

FEDERAL ACQUISITION CIRCULAR

October 5, 2004

Number 2001-25

Federal Acquisition Circular (FAC) 2001-25 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 2001-25 are effective October 5, 2004, except for Item I, which is effective November 4, 2004.

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FAC 2001-25 LIST of SUBJECTS

<u>Item</u>	<u>Title</u>	<u>Page</u>
I	Elimination of the Standard Form 1417	i
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FAC 2001-25 SUMMARY of ITEMS

Federal Acquisition Circular (FAC) 2001-25 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Elimination of the Standard Form 1417 (FAR Case 2002-017)

This final rule amends FAR Parts 1, 13, 19, 36, and 53, deleting the prescription for the use of the Standard Form 1417. This final rule eliminates the use of this form in contracts for construction, alteration or repair, dismantling, demolition, or removal of improvements. The use of the form has become unnecessary because contracting officers are required to provide access to presolicitation notices through the Governmentwide point of entry (GPE) via the Internet at <http://www.fedbizopps.gov> pursuant to FAR 5.204.

Replacement pages: 1.1-3 and 1.1-4; 1.1-7 and 1.1-8; 13.1-1 and 13.1-2; 19.8-5 and 19.8-6; 36.2-3 and 36.2-4; 36.7-1 and 36.7-2; Part 53 TOC 53-1 and 53-2; 53.2-3 and 53.2-4; and 53.3-123 and 53.3-124 (SF 1417 removed).

Item II—Free Trade Agreements—Chile and Singapore, and Trade Agreements Thresholds (FAR Case 2003-016)

The interim rule published in the Federal Register at 69 FR 1050, January 7, 2004, is converted to a final rule with changes to implement new Free Trade Agreements with Chile and Singapore, as approved by Congress (Public Laws 108-77 and 108-78). These Free Trade Agreements went into effect January 1, 2004. The final rule removes the statement of applicability of U.S. law from FAR clauses 52.225-3, 52.225-5, and 52.225-11, and creates a new clause at FAR 52.233-4, Applicable Law for Breach of Contract Claim, to include the statement of applicability of U.S. law in every contract subject to the FAR.

Replacement pages: Part 33 TOC, 33-1 and 33-2; 33.2-3 and 33.2-4; Part 52 TOC, 52-5 and 52-6; 52.2-33 thru 52.2-38; 52.2-131 thru 52.2-136; 52.2-139 thru 52.2-142; 52.2-231 and 52.2-232; and Matrix 33 and 34.

Item III—Telecommuting for Federal Contractors (FAR Case 2003-025) (Interim)

This interim rule amends the FAR to implement Section 1428 of the Services Acquisition Reform Act of 2003 (Title XIV of Public Law 108-136). This rule provides that solicitations for the acquisition of property or services may not include any requirement or evaluation criteria that would render an offeror ineligible to enter into a contract because it proposes to permit its employees to telecommute, unless the contracting officer determines that the requirements of the agency, including security

requirements, cannot be met if telecommuting is permitted. The contracting officer must document in writing the basis for the determination. Also, the solicitation cannot contain any evaluation criteria that would reduce the scoring of an offer because the offeror proposes to permit its employees to telecommute, unless the contracting officer determines that the requirements of the agency, including security requirements, would be adversely impacted if telecommuting is allowed. The contracting officer must document in writing the basis for this determination as well.

Replacement pages: Part 7 TOC, 7-1 and 7-2; 7.1-5 and 7.1-6; 11.1-1 and 11.1-2; 13.1-3 thru 13.1-6; and 15.3-1 and 15.3-2.

Item IV—Section 508 Micropurchase Exemption (FAR Case 2004-020) (Interim)

This interim rule extends the Electronic and Information Technology (Section 508) micropurchases exception to April 1, 2005. This rule is of special interest to contracting officers and other individuals designated in accordance with FAR 1.603-3. All micropurchases made on and after April 1, 2005, would have to comply with the requirements of Section 508. Micropurchases are subject to the same exemption provision as larger dollar buys, as articulated in FAR 39.204.

Replacement pages: 39.2-1 and 39.2-2.

Item V—Technical Amendments

Editorial changes are made at FAR 14.403(c), 52.212-5(b)(34)(ii), 52.215-15(b)(2), 52.217-5, and 52.219-4(d)(3) to update various references.

Replacement pages: 14.4-1 and 14.4-2; 52.2-35 and 52.2-36; 52.2-55 and 52.2-56; and 52.2-83 thru 52.2-88.

LOOSELEAF ONLY CORRECTIONS

1. Section 25.504-1 is corrected in the first sentence of paragraph (b)(2) by removing the word "outside" and adding "in" in its place.

Replacement pages: 25.5-1 and 25.5-2.

2. Section 52.225-11 is corrected in the first sentence of paragraph (b)(1) of the clause by removing the word "is".

Replacement pages: 52.2-139 and 52.2-140.

