 Total small business set-asides.

(a) Each acquisition of supplies or services that has an anticipated dollar value exceeding \$3,000 (\$15,000 for acquisitions as described in [13.201\(g\)\(1\)](#)), but not over \$150,000 (\$300,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition at [2.101](#)), is automatically reserved exclusively for small business concerns and shall be set aside for small business unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. If the contracting officer does not proceed with the small business set-aside and purchases on an unrestricted basis, the contracting officer shall include in the contract file the reason for this unrestricted purchase. If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm. If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis. The small business reservation does not preclude the award of a contract with a value not greater than \$150,000 under subpart [19.8](#), Contracting with the Small Business Administration, or under [19.1305](#), HUBZone set-aside procedures.

(b) The contracting officer shall set aside any acquisition over \$150,000 for small business participation when there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (but see paragraph (c) of this subsection); and (2) award will be made at fair market prices. Total small business set-asides shall not be made unless such a reasonable expectation exists (but see [19.502-3](#) as to partial set-asides). Although past acquisition history of an item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&D small business set-asides, there must also be a reasonable expectation of obtaining from small businesses the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.

(c) For small business set-asides other than for construction or services, any concern proposing to furnish a product that it did not itself manufacture must furnish the product of a small business manufacturer unless the SBA has granted either a waiver or exception to the nonmanufacturer rule (see [19.102\(f\)](#)). In industries where the SBA finds that there are no small business manufacturers, it may issue a waiver to the nonmanufacturer rule (see [19.102\(f\)\(4\)](#) and (5)). In addition, SBA has excepted procurements processed under simplified acquisition procedures (see [Part 13](#)), where the anticipated cost of the procurement will not exceed \$25,000, from the nonmanufacturer rule. Waivers permit small businesses to provide any firm's product. The exception permits small businesses to provide any domestic firm's product. In both of these cases, the contracting officer's determination in paragraph (b)(1) of this subsection or the decision not to set aside a procurement reserved for small business under paragraph (a) of this subsection will be based on the expectation of receiving offers from at least two responsible small businesses, including nonmanufacturers, offering the products of different concerns.

19.502-3 Partial set-asides.

(a) The contracting officer shall set aside a portion of an acquisition, except for construction, for exclusive small business participation when—

- (1) A total set-aside is not appropriate (see [19.502-2](#));
- (2) The requirement is severable into two or more economic production runs or reasonable lots;
- (3) One or more small business concerns are expected to have the technical competence and productive capacity to satisfy the set-aside portion of the requirement at a fair market price;
- (4) The acquisition is not subject to simplified acquisition procedures; and

(5) A partial set-aside shall not be made if there is a reasonable expectation that only two concerns (one large and one small) with capability will respond with offers unless authorized by the head of a contracting activity on a case-by-case basis. Similarly, a class of acquisitions, not including construction, may be partially set aside. Under certain specified conditions, partial set-asides may be used in conjunction with multiyear contracting procedures.

(b) When the contracting officer determines that a portion of an acquisition is to be set aside, the requirement shall be divided into a set-aside portion and a non-set-aside portion, each of which shall (1) be an economic production run or reasonable lot and (2) have terms and a delivery schedule comparable to the other. When practicable, the set-aside portion should make maximum use of small business capacity.

(c)(1) The contracting officer shall award the non-set-aside portion using normal contracting procedures.

(2)(i) After all awards have been made on the non-set-aside portion, the contracting officer shall negotiate with eligible concerns on the set-aside portion, as provided in the solicitation, and make award. Negotiations shall be conducted only with those offerors who have submitted responsive offers on the non-set-aside portion. Negotiations shall be conducted with small business concerns in the order of priority as indicated in the solicitation (but see paragraph (c)(2)(ii) of this section). The set-aside portion shall be awarded as provided in the solicitation. An offeror entitled to receive the award for quantities of an item under the non-set-aside portion and who accepts the award of additional quantities under the set-aside portion shall not be requested to accept a lower price because of the increased quantities of the award, nor shall negotiation be conducted with a view to obtaining such a lower price based solely upon receipt of award of both portions of the acquisition. This does not prevent acceptance by the contracting officer of voluntary reductions in the price from the low eligible offeror before award, acceptance of voluntary refunds, or the change of prices after award by negotiation of a contract modification.

(ii) If equal low offers are received on the non-set-aside portion from concerns eligible for the set-aside portion, the concern that is awarded the non-set-aside part of the acquisition shall have first priority with respect to negotiations for the set-aside.

19.502-4 Methods of conducting set-asides.

(a) Total small business set-asides may be conducted by using simplified acquisition procedures (see [Part 13](#)), sealed bids (see [Part 14](#)), or competitive proposals (see [Part 15](#)). Partial small business set-asides may be conducted using sealed bids (see [Part 14](#)), or competitive proposals (see [Part 15](#)).

(b) Except for offers on the non-set-aside portion of partial set-asides, offers received from concerns that do not qualify as small business concerns shall be considered nonresponsive

and shall be rejected. However, before rejecting an offer otherwise eligible for award because of questions concerning the size representation, an SBA determination must be obtained (see [Subpart 19.3](#)).

19.502-5 Insufficient causes for not setting aside an acquisition.

None of the following is, in itself, sufficient cause for not setting aside an acquisition:

(a) A large percentage of previous contracts for the required item(s) has been placed with small business concerns.

(b) The item is on an established planning list under the Industrial Readiness Planning Program. However, a total small business set-aside shall not be made when the list contains a large business Planned Emergency Producer of the item(s) who has conveyed a desire to supply some or all of the required items.

(c) The item is on a Qualified Products List. However, a total small business set-aside shall not be made if the list contains the products of large businesses unless none of the large businesses desire to participate in the acquisition.

(d) A period of less than 30 days is available for receipt of offers.

(e) The acquisition is classified.

(f) Small business concerns are already receiving a fair proportion of the agency's contracts for supplies and services.

(g) A class small business set-aside of the item or service has been made by another contracting activity.

(h) A "brand name or equal" product description will be used in the solicitation.

19.503 Setting aside a class of acquisitions for small business.

(a) A class of acquisitions of selected products or services, or a portion of the acquisitions, may be set aside for exclusive participation by small business concerns if individual acquisitions in the class will meet the criteria in [19.502-1](#), [19.502-2](#), or [19.502-3](#)(a). The determination to make a class small business set-aside shall not depend on the existence of a current acquisition if future acquisitions can be clearly foreseen.

(b) The determination to set aside a class of acquisitions for small business may be either unilateral or joint.

(c) Each class small business set-aside determination shall be in writing and must—

(1) Specifically identify the product(s) and service(s) it covers;

(2) Provide that the set-aside does not apply to any acquisition automatically reserved for small business concerns under [19.502-2](#)(a).

(3) Provide that the set-aside applies only to the (named) contracting office(s) making the determination; and

(4) Provide that the set-aside does not apply to any individual acquisition if the requirement is not severable into two or more economic production runs or reasonable lots, in the case of a partial class set-aside.

(d) The contracting officer shall review each individual acquisition arising under a class small business set-aside to identify any changes in the magnitude of requirements, specifications, delivery requirements, or competitive market conditions that have occurred since the initial approval of the class set-aside. If there are any changes of such a material nature as to result in probable payment of more than a fair market price by the Government or in a change in the capability of small business concerns to satisfy the requirements, the contracting officer may withdraw or modify (see [19.506](#)(a)) the unilateral or joint set-aside by giving written notice to the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402](#)(a)) stating the reasons.

19.504 Inclusion of Federal Prison Industries, Inc.

When using competitive procedures in accordance with [8.602](#)(a)(4), agencies shall include Federal Prison Industries, Inc. (FPI), in the solicitation process and consider a timely offer from FPI.

19.505 Rejecting Small Business Administration recommendations.

(a) If the contracting officer rejects a recommendation of the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402](#)(a)) or breakout procurement center representative, written notice shall be furnished to the appropriate SBA representative within 5 working days of the contracting officer's receipt of the recommendation.

(b) The SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402](#)(a)) may appeal the contracting officer's rejection to the head of the contracting activity (or designee) within 2 working days after receiving the notice. The head of the contracting activity (or designee) shall render a decision in writing, and provide it to the SBA representative within 7 working days. Pending issuance of a decision to the SBA representative, the contracting officer shall suspend action on the acquisition.

(c) If the head of the contracting activity agrees that the contracting officer's rejection was appropriate—

(1) Within 2 working days, the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402](#)(a)) may request the contracting officer to suspend action on the acquisition until the SBA Administrator appeals to the agency head (see paragraph (f) of this section); and

(2) The SBA must be allowed 15 working days after making such a written request, within which the Administrator of SBA—

(i) May appeal to the Secretary of the Department concerned; and

(ii) Must notify the contracting officer whether the further appeal has, in fact, been taken. If notification is not received by the contracting officer within the 15-day period, it is deemed that the SBA request to suspend the contract action has been withdrawn and that an appeal to the Secretary was not taken.

(d) When the contracting officer has been notified within the 15-day period that the SBA has appealed to the agency head, the head of the contracting activity (or designee) shall forward justification for its decision to the agency head. The contracting officer shall suspend contract action until notification is received that the SBA appeal has been settled.

(e) The agency head shall reply to the SBA within 30 working days after receiving the appeal. The decision of the agency head shall be final.

(f) A request to suspend action on an acquisition need not be honored if the contracting officer determines that proceeding to contract award and performance is in the public interest. The contracting officer shall include in the contract file a statement of the facts justifying the determination, and shall promptly notify the SBA representative of the determination and provide a copy of the justification.

19.506 Withdrawing or modifying small business set-asides.

(a) If, before award of a contract involving a small business set-aside, the contracting officer considers that award would be detrimental to the public interest (*e.g.*, payment of more than a fair market price), the contracting officer may withdraw the small business set-aside determination whether it was unilateral or joint. The contracting officer shall initiate a withdrawal of an individual small business set-aside by giving written notice to the agency small business specialist and the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) stating the reasons. In a similar manner, the contracting officer may modify a unilateral or joint class small business set-aside to withdraw one or more individual acquisitions.

(b) If the agency small business specialist does not agree to a withdrawal or modification, the case shall be promptly

referred to the SBA representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) for review.

(c) The contracting officer shall prepare a written statement supporting any withdrawal or modification of a small business set-aside and include it in the contract file.

19.507 Automatic dissolution of a small business set-aside.

(a) If a small business set-aside acquisition or portion of an acquisition is not awarded, the unilateral or joint determination to set the acquisition aside is automatically dissolved for the unawarded portion of the set-aside. The required supplies and/or services for which no award was made may be acquired by sealed bidding or negotiation, as appropriate.

(b) Before issuing a solicitation for the items called for in a small business set-aside that was dissolved, the contracting officer shall ensure that the delivery schedule is realistic in the light of all relevant factors, including the capabilities of small business concerns.

19.508 Solicitation provisions and contract clauses.

(a) [Reserved]

(b) [Reserved]

(c) The contracting officer shall insert the clause at [52.219-6](#), Notice of Total Small Business Set-Aside, in solicitations and contracts involving total small business set-asides. The clause at [52.219-6](#) with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see [19.102\(f\)\(4\)](#) and (5)). Use the clause at [52.219-6](#) with its Alternate II when including FPI in the competition in accordance with [19.504](#).

(d) The contracting officer shall insert the clause at [52.219-7](#), Notice of Partial Small Business Set-Aside, in solicitations and contracts involving partial small business set-asides. The clause at [52.219-7](#) with its Alternate I will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see [19.102\(f\)\(4\)](#) and (5)). Use the clause at [52.219-7](#) with its Alternate II when including FPI in the competition in accordance with [19.504](#).

(e) The contracting officer shall insert the clause at [52.219-14](#), Limitations on Subcontracting, in solicitations and contracts for supplies, services, and construction, if any portion of the requirement is to be set aside for small business and the contract amount is expected to exceed \$150,000.

SUBPART 19.10—[RESERVED]

Subpart 19.10—[Reserved]

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(ii) For the operation of a Government facility, or part of a Government facility (but may be applicable to sub-contracts for services); or

(iii) Subject to Section 4(c) of the Service Contract Act (see [22.1002-3](#)).

22.1003-5 Some examples of contracts covered.

The following examples, while not definitive or exclusive, illustrate some of the types of services that have been found to be covered by the Act (see 29 CFR 4.130 for additional examples):

- (a) Motor pool operation, parking, taxicab, and ambulance services.
- (b) Packing, crating, and storage.
- (c) Custodial, janitorial, housekeeping, and guard services.
- (d) Food service and lodging.
- (e) Laundry, dry-cleaning, linen-supply, and clothing alteration and repair services.
- (f) Snow, trash, and garbage removal.
- (g) Aerial spraying and aerial reconnaissance for fire detection.
- (h) Some support services at installations, including grounds maintenance and landscaping.
- (i) Certain specialized services requiring specific skills, such as drafting, illustrating, graphic arts, stenographic reporting, or mortuary services.
- (j) Electronic equipment maintenance and operation and engineering support services.
- (k) Maintenance and repair of all types of equipment, for example, aircraft, engines, electrical motors, vehicles, and electronic, office and related business and construction equipment. (But see [22.1003-4](#)(c)(1) and (d)(1)(iv).)
- (l) Operation, maintenance, or logistics support of a Federal facility.
- (m) Data collection, processing and analysis services.

22.1003-6 Repair distinguished from remanufacturing of equipment.

(a) Contracts principally for remanufacturing of equipment which is so extensive as to be equivalent to manufacturing are subject to the Walsh-Healey Public Contracts Act, rather than to the Service Contract Act. Remanufacturing shall be deemed to be manufacturing when the criteria in either subparagraphs (a)(1) or (a)(2) of this subsection are met.

(1) Major overhaul of an item, piece of equipment, or material which is degraded or inoperable, and under which all of the following conditions exist:

- (i) The item or equipment is required to be completely or substantially torn down into individual component parts.
- (ii) Substantially all of the parts are reworked, rehabilitated, altered and/or replaced.
- (iii) The parts are reassembled so as to furnish a totally rebuilt item or piece of equipment.

(iv) Manufacturing processes similar to those which were used in the manufacturing of the item or piece of equipment are utilized.

(v) The disassembled components, if usable (except for situations where the number of items or pieces of equipment involved are too few to make it practicable) are commingled with existing inventory and, as such, lose their identification with respect to a particular piece of equipment.

(vi) The items or equipment overhauled are restored to original life expectancy, or nearly so.

(vii) Such work is performed in a facility owned or operated by the contractor.

(2) Major modification of an item, piece of equipment, or material which is wholly or partially obsolete, and under which all of the following conditions exist:

- (i) The item or equipment is required to be completely or substantially torn down.
- (ii) Outmoded parts are replaced.
- (iii) The item or equipment is rebuilt or reassembled.
- (iv) The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition.
- (v) The work is performed in a facility owned or operated by the contractor.

(b) Remanufacturing does not include the repair of damaged or broken equipment which does not require a complete teardown, overhaul, and rebuild as described in subparagraphs (a)(1) and (a)(2) of this subsection, or the periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. Such contracts typically are billed on an hourly rate (labor plus materials and parts) basis. Any contract principally for this type of work is subject to the Service Contract Act. Examples of such work include the following:

- (1) Repair of an automobile, truck, or other vehicle, construction equipment, tractor, crane, aerospace, air conditioning and refrigeration equipment, electric motors, and ground powered industrial or vehicular equipment.
- (2) Repair of typewriters and other office equipment (but see [22.1003-4](#)(c)(1) and (d)(1)(iv)).
- (3) Repair of appliances, radios, television sets, calculators, and other electronic equipment.
- (4) Inspecting, testing, calibration, painting, packaging, lubrication, tune-up, or replacement of internal parts of equipment listed in subparagraphs (b)(1), (b)(2), and (b)(3) of this subsection.
- (5) Reupholstering, reconditioning, repair, and refinishing of furniture.

22.1003-7 Questions concerning applicability of the Act.

If the contracting officer questions the applicability of the Act to an acquisition, the contracting officer shall request the advice of the agency labor advisor. Unresolved questions shall be submitted in a timely manner to the Administrator, Wage and Hour Division, for determination.

22.1004 Department of Labor responsibilities and regulations.

Under the Act, the Secretary of Labor is authorized and directed to enforce the provisions of the Act, make rules and regulations, issue orders, hold hearings, make decisions, and take other appropriate action. The Department of Labor has issued implementing regulations on such matters as—

- (a) Service contract labor standards provisions and procedures (29 CFR Part 4, Subpart A);
- (b) Wage determination procedures (29 CFR part 4, subparts A and B);
- (c) Application of the Act (rulings and interpretations) (29 CFR Part 4, Subpart C);
- (d) Compensation standards (29 CFR Part 4, Subpart D);
- (e) Enforcement (29 CFR Part 4, Subpart E);
- (f) Safe and sanitary working conditions (29 CFR Part 1925);
- (g) Rules of practice for administrative proceedings enforcing service contract labor standards (29 CFR Part 6); and
- (h) Practice before the Administrative Review Board (29 CFR part 8).

22.1005 [Reserved]**22.1006 Solicitation provisions and contract clauses.**

(a)(1) The contracting officer shall insert the clause at [52.222-41](#), Service Contract Act of 1965, in solicitations and contracts (except as provided in paragraph (a)(2) of this section) if the contract is subject to the Act and is—

- (i) Over \$2,500; or
- (ii) For an indefinite dollar amount and the contracting officer does not know in advance that the contract amount will be \$2,500 or less.

(2) The contracting officer shall not insert the clause at [52.222-41](#) (or any of the associated Service Contract Act clauses as prescribed in this section for possible use when [52.222-41](#) applies) in the resultant contract if—

(i) The solicitation includes the provision at—

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

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

(C) Either of the comparable certifications is checked as applicable in the provision at [52.204-8\(c\)\(2\)\(iii\)](#) or (iv) or [52.212-3\(k\)](#); and

(ii) The contracting officer has made the determination, in accordance with paragraphs (c)(3) or (d)(3) of subsection [22.1003-4](#), that the Service Contract Act does not apply to the contract. (In such case, insert the clause at [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements, or [52.222-53](#), Exemption from

Application of the Service Contract Act to Contracts for Certain Services—Requirements, in the contract, in accordance with the prescription at paragraph (e)(2)(ii) or (e)(4)(ii) of this subsection).

(b) The contracting officer shall insert the clause at [52.222-42](#), Statement of Equivalent Rates for Federal Hires, in solicitations and contracts if the contract amount is expected to be over \$2,500 and the Act is applicable. (See [22.1016](#).)

(c)(1) The contracting officer shall insert the clause at [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), or another clause which accomplishes the same purpose, in solicitations and contracts if the contract is expected to be a fixed-price, time-and-materials, or labor-hour service contract containing the clause at [52.222-41](#), Service Contract Act of 1965, and is a multiple year contract or is a contract with options to renew which exceeds the simplified acquisition threshold. The clause may be used in contracts that do not exceed the simplified acquisition threshold. The clause at [52.222-43](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), applies to both contracts subject to area prevailing wage determinations and contracts subject to the incumbent contractor's collective bargaining agreement in effect during this contract's preceding contract period (see [22.1002-2](#) and [22.1002-3](#)). Contracting officers shall ensure that contract prices or contract unit price labor rates are adjusted only to the extent that a contractor's increases or decreases in applicable wages and fringe benefits are made to comply with the requirements set forth in the clauses at [52.222-43](#) (subparagraphs (d)(1), (2) and (3)), or [52.222-44](#) (subparagraphs (b)(1) and (2)). (For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The contractor actually paid \$4.10. The new wage determination increases the minimum rate to \$4.50. The contractor increases the rate actually paid to \$4.75 per hour. The allowable price adjustment is \$.40 per hour.)

(2) The contracting officer shall insert the clause at [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment, in solicitations and contracts if the contract is expected to be a fixed-price, time-and-materials, or labor-hour service contract containing the clause at [52.222-41](#), Service Contract Act of 1965, exceeds the simplified acquisition threshold, and is not a multiple year contract or is not a contract with options to renew. The clause may be used in contracts that do not exceed the simplified acquisition threshold. The clause at [52.222-44](#), Fair Labor Standards Act and Service Contract Act—Price Adjustment, applies to both contracts subject to area prevailing wage determinations and contracts subject to contractor collective bargaining agreements (see [22.1002-2](#) and [22.1002-3](#)).

(3) The clauses prescribed in paragraph [22.1006\(c\)\(1\)](#) cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a wage determination in connection with (i) exercise of a contract option or (ii) extension of a multiple year contract into a

new program year. If a clause prescribed in [16.203-4\(d\)](#) is used, it must not conflict with, or duplicate payment under, the clauses prescribed in this paragraph [22.1006\(c\)](#).

(d) [Reserved]

(e)(1) The contracting officer shall insert the provision at [52.222-48](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification, in solicitations that—

(i) Include the clause at [52.222-41](#), Service Contract Act of 1965; and

(ii) The contract may be exempt from the Service Contract Act in accordance with [22.1003-4\(c\)](#).

(2) The contracting officer shall insert the clause at [52.222-51](#), Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements—

(i) In solicitations that include the provision at [52.222-48](#), or the comparable provision is checked as applicable in the clause at [52.204-8\(c\)\(2\)\(iii\)](#) or [52.212-3\(k\)\(1\)](#); and

(ii) In resulting contracts in which the contracting officer has determined, in accordance with [22.1003-4\(c\)\(3\)](#), that the Service Contract Act does not apply.

(3)(i) Except as provided in paragraph (e)(3)(ii) of this section, the contracting officer shall insert the provision at [52.222-52](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification, in solicitations that—

(A) Include the clause at [52.222-41](#), Service Contract Act of 1965; and

(B) The contract may be exempt from the Service Contract Act in accordance with [22.1003-4\(d\)](#).

(ii) When resoliciting in accordance with [22.1003-4\(d\)\(3\)\(iii\)](#), amend the solicitation by removing the provision at [52.222-52](#) from the solicitation.

(4) The contracting officer shall insert the clause at [52.222-53](#), Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements—

(i) In solicitations that include the provision at [52.222-52](#), or the comparable provision is checked as applicable in [52.204-8\(c\)\(2\)\(iv\)](#) or [52.212-3\(k\)\(2\)](#); and

(ii) In resulting contracts in which the contracting officer has determined, in accordance with [22.1003-4\(d\)\(3\)](#), that the Service Contract Act does not apply.

(f) The contracting officer shall insert the clause at [52.222-49](#), Service Contract Act—Place of Performance Unknown, if using the procedures prescribed in [22.1009-4](#).

22.1007 Requirement to obtain wage determinations.

The contracting officer shall obtain wage determinations for the following service contracts:

(a) Each new solicitation and contract in excess of \$2,500.

(b) Each contract modification which brings the contract above \$2,500 and—

(1) Extends the existing contract pursuant to an option clause or otherwise; or

(2) Changes the scope of the contract whereby labor requirements are affected significantly.

(c) Each multiple year contract in excess of \$2,500 upon—

(1) Annual anniversary date if the contract is subject to annual appropriations; or

(2) Biennial anniversary date if the contract is not subject to annual appropriations and its proposed term exceeds 2 years—unless otherwise advised by the Wage and Hour Division.

22.1008 Procedures for obtaining wage determinations.

22.1008-1 Obtaining wage determinations.

(a) Contracting officers may obtain most prevailing wage determinations using the WDOL website. Contracting officers may also use the Department of Labor's e98 electronic process, located on the WDOL website, to request a wage determination directly from the Department of Labor. If the WDOL database does not contain the applicable prevailing wage determination for a contract action, the contracting officer must use the e98 process to request a wage determination from the Department of Labor.

(b) In using the e98 process to obtain prevailing wage determinations, contracting officers shall provide as complete and accurate information on the e98 as possible. Contracting officers shall ensure that the email address submitted on an e98 request is accurate.

(c) The contracting officer must anticipate the amount of time required to gather the information necessary to obtain a wage determination, including sufficient time, if necessary, to contact the Department of Labor to request wage determinations that are not available through use of the WDOL.

(d) Although the WDOL website provides assistance to the contracting agency to select the correct wage determination, the contracting agency remains responsible for the wage determination selected. If the contracting agency has used the e98 process, the Department of Labor will respond to the contracting agency based on the information provided on the e98. The contracting agency may rely upon the Department of Labor response as the correct wage determination for the contract.

(e) To obtain the applicable wage determination for each contract action, the contracting officer shall determine the following information concerning the service employees expected to be employed by the contractor and any subcontractors in performing the contract:

(1) Determine the classes of service employees to be utilized in performance of the contract using the Wage and Hour Division's *Service Contract Act Directory of Occupations* (Directory). The Directory can be found on WDOL's Library Page, and is for sale by the Superintendent of Documents, U.S. Government Printing Office.

(2) Determine the locality where the services will be performed (see [22.1009](#)).

(3) Determine whether Section 4(c) of the Act applies (see [22.1008-2](#), [22.1010](#) and [22.1002-2](#)).

(4) Determine the wage rate that would be paid each class if employed by the agency and subject to the wage provisions of [5 U.S.C. 5341](#) and/or 5332 (see [22.1016](#)).

(f) If the contracting officer has questions regarding the procedures for obtaining a wage determination, or questions regarding the selection of a wage determination, the contracting officer should request assistance from the agency labor advisor.

22.1008-2 Section 4(c) successorship with incumbent contractor collective bargaining agreement.

(a) Early in the acquisition cycle, the contracting officer shall determine whether section 4(c) of the Act affects the new acquisition. The contracting officer shall determine whether there is a predecessor contract covered by the Act and, if so, whether the incumbent prime contractor or its subcontractors and any of their employees have a collective bargaining agreement.

(b) Section 4(c) of the Act provides that a successor contractor must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) to service employees at least equal to those agreed upon by a predecessor contractor under the following conditions:

(1) The services to be furnished under the proposed contract will be substantially the same as services being furnished by an incumbent contractor whose contract the proposed contract will succeed.

(2) The services will be performed in the same locality.

(3) The incumbent prime contractor or subcontractor is furnishing such services through the use of service employees whose wages and fringe benefits are the subject of one or more collective bargaining agreements.

(c) The application of section 4(c) of the Act is subject to the following limitations:

(1) Section 4(c) of the Act will not apply if the incumbent contractor enters into a collective bargaining agreement for the first time and the agreement does not become effective until after the expiration of the incumbent's contract.

(2) If the incumbent contractor enters into a new or revised collective bargaining agreement during the period of the incumbent's performance on the current contract, the terms of the new or revised agreement shall not be effective for the purposes of section 4(c) of the Act under the following conditions:

(i)(A) In sealed bidding, the contracting agency receives notice of the terms of the collective bargaining agreement less than 10 days before bid opening and finds that there is not reasonable time still available to notify bidders (see [22.1002-2\(a\)](#)); or

(B) For contractual actions other than sealed bidding, the contracting agency receives notice of the terms of the collective bargaining agreement after award, provided that the

start of performance is within 30 days of award (see [22.1002-2\(b\)](#)); and

(ii) The contracting officer has given both the incumbent contractor and its employees' collective bargaining agent timely written notification of the applicable acquisition dates (see [22.1010](#)).

(d)(1) If section 4(c) of the Act applies, the contracting officer shall obtain a copy of any collective bargaining agreement between an incumbent contractor or subcontractor and its employees. Obtaining a copy of an incumbent contractor's collective bargaining agreement may involve coordination with the administrative contracting officer responsible for administering the predecessor contract. (Paragraph (m) of the clause at [52.222-41](#), Service Contract Act of 1965, requires the incumbent prime contractor to furnish the contracting officer a copy of each collective bargaining agreement.)

(2) If the contracting officer has timely received the collective bargaining agreement, the contracting officer may use the WDOL website to prepare a wage determination referencing the agreement and incorporate that wage determination, attached to a complete copy of the collective bargaining agreement, into the successor contract action. In using the WDOL process, it is not necessary to submit a copy of the collective bargaining agreement to the Department of Labor unless requested to do so.

(3) The contracting officer may also use the e98 process on WDOL to request that the Department of Labor prepare the cover wage determination. The Department of Labor's response to the e98 may include a request for the contracting officer to submit a complete copy of the collective bargaining agreement. Any questions regarding the applicability of the Act to a collective bargaining agreement should be directed to the agency labor advisor.

(e)(1) Section 4(c) of the Act will not apply if the Secretary of Labor determines (i) after a hearing, that the wages and fringe benefits in the predecessor contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a similar character in the locality, or (ii) that the wages and fringe benefits in the predecessor contractor's collective bargaining agreement are not the result of arm's length negotiations (see [22.1013](#) and [22.1021](#)). The Department of Labor (DOL) has concluded that contingent collective bargaining agreement provisions that attempt to limit a contractor's obligations by means such as requiring issuance of a wage determination by the DOL, requiring inclusion of the wage determination in the contract, or requiring the Government to adequately reimburse the contractor, generally reflect a lack of arm's length negotiations.

(2) If the contracting officer's review (see [22.1013](#)) indicates that monetary provisions of the collective bargaining agreement may be substantially at variance or may not have been reached as a result of arm's length bargaining, the

49.000 Scope of part.

This part establishes policies and procedures relating to the complete or partial termination of contracts for the convenience of the Government or for default. It prescribes contract clauses relating to termination and excusable delay and includes instructions for using termination and settlement forms.

49.001 Definitions.

As used in this part—

“Other work” means any current or scheduled work of the contractor, whether Government or commercial, other than work related to the terminated contract.

“Plant clearance period,” as used in this subpart, means the period beginning on the effective date of contract completion or termination and ending 90 days (or such longer period as may be agreed to) after receipt by the contracting officer of acceptable inventory schedules for each property classification. The final phase of the plant clearance period means that period after receipt of acceptable inventory schedules.

“Settlement agreement” means a written agreement in the form of a contract modification settling all or a severable portion of a settlement proposal.

“Settlement proposal” means a proposal for effecting settlement of a contract terminated in whole or in part, submitted by a contractor or subcontractor in the form, and supported by the data, required by this part. A settlement proposal is included within the generic meaning of the word “claim” under false claims acts (see [18 U.S.C. 287](#) and [31 U.S.C. 3729](#)).

“Unsettled contract change” means any contract change or contract term for which a definitive modification is required but has not been executed.

49.002 Applicability.

(a)(1) This part applies to contracts that provide for termination for the convenience of the Government or for the default of the contractor (see also [12.403](#) and [13.302-4](#)).

(2) This part does not apply to commercial item contracts awarded using part [12](#) procedures. See [12.403](#) for termination policies for contracts for the acquisition of commercial items. However, for contracts for the acquisition of commercial items, this part provides administrative guidance which may be followed unless it is inconsistent with the requirements and procedures in [12.403](#), Termination, and the clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items.

(b) Contractors shall use this part, unless inappropriate, to settle subcontracts terminated as a result of modification of prime contracts. The contracting officer shall use this part as a guide in evaluating settlements of subcontracts terminated for the convenience of a contractor whenever the settlement will be the basis of a proposal for reimbursement from the Government under a cost-reimbursement contract.

(c) The contracting officer may use this part in determining an equitable adjustment resulting from a modification under

the Changes clause of any contract, except cost-reimbursement contracts.

(d) When action to be taken or authority to be exercised under this part depends upon the “amount” of the settlement proposal, that amount shall be determined by deducting from the gross settlement proposed the amounts payable for completed articles or work at the contract price and amounts for the settlement of subcontractor settlement proposals. Credits for retention or other disposal of termination inventory and amounts for advance or partial payments shall not be deducted.

Subpart 49.1—General Principles

49.100 Scope of subpart.

(a) This subpart deals with—

(1) The authority and responsibility of contracting officers to terminate contracts in whole or in part for the convenience of the Government or for default;

(2) Duties of the contractor and the contracting officer after issuance of the notice of termination;

(3) General procedures for the settlement of terminated contracts; and

(4) Settlement agreements.

(b) Additional principles applicable to the termination for convenience and settlement of fixed-price and cost-reimbursement contracts are included in [Subparts 49.2](#) and [49.3](#). Additional principles applicable to the termination of contracts for default are included in [Subpart 49.4](#).

49.101 Authorities and responsibilities.

(a) The termination clauses or other contract clauses authorize contracting officers to terminate contracts for convenience, or for default, and to enter into settlement agreements under this regulation.

(b) The contracting officer shall terminate contracts, whether for default or convenience, only when it is in the Government’s interest. The contracting officer shall effect a no-cost settlement instead of issuing a termination notice when—

(1) It is known that the contractor will accept one,

(2) Government property was not furnished, and

(3) There are no outstanding payments, debts due the Government, or other contractor obligations.

(c) When the price of the undelivered balance of the contract is less than \$5,000, the contract should not normally be terminated for convenience but should be permitted to run to completion.

(d) After the contracting officer issues a notice of termination, the termination contracting officer (TCO) is responsible for negotiating any settlement with the contractor, including a no-cost settlement if appropriate. Auditors and TCO’s shall promptly schedule and complete audit reviews and negotiations, giving particular attention to the need for timely action on all settlements involving small business concerns.

(e) If the same item is under contract with both large and small business concerns and it is necessary to terminate for

convenience part of the units still to be delivered, preference shall be given to the continuing performance of small business contracts over large business contracts unless the chief of the contracting office determines that this is not in the Government's interest.

(f) The contracting officer is responsible for the release of excess funds resulting from the termination unless this responsibility is specifically delegated to the TCO.

49.102 Notice of termination.

(a) *General.* The contracting officer shall terminate contracts for convenience or default only by a written notice to the contractor (see [49.601](#)). When the notice is mailed, it shall be sent by certified mail, return receipt requested. When the contracting office arranges for hand delivery of the notice, a written acknowledgement shall be obtained from the contractor. The notice shall state—

(1) That the contract is being terminated for the convenience of the Government (or for default) under the contract clause authorizing the termination;

(2) The effective date of termination;

(3) The extent of termination;

(4) Any special instructions; and

(5) The steps the contractor should take to minimize the impact on personnel if the termination, together with all other outstanding terminations, will result in a significant reduction in the contractor's work force (see paragraph (g) of the notice in [49.601-2](#)). If the termination notice is by telegram, include these "steps" in the confirming letter or modification.

(b) *Distribution of copies.* The contracting officer shall simultaneously send the termination notice to the contractor, and a copy to the contract administration office and to any known assignee, guarantor, or surety of the contractor.

(c) *Amendment of termination notice.* The contracting officer may amend a termination notice to—

(1) Correct nonsubstantive mistakes in the notice;

(2) Add supplemental data or instructions; or

(3) Rescind the notice if it is determined that items terminated had been completed or shipped before the contractor's receipt of the notice.

(d) *Reinstatement of terminated contracts.* Upon written consent of the contractor, the contracting office may reinstate the terminated portion of a contract in whole or in part by amending the notice of termination if it has been determined in writing that—

(1) Circumstances clearly indicate a requirement for the terminated items; and

(2) Reinstatement is advantageous to the Government.

49.103 Methods of settlement.

Settlement of terminated cost-reimbursement contracts and fixed-price contracts terminated for convenience may be effected by (a) negotiated agreement, (b) determination by the TCO, (c) costing-out under vouchers using [SF 1034](#), Public Voucher for Purchases and Services Other Than Personal, for cost-reimbursement contracts (as prescribed in [Subpart 49.3](#)),

or (d) a combination of these methods. When possible, the TCO should negotiate a fair and prompt settlement with the contractor. The TCO shall settle a settlement proposal by determination only when it cannot be settled by agreement.

49.104 Duties of prime contractor after receipt of notice of termination.

After receipt of the notice of termination, the contractor shall comply with the notice and the termination clause of the contract, except as otherwise directed by the TCO. The notice and clause applicable to convenience terminations generally require that the contractor—

(a) Stop work immediately on the terminated portion of the contract and stop placing subcontracts thereunder;

(b) Terminate all subcontracts related to the terminated portion of the prime contract;

(c) Immediately advise the TCO of any special circumstances precluding the stoppage of work;

(d) Perform the continued portion of the contract and submit promptly any request for an equitable adjustment of price for the continued portion, supported by evidence of any increase in the cost, if the termination is partial;

(e) Take necessary or directed action to protect and preserve property in the contractor's possession in which the Government has or may acquire an interest and, as directed by the TCO, deliver the property to the Government;

(f) Promptly notify the TCO in writing of any legal proceedings growing out of any subcontract or other commitment related to the terminated portion of the contract;

(g) Settle outstanding liabilities and proposals arising out of termination of subcontracts, obtaining any approvals or ratifications required by the TCO;

(h) Promptly submit the contractor's own settlement proposal, supported by appropriate schedules; and

(i) Dispose of termination inventory, as directed or authorized by the TCO.

49.105 Duties of termination contracting officer after issuance of notice of termination.

(a) Consistent with the termination clause and the notice of termination, the TCO shall—

(1) Direct the action required of the prime contractor;

(2) Examine the settlement proposal of the prime contractor and, when appropriate, the settlement proposals of subcontractors;

(3) Promptly negotiate settlement with the contractor and enter into a settlement agreement; and

(4) Promptly settle the contractor's settlement proposal by determination for the elements that cannot be agreed on, if unable to negotiate a complete settlement.

(b) To expedite settlement, the TCO may request specially qualified personnel to—

(1) Assist in dealings with the contractor;

Subpart 49.5—Contract Termination Clauses

49.501 General.

This subpart prescribes the principal contract termination clauses. This subpart does not apply to contracts that use the clause at [52.213-4](#), Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items). In appropriate cases, agencies may authorize the use of special purpose clauses, if consistent with this chapter.

49.502 Termination for convenience of the Government.

(a) *Fixed-price contracts that do not exceed the simplified acquisition threshold (short form)*—(1) *General use*. The contracting officer shall insert the clause at [52.249-1](#), Termination for Convenience of the Government (Fixed-Price) (Short Form), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is not expected to exceed the simplified acquisition threshold, except—

(i) If use of the clause at [52.249-4](#), Termination for Convenience of the Government (Services) (Short Form) is appropriate,

(ii) In contracts for research and development work with an educational or nonprofit institution on a no-profit basis,

(iii) In contracts for architect-engineer services, or

(iv) If one of the clauses prescribed or cited at [49.505](#)(a) or (c), is appropriate.

(2) *Dismantling and demolition*. If the contract is for dismantling, demolition, or removal of improvements, the contracting officer shall use the clause with its Alternate I.

(b) *Fixed-price contracts that exceed the simplified acquisition threshold*—(1)(i) *General use*. The contracting officer shall insert the clause at [52.249-2](#), Termination for Convenience of the Government (Fixed-Price), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold except in contracts for —

(A) Dismantling and demolition,

(B) Research and development work with an educational or nonprofit institution on a no-profit basis, or

(C) Architect-engineer services; it shall not be used if the clause at [52.249-4](#), Termination for Convenience of the Government (Services) (Short Form), is appropriate (see [49.502](#)(c)), or one of the clauses prescribed or cited at [49.505](#)(a) or (c), is appropriate.

(2) *Construction*. If the contract is for construction, the contracting officer shall use the clause with its Alternate I.

(i) *Partial payments*. If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial

payments is inappropriate, the contracting officer shall use the clause with its Alternate II. In such contracts for construction, the contracting officer shall use the clause with its Alternate III.

(ii) *Dismantling and demolition*. The contracting officer shall insert the clause at [52.249-3](#), Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements) in solicitations and contracts for dismantling, demolition, or removal of improvements, when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, the contracting officer shall use the clause with its Alternate I.

(c) *Service contracts (short form)*. The contracting officer shall insert the clause at [52.249-4](#), Termination for Convenience of the Government (Services) (Short Form), in solicitations and contracts for services, regardless of value, when a fixed-price contract is contemplated and the contracting officer determines that because of the kind of services required, the successful offeror will not incur substantial charges in preparation for and in carrying out the contract, and would, if terminated for the convenience of the Government, limit termination settlement charges to services rendered before the date of termination. Examples of services where this clause may be appropriate are contracts for rental of unreserved parking space, laundry and dry cleaning, etc.

(d) *Research and development contracts*. The contracting officer shall insert the clause at [52.249-5](#), Termination for the Convenience of the Government (Educational and Other Nonprofit Institutions), in solicitations and contracts when either a fixed-price or cost-reimbursement contract is contemplated for research and development work with an educational or nonprofit institution on a nonprofit or no-fee basis.

(e) *Subcontracts*—(1) *General use*. The prime contractor may find the clause at [52.249-1](#), Termination for Convenience of the Government (Fixed-Price) (Short Form), or at [52.249-2](#), Termination for Convenience of the Government (Fixed-Price), as appropriate, suitable for use in fixed-price subcontracts, except as noted in paragraph (e)(2) of this section; provided, that the relationship between the contractor and subcontractor is clearly indicated. Inapplicable conditions (e.g., paragraph (d)) in [52.249-2](#) should be deleted and the periods reduced for submitting the subcontractor's termination settlement proposal (e.g., 6 months), and for requesting an equitable price adjustment (e.g., 45 days).

(2) *Research and development*. The prime contractor may find the clause at [52.249-5](#), Termination for the Convenience of the Government (Educational and Other Nonprofit Institutions), suitable for use in subcontracts placed with educational or nonprofit institutions on a no-profit or no-fee basis;

provided, that the relationship between the contractor and subcontractor is clearly indicated. Inapplicable conditions (e.g., paragraph (h)) should be deleted, the period for submitting the subcontractor's termination settlement proposal should be reduced (e.g., 6 months), the subcontract should be placed on a no-profit or no-fee basis, and the subcontract should incorporate or be negotiated on the basis of the cost principles in [Part 31](#) of the Federal Acquisition Regulation.

49.503 Termination for convenience of the Government and default.

(a) *Cost-reimbursement contracts—(1) General use.* Insert the clause at [52.249-6](#), Termination (Cost-Reimbursement), in solicitations and contracts when a cost-reimbursement contract is contemplated, except contracts for research and development with an educational or nonprofit institution on a no-fee basis.

(2) *Construction.* If the contract is for construction, the contracting officer shall use the clause with its Alternate I.

(3) *Partial payments.* If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, the contracting officer shall use the clause with its Alternate II. In such contracts for construction, the contracting officer shall use the clause with its Alternate III.

(4) *Time-and-material and labor-hour contracts.* If the contract is a time-and-material or labor-hour contract, the contracting officer shall use the clause with its Alternate IV. If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, the contracting officer shall use the clause with its Alternate V.

(b) Insert the clause at [52.249-7](#), Termination (Fixed-Price Architect-Engineer), in solicitations and contracts for architect-engineer services, when a fixed-price contract is contemplated.

(c) *Subcontracts.* The prime contractor may find the clause at [52.249-6](#), Termination (Cost-Reimbursement), suitable for use in cost-reimbursement subcontracts; provided, that the relationship between the contractor and subcontractor is clearly indicated. Inapplicable conditions (e.g., paragraphs (e), (j) and (n)) should be deleted and the period for submitting the subcontractor's termination settlement proposal should be reduced (e.g., 6 months).

49.504 Termination of fixed-price contracts for default.

(a)(1) *Supplies and services.* The contracting officer shall insert the clause at [52.249-8](#), Default (Fixed-Price Supply and Service), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contract-

ing officer may use the clause when the contract amount is at or below the simplified acquisition threshold, if appropriate (e.g., if the acquisition involves items with a history of unsatisfactory quality).

(2) *Transportation.* If the contract is for transportation or transportation-related services, the contracting officer shall use the clause with its Alternate I.

(b) *Research and development.* The contracting officer shall insert the clause at [52.249-9](#), Default (Fixed-Price Research and Development), in solicitations and contracts for research and development when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold, except those with educational or nonprofit institutions on a no-profit basis. The contracting officer may use the clause when the contract amount is at or below the simplified acquisition threshold, if appropriate (e.g., if the contracting officer believes that key personnel essential to the work may be devoted to other programs).

(c)(1) *Construction.* The contracting officer shall insert the clause at [52.249-10](#), Default (Fixed-Price Construction), in solicitations and contracts for construction, when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may use the clause when the contract amount is at or below the simplified acquisition threshold, if appropriate (e.g., if completion dates are essential).

(2) *Dismantling and demolition.* If the contract is for dismantling, demolition, or removal of improvements, the contracting officer shall use the clause with its Alternate I.

(3) *National emergencies.* If the contract is to be awarded during a period of national emergency, the contracting officer may use the clause—

(i) With its Alternate II when a fixed-price contract for construction is contemplated, or

(ii) With its Alternate III when a contract for dismantling, demolition, or removal of improvements is contemplated.

49.505 Other termination clauses.

(a) *Personal service contracts.* The contracting officer shall insert the clause at [52.249-12](#), Termination (Personal Services), in solicitations and contracts for personal services (see [Part 37](#)).

(b) *Excusable delays.* The contracting officer shall insert the clause at [52.249-14](#), Excusable Delays, in solicitations and contracts for supplies, services, construction, and research and development on a fee basis, when a cost-reimbursement contract is contemplated. The contracting officer shall also insert the clause in time-and-material contracts, and labor-hour contracts.

(c) *Communication service contracts.* This regulation does not prescribe a clause for the cancellation or termination of orders under communication service contracts with common carriers because of special agency requirements that apply to these services. An appropriate clause, however, shall be prescribed at agency level, within those agencies contracting for these services.

FEDERAL ACQUISITION REGULATION

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- 52.216-12 Cost-Sharing Contract—No Fee.
 - 52.216-13 [Reserved]
 - 52.216-14 [Reserved]
 - 52.216-15 Predetermined Indirect Cost Rates.
 - 52.216-16 Incentive Price Revision—Firm Target.
 - 52.216-17 Incentive Price Revision—Successive Targets.
 - 52.216-18 Ordering.
 - 52.216-19 Order Limitations.
 - 52.216-20 Definite Quantity.
 - 52.216-21 Requirements.
 - 52.216-22 Indefinite Quantity.
 - 52.216-23 Execution and Commencement of Work.
 - 52.216-24 Limitation of Government Liability.
 - 52.216-25 Contract Definitization.
 - 52.216-26 Payments of Allowable Costs Before Definitization.
 - 52.216-27 Single or Multiple Awards.
 - 52.216-28 Multiple Awards for Advisory and Assistance Services.
 - 52.216-29 Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition With Adequate Price Competition.
 - 52.216-30 Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition Without Adequate Price Competition.
 - 52.216-31 Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition.
 - 52.217-1 [Reserved]
 - 52.217-2 Cancellation Under Multi-year Contracts.
 - 52.217-3 Evaluation Exclusive of Options.
 - 52.217-4 Evaluation of Options Exercised at Time of Contract Award.
 - 52.217-5 Evaluation of Options.
 - 52.217-6 Option for Increased Quantity.
 - 52.217-7 Option for Increased Quantity—Separately Priced Line Item.
 - 52.217-8 Option to Extend Services.
 - 52.217-9 Option to Extend the Term of the Contract.
 - 52.218 [Reserved]
 - 52.219-1 Small Business Program Representations.
 - 52.219-2 Equal Low Bids.
 - 52.219-3 Notice of Total HUBZone Set-Aside or Sole Source Award.
 - 52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.
 - 52.219-5 [Reserved]
 - 52.219-6 Notice of Total Small Business Set-Aside.
 - 52.219-7 Notice of Partial Small Business Set-Aside.
 - 52.219-8 Utilization of Small Business Concerns.
 - 52.219-9 Small Business Subcontracting Plan.
 - 52.219-10 Incentive Subcontracting Program.
 - 52.219-11 Special 8(a) Contract Conditions.
 - 52.219-12 Special 8(a) Subcontract Conditions.
 - 52.219-13 [Reserved]
 - 52.219-14 Limitations on Subcontracting.
 - 52.219-15 [Reserved]
 - 52.219-16 Liquidated Damages—Subcontracting Plan.
 - 52.219-17 Section 8(a) Award.
 - 52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.
 - 52.219-19 [Reserved]
 - 52.219-20 [Reserved]
 - 52.219-21 [Reserved]
 - 52.219-22 Small Disadvantaged Business Status.
 - 52.219-23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.
 - 52.219-24 Small Disadvantaged Business Participation Program—Targets.
 - 52.219-25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.
 - 52.219-26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.
 - 52.219-27 Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside.
 - 52.219-28 Post-Award Small Business Program Rerepresentation.
 - 52.220 [Reserved]
 - 52.221 [Reserved]
 - 52.222-1 Notice to the Government of Labor Disputes.
 - 52.222-2 Payment for Overtime Premiums.
 - 52.222-3 Convict Labor.
 - 52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.
 - 52.222-5 Davis-Bacon Act—Secondary Site of the Work.
 - 52.222-6 Davis-Bacon Act.
 - 52.222-7 Withholding of Funds.
 - 52.222-8 Payrolls and Basic Records.
 - 52.222-9 Apprentices and Trainees.
 - 52.222-10 Compliance with Copeland Act Requirements.
 - 52.222-11 Subcontracts (Labor Standards).
 - 52.222-12 Contract Termination—Debarment.
 - 52.222-13 Compliance with Davis-Bacon and Related Act Regulations.
 - 52.222-14 Disputes Concerning Labor Standards.
 - 52.222-15 Certification of Eligibility.
 - 52.222-16 Approval of Wage Rates.
 - 52.222-17 [Reserved]
 - 52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.
 - 52.222-19 Child Labor—Cooperation with Authorities and Remedies.
 - 52.222-20 Walsh-Healey Public Contracts Act.
 - 52.222-21 Prohibition of Segregated Facilities.
 - 52.222-22 Previous Contracts and Compliance Reports.

- 52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction.
- 52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation.
- 52.222-25 Affirmative Action Compliance.
- 52.222-26 Equal Opportunity.
- 52.222-27 Affirmative Action Compliance Requirements for Construction.
- 52.222-28 [Reserved]
- 52.222-29 Notification of Visa Denial.
- 52.222-30 Davis-Bacon Act—Price Adjustment (None or Separately Specified Method).
- 52.222-31 Davis-Bacon Act—Price Adjustment (Percentage Method).
- 52.222-32 Davis-Bacon Act—Price Adjustment (Actual Method).
- 52.222-33 Notice of Requirement for Project Labor Agreement.
- 52.222-34 Project Labor Agreement.
- 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.
- 52.222-36 Affirmative Action for Workers with Disabilities.
- 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans.
- 52.222-38 Compliance with Veterans' Employment Reporting Requirements.
- 52.222-39 [Reserved]
- 52.222-40 Notification of Employee Rights Under the National Labor Relations Act.
- 52.222-41 Service Contract Act of 1965.
- 52.222-42 Statement of Equivalent Rates for Federal Hires.
- 52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).
- 52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.
- 52.222-45 [Reserved]
- 52.222-46 Evaluation of Compensation for Professional Employees.
- 52.222-47 [Reserved]
- 52.222-48 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Certification.
- 52.222-49 Service Contract Act—Place of Performance Unknown.
- 52.222-50 Combating Trafficking in Persons.
- 52.222-51 Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.
- 52.222-52 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Certification.
- 52.222-53 Exemption from Application of the Service Contract Act to Contracts for Certain Services—Requirements.
- 52.222-54 Employment Eligibility Verification.
- 52.223-1 Biobased Product Certification.
- 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.
- 52.223-3 Hazardous Material Identification and Material Safety Data.
- 52.223-4 Recovered Material Certification.
- 52.223-5 Pollution Prevention and Right-to-Know Information.
- 52.223-6 Drug-Free Workplace.
- 52.223-7 Notice of Radioactive Materials.
- 52.223-8 [Reserved]
- 52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Items.
- 52.223-10 Waste Reduction Program.
- 52.223-11 Ozone-Depleting Substances.
- 52.223-12 Refrigeration Equipment and Air Conditioners.
- 52.223-13 Certification of Toxic Chemical Release Reporting.
- 52.223-14 Toxic Chemical Release Reporting.
- 52.223-15 Energy Efficiency in Energy-Consuming Products.
- 52.223-16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.
- 52.223-17 Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.
- 52.223-18 Contractor Policy to Ban Text Messaging While Driving.
- 52.224-1 Privacy Act Notification.
- 52.224-2 Privacy Act.
- 52.225-1 Buy American Act—Supplies.
- 52.225-2 Buy American Act Certificate.
- 52.225-3 Buy American Act—Free Trade Agreements—Israeli Trade Act.
- 52.225-4 Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.
- 52.225-5 Trade Agreements.
- 52.225-6 Trade Agreements Certificate.
- 52.225-7 Waiver of Buy American Act for Civil Aircraft and Related Articles.
- 52.225-8 Duty-Free Entry.
- 52.225-9 Buy American Act—Construction Materials.

internet at <http://www.ccr.gov> or by calling 1-888-227-2423, or 269-961-5757.

(End of clause)

52.204-8 Annual Representations and Certifications.

As prescribed in [4.1202](#), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS
(JAN 2011)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is _____
[insert NAICS code].

(2) The small business size standard is _____
[insert size standard].

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

(b)(1) If the clause at [52.204-7](#), Central Contractor Registration, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the clause at [52.204-7](#) is not included in this solicitation, and the offeror is currently registered in CCR, and has completed the ORCA electronically, the offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The offeror shall indicate which option applies by checking one of the following boxes:

(i) Paragraph (d) applies.

(ii) Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c)(1) The following representations or certifications in ORCA are applicable to this solicitation as indicated:

(i) [52.203-2](#), Certificate of Independent Price Determination. This provision applies to solicitations when a firm-fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

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

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

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

(ii) [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$150,000.

(iii) [52.204-3](#), Taxpayer Identification. This provision applies to solicitations that do not include the clause at [52.204-7](#), Central Contractor Registration.

(iv) [52.204-5](#), Women-Owned Business (Other Than Small Business). This provision applies to solicitations that—

(A) Are not set aside for small business concerns;

(B) Exceed the simplified acquisition threshold;

and

(C) Are for contracts that will be performed in the United States or its outlying areas.

(v) [52.209-5](#), Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(vi) [52.214-14](#), Place of Performance—Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(vii) [52.215-6](#), Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(viii) [52.219-1](#), Small Business Program Representations (Basic & Alternate I). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(ix) [52.219-2](#), Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.

(x) [52.222-22](#), Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at [52.222-26](#), Equal Opportunity.

(xi) [52.222-25](#), Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at [52.222-26](#), Equal Opportunity.

(xii) [52.222-38](#), Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

(xiii) [52.223-1](#), Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA–designated items; or include the clause at [52.223-2](#), Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

(xiv) [52.223-4](#), Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA–designated items.

(xv) [52.225-2](#), Buy American Act Certificate. This provision applies to solicitations containing the clause at [52.225-1](#).

(xvi) [52.225-4](#), Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate. (Basic, Alternate I, and Alternate II) This provision applies to solicitations containing the clause at [52.225-3](#).

(A) If the acquisition value is less than \$25,000, the basic provision applies.

(B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.

(C) If the acquisition value is \$50,000 or more but is less than \$67,826, the provision with its Alternate II applies.

(xvii) [52.225-6](#), Trade Agreements Certificate. This provision applies to solicitations containing the clause at [52.225-5](#).

(xviii) [52.225-20](#), Prohibition on Conducting Restricted Business Operations in Sudan—Certification. This provision applies to all solicitations.

(xix) [52.225-25](#), Prohibition on Engaging in Sanctioned Activities Relating to Iran—Certification. This provision applies to all solicitations.

(xx) [52.226-2](#), Historically Black College or University and Minority Institution Representation. This provision applies to—

(A) Solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions; and

(B) For DoD, NASA, and Coast Guard acquisitions, solicitations that contain the clause at [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

(2) The following certifications are applicable as indicated by the Contracting Officer:

[Contracting Officer check as appropriate.]

___ (i) [52.219-22](#), Small Disadvantaged Business Status.

___ (A) Basic.

___ (B) Alternate I.

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

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

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

___ (v) [52.223-9](#), with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA—Designated Products (Alternate I only).

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

___ (vii) [52.227-6](#), Royalty Information.

___ (A) Basic.

___ (B) Alternate I.

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

(d) The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) website at <http://orca.bpn.gov>. After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR [4.1201](#)); except for the changes identified below [*offeror to insert changes, identifying change by clause number, title, date*]. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR CLAUSE #	TITLE	DATE	CHANGE
_____	_____	_____	_____

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

(End of provision)

52.204-9 Personal Identity Verification of Contractor Personnel.

As prescribed in [4.1303](#), insert the following clause:

PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)

(a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24 and Federal Information Processing Standards Publication (FIPS PUB) Number 201.

(b) The Contractor shall account for all forms of Government-provided identification issued to the Contractor employees in connection with performance under this contract. The Contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government:

(1) When no longer needed for contract performance.

(2) Upon completion of the Contractor employee's employment.

(3) Upon contract completion or termination.

(c) The Contracting Officer may delay final payment under a contract if the Contractor fails to comply with these requirements.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts when the subcontractor's employees are required to have routine physical access to a Federally-controlled facility and/or routine access

to a Federally-controlled information system. It shall be the responsibility of the prime Contractor to return such identification to the issuing agency in accordance with the terms set forth in paragraph (b) of this section, unless otherwise approved in writing by the Contracting Officer.

(End of clause)

52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards.

As prescribed in 4.1403(a), insert the following clause:

REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUL 2010)

(a) *Definitions.* As used in this clause:

“Executive” means officers, managing partners, or any other employees in management positions.

“First-tier subcontract” means a subcontract awarded directly by a Contractor to furnish supplies or services (including construction) for performance of a prime contract, but excludes supplier agreements with vendors, such as long-term arrangements for materials or supplies that would normally be applied to a Contractor’s general and administrative expenses or indirect cost.

“Total compensation” means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) *Salary and bonus.*

(2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

(3) *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

(5) *Above-market earnings on deferred compensation which is not tax-qualified.*

(6) Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Con-

tractor is responsible for notifying its subcontractors that the required information will be made public.

(c)(1) Unless otherwise directed by the contracting officer, by the end of the month following the month of award of a first-tier subcontract with a value of \$25,000 or more, (and any modifications to these subcontracts that change previously reported data), the Contractor shall report the following information at <http://www.fsrs.gov> for each first-tier subcontract. (The Contractor shall follow the instructions at <http://www.fsrs.gov> to report the data.)

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor’s parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(vi) Subcontract number (the subcontract number assigned by the Contractor).

(vii) Subcontractor’s physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(viii) Subcontractor’s primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(ix) The prime contract number, and order number if applicable.

(x) Awarding agency name and code.

(xi) Funding agency name and code.

(xii) Government contracting office code.

(xiii) Treasury account symbol (TAS) as reported in FPDS.

(xiv) The applicable North American Industry Classification System code (NAICS).

(2) By the end of the month following the month of a contract award, and annually thereafter, the Contractor shall report the names and total compensation of each of the five most highly compensated executives for the Contractor’s preceding completed fiscal year at <http://www.ccr.gov>, if—

(i) In the Contractor’s preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986. (To determine if

the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(3) Unless otherwise directed by the contracting officer, by the end of the month following the month of a first-tier subcontract with a value of \$25,000 or more, and annually thereafter, the Contractor shall report the names and total compensation of each of the five most highly compensated executives for each first-tier subcontractor for the subcontractor's preceding completed fiscal year at <http://www.fsrs.gov>, if—

(i) In the subcontractor's preceding fiscal year, the subcontractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(d)(1) If the Contractor in the previous tax year had gross income, from all sources, under \$300,000, the Contractor is exempt from the requirement to report subcontractor awards.

(2) If a subcontractor in the previous tax year had gross income from all sources under \$300,000, the Contractor does not need to report awards to that subcontractor.

(e) Phase-in of reporting of subcontracts of \$25,000 or more.

(1) Until September 30, 2010, any newly awarded subcontract must be reported if the prime contract award amount was \$20,000,000 or more.

(2) From October 1, 2010, until February 28, 2011, any newly awarded subcontract must be reported if the prime contract award amount was \$550,000 or more.

(3) Starting March 1, 2011, any newly awarded subcontract must be reported if the prime contract award amount was \$25,000 or more.

(End of clause)

52.204-11 American Recovery and Reinvestment Act—Reporting Requirements.

As prescribed in [4.1502](#), insert the following clause:

AMERICAN RECOVERY AND REINVESTMENT ACT—
REPORTING REQUIREMENTS (JUL 2010)

(a) *Definitions.* For definitions related to this clause (e.g., contract, first-tier subcontract, total compensation etc.) see the Frequently Asked Questions (FAQs) available at http://www.whitehouse.gov/omb/recovery_faqs_contractors. These FAQs are also linked under <http://www.FederalReporting.gov>.

(b) This contract requires the contractor to provide products and/or services that are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). Section 1512(c) of the Recovery Act requires each contractor to report on its use of Recovery Act funds under this contract. These reports will be made available to the public.

(c) Reports from the Contractor for all work funded, in whole or in part, by the Recovery Act, are due no later than the 10th day following the end of each calendar quarter. The Contractor shall review the Frequently Asked Questions (FAQs) for Federal Contractors before each reporting cycle and prior to submitting each quarterly report as the FAQs may be updated from time-to-time. The first report is due no later than the 10th day after the end of the calendar quarter in which the Contractor received the award. Thereafter, reports shall be submitted no later than the 10th day after the end of each calendar quarter. For information on when the Contractor shall submit its final report, see http://www.whitehouse.gov/omb/recovery_faqs_contractors.

(d) The Contractor shall report the following information, using the online reporting tool available at www.FederalReporting.gov.

(1) The Government contract and order number, as applicable.

(2) The amount of Recovery Act funds invoiced by the contractor for the reporting period. A cumulative amount from all the reports submitted for this action will be maintained by the government's on-line reporting tool.

(3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in this calendar quarter.

(4) Program or project title, if any.

(5) A description of the overall purpose and expected outcomes or results of the contract, including significant deliverables and, if appropriate, associated units of measure.

(6) An assessment of the contractor's progress towards the completion of the overall purpose and expected outcomes or results of the contract (i.e., not started, less than 50 percent completed, completed 50 percent or more, or fully completed). This covers the contract (or portion thereof) funded by the Recovery Act.

(7) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the Contractor's and first-tier subcontractors' workforce for all first-tier subcontracts valued at \$25,000 or more. At a minimum, the Contractor shall provide—

(i) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR [2.101](#)). This description may rely on job titles, broader labor categories, or the Contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and

(ii) An estimate of the number of jobs created and jobs retained by the prime Contractor and all first-tier subcontracts valued at \$25,000 or more, in the United States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at http://www.whitehouse.gov/omb/recovery_faqs_contractors.

(8) Names and total compensation of each of the five most highly compensated officers of the Contractor for the calendar year in which the contract is awarded if—

(i) In the Contractor's preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants) and cooperative agreements; and

(ii) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986.

(9) For subcontracts valued at less than \$25,000 or any subcontracts awarded to an individual, or subcontracts awarded to a subcontractor that in the previous tax year had gross income under \$300,000, the Contractor shall only report the aggregate number of such first tier subcontracts awarded in the quarter and their aggregate total dollar amount.

(10) For any first-tier subcontract funded in whole or in part under the Recovery Act, that is valued at \$25,000 or more and not subject to reporting under paragraph 9, the Contractor shall require the subcontractor to provide the information described in paragraphs (d)(10)(i), (ix), (x), (xi), and (xii) of this section to the Contractor for the purposes of the quarterly report. The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 1512 of the Recovery Act. The Contractor shall provide detailed information on these first-tier subcontracts as follows:

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) The applicable North American Industry Classification System (NAICS) code.

(vi) Funding agency.

(vii) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(viii) Subcontract number (the contract number assigned by the prime contractor).

(ix) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(x) Subcontract primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district if applicable.

(xi) Names and total compensation of each of the subcontractor's five most highly compensated officers, for the calendar year in which the subcontract is awarded if—

(A) In the subcontractor's preceding fiscal year, the subcontractor received—

(1) 80 percent or more of its annual gross revenues in Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(2) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), and cooperative agreements; and

(B) The public does not have access to information about the compensation of the senior executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986.

(xii) A narrative description of the employment impact of work funded by the Recovery Act. This narrative should be cumulative for each calendar quarter and address the impact on the subcontractor's workforce. At a minimum, the subcontractor shall provide—

(A) A brief description of the types of jobs created and jobs retained in the United States and outlying areas (see definition in FAR [2.101](#)). This description may rely on job titles, broader labor categories, or the subcontractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work; and

(B) An estimate of the number of jobs created and jobs retained by the subcontractor in the United States and outlying areas. A job cannot be reported as both created and retained. See an example of how to calculate the number of jobs at http://www.whitehouse.gov/omb/recovery_faqs_contractors.

(End of clause)

52.205 [Reserved]

52.206 [Reserved]

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

(1) The agency’s evaluation of the significant weak or deficient factors in the debriefed offeror’s offer.

(2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(4) A summary of the rationale for award;

(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

52.212-2 Evaluation—Commercial Items.

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

EVALUATION—COMMERCIAL ITEMS (JAN 1999)

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

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

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

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

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

(End of provision)

52.212-3 Offeror Representations and Certifications—Commercial Items.

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

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—
COMMERCIAL ITEMS (JAN 2011)

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

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

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

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

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

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

- (1) FSC 5510, Lumber and Related Basic Wood Materials;
- (2) Federal Supply Group (FSG) 87, Agricultural Supplies;
- (3) FSG 88, Live Animals;

- (4) FSG 89, Food and Related Consumables;
- (5) FSC 9410, Crude Grades of Plant Materials;
- (6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) FSC 9610, Ores;
- (9) FSC 9620, Minerals, Natural and Synthetic; and
- (10) FSC 9630, Additive Metal Materials.

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

“Restricted business operations” means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

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

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

- (1) Means a small business concern—
 - (i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
 - (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with perma-

nent and severe disability, the spouse or permanent caregiver of such veteran.

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

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

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

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at [38 U.S.C. 101\(2\)](#)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

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

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

- (1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

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

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

in this offer by reference (see FAR [4.1201](#)), except for paragraphs _____.

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

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

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

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

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

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

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

(4) *Small disadvantaged business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, for general statistical purposes, that it is, is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) *Women-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is, is not a women-owned small business concern.

NOTE: Complete paragraphs (c)(6) and (c)(7) only if this solicitation is expected to exceed the simplified acquisition threshold.

(6) *Women-owned business concern (other than small business concern).* [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it is a women-owned business concern.

(7) *Tie bid priority for labor surplus area concerns.* If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on

account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price: _____

(8) [Complete only if the solicitation contains the clause at FAR [52.219-23](#), *Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns*, or FAR [52.219-25](#), *Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting*, and the offeror desires a benefit based on its disadvantaged status.]

(i) *General.* The offeror represents that either—

(A) It is, is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net), and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or

(B) It has, has not submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) *Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns.* The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(9)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture: _____.]

(9) *HUBZone small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents, as part of its offer, that—

(i) It is, is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR Part 126; and

(ii) It is, is not a HUBZone joint venture that complies with the requirements of 13 CFR Part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: _____.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

(d) *Representations required to implement provisions of Executive Order 11246*—(1) Previous contracts and compliance. The offeror represents that—

(i) It has, has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It has, has not filed all required compliance reports.

(2) *Affirmative Action Compliance*. The offeror represents that—

(i) It has developed and has on file, has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR parts 60-1 and 60-2), or

(ii) It has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) *Certification Regarding Payments to Influence Federal Transactions* (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$150,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) *Buy American Act Certificate*. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American Act—Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been

mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.” The terms “commercially available off-the-shelf (COTS) item” “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Supplies.”

(2) Foreign End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g)(1) *Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate*. (Applies only if the clause at FAR 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act, is included in this solicitation.)

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “Bahrainian, Moroccan, Omani, or Peruvian end product,” “commercially available off-the-shelf (COTS) item,” “component,” “domestic end product,” “end product,” “foreign end product,” “Free Trade Agreement country,” “Free Trade Agreement country end product,” “Israeli end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.”

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, or Peruvian End Products) or Israeli End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(3) That payments to be made under the contract will be made directly to the subcontractor by the contracting activity.

(4) To notify the _____ [insert name of contracting agency] Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

(5) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the cognizant Contracting Officer under the “Disputes” clause of the subcontract.

(b) The offeror/subcontractor agrees and acknowledges that it will, for and on behalf of the SBA, fulfill and perform all of the requirements of the contract.

(c) The offeror/subcontractor agrees that it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the cognizant Contracting Officer of the _____ [insert name of contracting agency].

(End of clause)

52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.

As prescribed in [19.811-3\(d\)](#), insert the following clause:

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS (JUNE 2003)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA’s 8(a) Program and which meet the following criteria at the time of submission of offer—

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(2) The _____ [insert name of SBA's contractor] will notify the _____ [insert name of contracting agency] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

Alternate I (Apr 2005). If the competition is to be limited to 8(a) concerns within one or more specific SBA regions or districts, add the following paragraph (a)(3) to paragraph (a) of the clause:

(3) The offeror’s approved business plan is on the file and serviced by _____ [Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by the SBA].

Alternate II (Dec 1996). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with [19.502-2\(c\)](#), delete paragraph (d)(1).

52.219-19 [Reserved]

52.219-20 [Reserved]

52.219-21 [Reserved]

52.219-22 Small Disadvantaged Business Status.

As prescribed in [19.308\(b\)](#), insert the following provision:

SMALL DISADVANTAGED BUSINESS STATUS (OCT 1999)

(a) *General.* This provision is used to assess an offeror’s small disadvantaged business status for the purpose of obtaining a benefit on this solicitation. Status as a small business and status as a small disadvantaged business for general statistical purposes is covered by the provision at FAR [52.219-1](#), Small Business Program Representation.

(b) *Representations.* (1) *General.* The offeror represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either—

[] (i) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR 124, Subpart B; and

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

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

(C) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net); or

[] (ii) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(2) *For Joint Ventures.* The offeror represents, as part of its offer, that it is a joint venture that complies with the requirements at 13 CFR 124.1002(f) and that the representation in paragraph (b)(1) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. [*The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture: _____.*]

(c) *Penalties and Remedies.* Anyone who misrepresents any aspects of the disadvantaged status of a concern for the purposes of securing a contract or subcontract shall—

(1) Be punished by imposition of a fine, imprisonment, or both;

(2) Be subject to administrative remedies, including suspension and debarment; and

(3) Be ineligible for participation in programs conducted under the authority of the Small Business Act.

(End of provision)

Alternate I (Oct 1998). As prescribed in 19.308(b), add the following paragraph (b)(3) to the basic provision:

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

52.219-23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

As prescribed in 19.1104, insert the following clause:

NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS (OCT 2008)

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

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

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

“Small disadvantaged business concern” means an offeror that represents, as part of its offer, that it is a small business under the size standard applicable to this acquisition; and either—

(1) It has received certification by the Small Business Administration as a small disadvantaged business concern consistent with 13 CFR Part 124, subpart B; and

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

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

(iii) It is identified, on the date of its representation, as a certified small disadvantaged business concern in the database maintained by the Small Business Administration (PRO-Net).

(2) It has submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR Part 124, subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted. In this case, in order to receive the benefit of a price evaluation adjustment, an offeror must receive certification as a small disadvantaged business concern by the Small Business Administration prior to contract award; or

(3) Is a joint venture as defined in 13 CFR 124.1002(f).

(b) *Evaluation adjustment.* (1) The Contracting Officer will evaluate offers by adding a factor of ____ [*Contracting Officer insert the percentage*] percent to the price of all offers, except—

(i) Offers from small disadvantaged business concerns that have not waived the adjustment; and

(ii) An otherwise successful offer from a historically black college or university or minority institution.

(2) The Contracting Officer will apply the factor to a line item or a group of line items on which award may be made. The Contracting Officer will apply other evaluation factors described in the solicitation before application of the

factor. The factor may not be applied if using the adjustment would cause the contract award to be made at a price that exceeds the fair market price by more than the factor in paragraph (b)(1) of this clause.

(c) *Waiver of evaluation adjustment.* A small disadvantaged business concern may elect to waive the adjustment, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraph (d) of this clause do not apply to offers that waive the adjustment.

_____ Offeror elects to waive the adjustment.

(d) *Agreements.* (1) A small disadvantaged business concern, that did not waive the adjustment, agrees that in performance of the contract, in the case of a contract for—

(i) Services, except construction, at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern;

(ii) Supplies (other than procurement from a non-manufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern;

(iii) General construction, at least 15 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern; or

(iv) Construction by special trade contractors, at least 25 percent of the cost of the contract, excluding the cost of materials, will be performed by employees of the concern.

(2) A small disadvantaged business concern submitting an offer in its own name shall furnish in performing this contract only end items manufactured or produced by small disadvantaged business concerns in the United States or its outlying areas. This paragraph does not apply to construction or service contracts.

(End of clause)

Alternate I (June 2003). As prescribed in [19.1104](#), substitute the following paragraph (d)(2) for paragraph (d)(2) of the basic clause:

(2) A small disadvantaged business concern submitting an offer in its own name shall furnish in performing this contract only end items manufactured or produced by small business concerns in the United States or its outlying areas. This paragraph does not apply to construction or service contracts.

Alternate II (Oct 1998) As prescribed in [19.1104](#), substitute the following paragraph (b)(1)(i) for paragraph (b)(1)(i) of the basic clause:

(i) Offers from small disadvantaged business concerns, that have not waived the adjustment, whose address is in a region for which an evaluation adjustment is authorized;

52.219-24 Small Disadvantaged Business Participation Program—Targets.

As prescribed in [19.1204\(a\)](#), insert a provision substantially the same as the following:

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—TARGETS (OCT 2000)

(a) This solicitation contains a source selection factor or subfactor related to the participation of small disadvantaged business (SDB) concerns in the contract. Credit under that evaluation factor or subfactor is not available to an SDB concern that qualifies for a price evaluation adjustment under the clause at FAR [52.219-23](#), Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, unless the SDB concern specifically waives the price evaluation adjustment.

(b) In order to receive credit under the source selection factor or subfactor, the offeror must provide, with its offer, targets, expressed as dollars and percentages of total contract value, for SDB participation in any of the North American Industry Classification System (NAICS) Industry Subsectors as determined by the Department of Commerce. The targets may provide for participation by a prime contractor, joint venture partner, teaming arrangement member, or subcontractor; however, the targets for subcontractors must be listed separately.

(End of provision)

52.219-25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.

As prescribed in [19.1204\(b\)](#), insert the following clause:

SMALL DISADVANTAGED BUSINESS PARTICIPATION PROGRAM—DISADVANTAGED STATUS AND REPORTING (DEC 2010)

(a) *Disadvantaged status for joint venture partners, team members, and subcontractors.* This clause addresses disadvantaged status for joint venture partners, teaming arrangement members, and subcontractors and is applicable if this contract contains small disadvantaged business (SDB) participation targets. The Contractor shall obtain representations of small disadvantaged status from joint venture partners, teaming arrangement members, and subcontractors (see exception in paragraph (b) of this section) through use of a provision substantially the same as paragraph (b)(1)(i) of the provision at FAR [52.219-22](#), Small Disadvantaged Business Status. The Contractor shall confirm that a joint venture partner, team member, or subcontractor representing itself as a small disadvantaged business concern is a small disadvantaged business concern certified by the Small Business Administration by using the Central Contractor Registration database or by con-

tacting the SBA's Office of Small Disadvantaged Business Certification and Eligibility.

(b) For subcontractors that are not certified as a small disadvantaged business by the Small Business Administration, the Contractor shall accept the subcontractor's written self-representation as a small disadvantaged business, unless the Contractor has reason to question the self-representation.

(c) *Reporting requirement.* If this contract contains SDB participation targets, the Contractor shall report on the participation of SDB concerns at contract completion, or as otherwise provided in this contract. Reporting may be on [Optional](#)

[Form 312](#), Small Disadvantaged Business Participation Report, in the Contractor's own format providing the same information, or accomplished through using the Electronic Subcontracting Reporting System's Small Disadvantaged Business Participation Report. This report is required for each contract containing SDB participation targets. If this contract contains an individual Small Business Subcontracting Plan, reports shall be submitted with the final Individual Subcontract Report at the completion of the contract.

(End of clause)

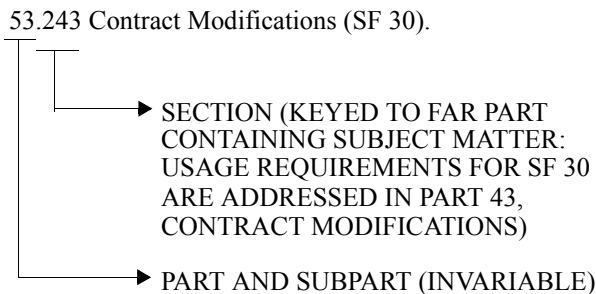
PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.216-29 T&M/LH Proposal Requirements—Non-commercial Item Acquisition with Adequate Price Competition	16.601(e)(1)	P	Yes	L									A										
52.216-30 T&M/LH Proposal Requirements—Non-commercial Item Acquisition without Adequate Price Competition	16.601(e)(2)	P	No	L									A										
52.216-31 T&M/LH Proposal Requirements—Commercial Item Acquisition	16.601(e)(3)	P	Yes	I									A										
52.217-2 Cancellation Under Multiyear Contracts.	17.109(a)	C	Yes	I	A		A							A					A				
52.217-3 Evaluation Exclusive of Options.	17.208(a)	P	Yes	M	A	A			A				A						A	A			
52.217-4 Evaluation of Options Exercised at Time of Contract Award.	17.208(b)	P	Yes	M	A	A			A				A						A	A			
52.217-5 Evaluation of Options.	17.208(c)	P	Yes	M	A	A			A				A						A	A			
52.217-6 Option for Increased Quantity.	17.208(d)	C	Yes	I	A				A										A	A			
52.217-7 Option for Increased Quantity—Separately Priced Line Item.	17.208(e)	C	Yes	I	A	A							A						A				
52.217-8 Option to Extend Services.	17.208(f)	C	Yes	I					A				A						A	A			
52.217-9 Option to Extend the Term of the Contract.	17.208(g)	C	No	I					A				A						A	A			
52.219-1 Small Business Program Representations.	19.308(a)(1)	P	No	K	A	A			A				A						A	A	A		
Alternate I	19.308(a)(2)	P	No	K	A	A			A				A						A	A	A		
Alternate II	19.308(c)	P	No	K	A				A										A	A			
52.219-3 Notice of Total HUBZone Set-Aside or Sole Source Award. ✓	19.1309(a)	C	Yes	I	A	A			A				A						A	A	A	A	A
Alternate I	19.1309(a)(1)	C	Yes	I	A	A			A				A						A	A	A	A	A
Alternate II	19.1309(b)	C	Yes	I	A	A			A				A						A	A	A	A	A
52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.																							
Alternate I	19.1309(b)(1)	C	Yes	I	A	A			A				A						A	A	A	A	A
Alternate II	19.508(c)	C	Yes	I	A				A										A	A			
52.219-6 Notice of Total Small Business Set-Aside.	19.508(c)	C	Yes	I	A				A										A	A	A	A	A
Alternate I	19.508(c)	C	Yes	I	A								A										
Alternate II	19.508(c)	C	Yes	I	A								A										
52.219-7 Notice of Partial Small Business Set-Aside.	19.508(d)	C	Yes	I	A	A			A				A						A	A	A	A	A
Alternate I	19.508(d)	C	Yes	I	A								A										
Alternate II	19.508(d)	C	Yes	I	A								A										

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
																								PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT
52.219-8 Utilization of Small Business Concerns.	19.708(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.219-9 Small Business Subcontracting Plan.	19.708(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	19.708(b)(1)	C	Yes	I	A		A		A		A			A		A				A			A	
Alternate II	19.708(b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate III	19.708(b)(1)(iii)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-10 Incentive Subcontracting Program.	19.708(c)(1)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.219-11 Special 8(a) Contract Conditions. (See Note 2.)	19.811-3(a)	C	Yes	I																				
52.219-12 Special 8(a) Subcontract Conditions. (See Note 2.)	19.811-3(b)	C	No	I																				
52.219-14 Limitations on Subcontracting. (See Note 2.)	19.508(e) or 19.811-3(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-16 Liquidated Damages—Subcontracting Plan.	19.708(b)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-17 Section 8(a) Award. (See Note 2.)	19.811-3(c)	C	No	I																				
52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns. (See Note 2.)	19.811-3(d)	C	No	I																				
Alternate I (See Note 2.)	19.811-3(d)(1)	C	No	I																				
Alternate II (See Note 2.)	19.811-3(d)(2)	C	No	I																				
52.219-22 Small Disadvantaged Business Status.	19.308(b)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	19.308(b)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.	19.1104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	19.1104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	19.1104	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-24 Small Disadvantaged Business Participation Program—Targets.	19.1204(a)	P	Yes	L	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.219-25 Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting.	19.1204(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

Subpart 53.2—Prescription of Forms

53.200 Scope of subpart.

This subpart prescribes standard forms and references optional forms and agency-prescribed forms for use in acquisition. Consistent with the approach used in [Subpart 52.2](#), this subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the FAR in which the form usage requirements are addressed. For example, forms addressed in FAR [Part 14](#), Sealed Bidding, are treated in this subpart in section [53.214](#), Sealed Bidding; forms addressed in FAR [Part 43](#), Contract Modifications, are treated in this subpart in section [53.243](#), Contract modifications. The following example illustrates how the subjects are keyed to the parts in which they are addressed:



53.201 Federal acquisition system.

53.201-1 Contracting authority and responsibilities (SF 1402).

[SF 1402](#) (10/83), *Certificate of Appointment*. [SF 1402](#) is prescribed for use in appointing contracting officers, as specified in [1.603-3](#).

53.202 [Reserved]

53.203 [Reserved]

53.204 Administrative matters.

53.204-1 Safeguarding classified information within industry (DD Form 254, DD Form 441).

The following forms, which are prescribed by the Department of Defense, shall be used by agencies covered by the Defense Industrial Security Program if contractor access to classified information is required, as specified in and the clause at [52.204-2](#):

- (a) [DD Form 254](#) (*Department of Defense (DoD)*), *Contract Security Classification Specification*. (See [4.403](#)(c)(1).)
- (b) [DD Form 441](#) (*DoD*), *Security Agreement*. (See paragraph (b) of the clause at [52.204-2](#).)

53.204-2 [Reserved]

53.205 Publicizing contract actions.

53.205-1 Paid advertisements.

[SF 1449](#), prescribed in [53.212](#), shall be used to place orders for paid advertisements as specified in [5.503](#).

53.206 [Reserved]

53.207 [Reserved]

53.208 [Reserved]

53.209 Contractor qualifications.

53.209-1 Responsible prospective contractors.

The following forms are prescribed for use in conducting preaward surveys of prospective contractors, as specified in [9.106-1](#), [9.106-2](#), and [9.106-4](#):

- (a) [SF 1403](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor (General)*. [SF 1403](#) is authorized for local reproduction.
- (b) [SF 1404](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor—Technical*. [SF 1404](#) is authorized for local reproduction.
- (c) [SF 1405](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor—Production*. [SF 1405](#) is authorized for local reproduction.
- (d) [SF 1406](#) (Rev. 11/97), *Preaward Survey of Prospective Contractor—Quality Assurance*. [SF 1406](#) is authorized for local reproduction.
- (e) [SF 1407](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor—Financial Capability*. [SF 1407](#) is authorized for local reproduction.
- (f) [SF 1408](#) (Rev. 9/88), *Preaward Survey of Prospective Contractor—Accounting System*. [SF 1408](#) is authorized for local reproduction.

53.210 [Reserved]

53.211 [Reserved]

53.212 Acquisition of commercial items.

[SF 1449](#) (Rev. 10/2010), *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. 10/2010), *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. 10/2010) *Solicitation/Contract/Order for Commercial Items* prescribed in [53.212](#), [OF 347](#) (Rev. 10/2010), *Order for Supplies or Services*, and [OF 348](#) (Rev. 4/06), *Order for Supplies or Services—Schedule Continuation*. [SF 1449](#), [OF 347](#) and [348](#) (or approved agency forms/automated formats) may be used as follows:

(1) To accomplish acquisitions under simplified acquisition procedures, as specified in [13.307](#).

(2) To establish blanket purchase agreements (BPA's), as specified in [13.303-2](#), and to make purchases under BPA's, as specified in [13.303-5](#).

(3) To issue orders under basic ordering agreements, as specified in [16.703](#)(d)(2)(i).

(4) As otherwise specified in this chapter (e.g., see [5.503](#)(a)(2), [8.406-1](#), [36.701](#)(b), and [51.102](#)(e)(3)(ii)).

53.214 Sealed bidding.

The following forms are prescribed for use in contracting by sealed bidding (except for construction and architect-engineer services):

(a) [SF 26](#) (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](#) (Rev. 11/2010), *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](#).

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

53.216 Types of contracts.

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

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

53.217 [Reserved]

53.218 [Reserved]

53.219 Small business programs.

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

(b) The following standard form is prescribed for use in reporting small business (including Alaska Native Corporations and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including Alaska Native Corporations and Indian tribes) and women-owned small business subcontracting data, as specified in [Part 19: SF 294](#), (Rev. 1/2010) Subcontracting Report for Individual Contracts. [SF 294](#) is authorized for local reproduction.

53.220 [Reserved]

53.221 [Reserved]

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

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

(a) [Reserved]

(b) [Reserved]

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

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

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

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

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

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

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

53.223 [Reserved]

53.224 [Reserved]

53.225 [Reserved]

53.226 [Reserved]

53.227 [Reserved]

53.228 Bonds and insurance.

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

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

(b) [SF 25](#) (Rev. 5/96) *Performance Bond*. (See [28.106-1](#)(b).) [SF 25](#) is authorized for local reproduction.

(c) [SF 25A](#) (Rev. 10/98) *Payment Bond*. (See [28.106-1](#)(c).) [SF 25A](#) is authorized for local reproduction.

(d) [SF 25B](#) (Rev. 10/83), *Continuation Sheet* (For Standard Forms [24](#), [25](#), and [25A](#)). (See [28.106-1](#)(c).)

(e) [SF 28](#) (Rev. 6/03) *Affidavit of Individual Surety*. (See [28.106-1](#)(e) and [28.203](#)(b).) [SF 28](#) is authorized for local reproduction.

(f) [SF 34](#) (Rev. 1/90), *Annual Bid Bond*. (See [28.106-1](#)(f).) [SF 34](#) is authorized for local reproduction.

(g) [SF 35](#) (Rev. 1/90), *Annual Performance Bond*. (See [28.106-1](#).) [SF 35](#) is authorized for local reproduction.

(h) [SF 273](#) (Rev. 10/98) *Reinsurance Agreement for a Miller Act Performance Bond*. (See [28.106-1](#)(h) and [28.202-1](#)(a)(4).) [SF 273](#) is authorized for local reproduction.

(i) [SF 274](#) (Rev. 10/98) *Reinsurance Agreement for a Miller Act Payment Bond*. (See [28.106-1](#)(i) and [28.202-1](#)(a)(4).) [SF 274](#) is authorized for local reproduction.

(j) [SF 275](#) (Rev. 10/98) *Reinsurance Agreement in Favor of the United States*. (See [28.106-1](#)(j) and [28.202-1](#)(a)(4).) [SF 275](#) is authorized for local reproduction.

(k) [SF 1414](#) (Rev. 10/93), *Consent of Surety*. [SF 1414](#) is authorized for local reproduction.

(l) [SF 1415](#) (Rev. 7/93), *Consent of Surety and Increase of Penalty*. (See [28.106-1](#)(l).) [SF 1415](#) is authorized for local reproduction.

(m) [SF 1416](#) (Rev. 10/98) *Payment Bond for Other than Construction Contracts*. (See [28.106-1\(m\)](#).) [SF 1416](#) is authorized for local reproduction.

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

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

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

53.229 Taxes (SF’s 1094, 1094-A).

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

53.230 [Reserved]

53.231 [Reserved]

53.232 Contract financing (SF 1443).

[SF 1443](#) (7/09), *Contractor’s Request for Progress Payment*. [SF 1443](#) is prescribed for use in obtaining contractors’ requests for progress payments.

53.233 [Reserved]

53.234 [Reserved]

53.235 Research and development contracting (SF 298).

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

53.236 Construction and architect-engineer contracts.

53.236-1 Construction.

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

(a) [Reserved]

(b) [Reserved]

(c) [Reserved]

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

(1) Construction, alteration, or repair; or

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

(e) [OF 347](#) (Rev. 10/2010), *Order for Supplies or Services*. [OF 347](#), prescribed in [53.213\(f\)](#) (or an approved agency form), may be used for contracts under the simplified acquisition threshold for—

(1) Construction, alteration, or repair; or

(2) Dismantling, demolition, or removal of improvements, as specified in [36.701\(b\)](#).

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

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

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

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

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

53.237 [Reserved]

53.238 [Reserved]

53.239 [Reserved]

53.240 [Reserved]

53.241 [Reserved]

Standard Form 1447

[Go to <http://www.gsa.gov/forms> to access form.]

Standard Form 1449

[Go to <http://www.gsa.gov/forms> to access form.]

Optional Form 347

[Go to <http://www.gsa.gov/forms> to access form.]