3. Section 52.244-2 is corrected in paragraph (k) of the clause by adding a colon after the word "negotiations".

Replacement pages: 52.2-259 and 52.2-260.

4. Section 52.249-5 is corrected in paragraph (f) of the clause by removing the word "principle" and adding "principles" in its place.

Replacement pages: 52.2-343 and 52.2-344.

6. The Matrix is corrected in the sixth column at the top of page 34 by removing "FP SUB" and adding "FP SUP" in its place.

Replacement pages: Matrix 33 and Matrix 34.

7. Section 53.301-1414 is corrected by replacing the 10-93 edition of the form with the 5-97 edition.

Replacement pages: 53.3-117 and 53.3-118 removed; SF 1414 (Rev. 5-97) added in its place.

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FAC 2001-25 FILING INSTRUCTIONS

NOTE: The FAR is now segmented by subparts. The FAR page numbers reflect FAR Subparts. For example, "7.1-5" is page 5 of Subpart 7.1, and "52.2-344" is page 344 of Subpart 52.2.

The following pages reflect changes to the FAR that are effective October 5, 2004:

Remove Pages

Part 7 TOC
pp. 7-1 and 7-2
7.1-5 and 7.1-6

11.1-1 and 11.1-2

13.1-3 thru 13.1-6

14.4-1 and 14.4-2

15.3-1 and 15.3-2

25.5-1 and 25.5-2

Part 33 TOC
pp. 33-1 and 33-2
33.2-3 and 33.2-4

39.2-1 and 39.2-2

Part 52 TOC
pp. 52-5 and 52-6
52.2-33 thru 52.2-38
52.2-55 and 52.2-56
52.2-83 thru 52.2-88
52.2-131 thru 52.2-136
52.2-139 thru 52.2-142
52.2-231 and 52.2-232
52.2-259 and 52.2-260
52.2-343 and 52.2-344

Matrix 33 and Matrix 34

53.3-117 and 53-118

**Remove from behind
Forms for Repro tab**

SF 1414 (Rev. 10-93)

Insert Pages

Part 7 TOC
pp. 7-1 and 7-2
7.1-5 and 7.1-6

11.1-1 and 11.1-2

13.1-3 thru 13.1-6

14.4-1 and 14.4-2

15.3-1 and 15.3-2

25.5-1 and 25.5-2

Part 33 TOC
pp. 33-1 and 33-2
33.2-3 and 33.2-4

39.2-1 and 39.2-2

Part 52 TOC
pp. 52-5 and 52-6
52.2-33 thru 52.2-38
52.2-55 and 52.2-56
52.2-83 thru 52.2-88
52.2-131 thru 52.2-136
52.2-139 thru 52.2-142
52.2-231 and 52.2-232
52.2-259 and 52.2-260
52.2-343 and 52.2-344

Matrix 33 and Matrix 34

SF 1414

**Insert behind
Forms for Repro tab**

SF 1414 (Rev. 5-97)

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PART 7—ACQUISITION PLANNING

Sec.

7.000	Scope of part.	7.301	Policy.
	Subpart 7.1—Acquisition Plans	7.302	General.
7.101	Definitions.	7.303	Determining availability of private commercial sources.
7.102	Policy.	7.304	Procedures.
7.103	Agency-head responsibilities.	7.305	Solicitation provisions and contract clause.
7.104	General procedures.	7.306	Evaluation.
7.105	Contents of written acquisition plans.	7.307	Appeals.
7.106	Additional requirements for major systems.		Subpart 7.4—Equipment Lease or Purchase
7.107	Additional requirements for acquisitions involving bundling.	7.400	Scope of subpart.
7.108	Additional requirements for telecommuting.	7.401	Acquisition considerations.
	Subpart 7.2—Planning for the Purchase of Supplies in Economic Quantities	7.402	Acquisition methods.
7.200	Scope of subpart.	7.403	General Services Administration assistance.
7.201	[Reserved]	7.404	Contract clause.
7.202	Policy.		Subpart 7.5—Inherently Governmental Functions
7.203	Solicitation provision.	7.500	Scope of subpart.
7.204	Responsibilities of contracting officers.	7.501	[Reserved]
	Subpart 7.3—Contractor Versus Government Performance	7.502	Applicability.
7.300	Scope of subpart.	7.503	Policy.

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(16) *Environmental and energy conservation objectives.* Discuss all applicable environmental and energy conservation objectives associated with the acquisition (see Part 23), the applicability of an environmental assessment or environmental impact statement (see 40 CFR 1502), the proposed resolution of environmental issues, and any environmentally-related requirements to be included in solicitations and contracts.

(17) *Security considerations.* For acquisitions dealing with classified matters, discuss how adequate security will be established, maintained, and monitored (see Subpart 4.4).

(18) *Contract administration.* Describe how the contract will be administered. In contracts for services, include how inspection and acceptance corresponding to the work statement’s performance criteria will be enforced.

(19) *Other considerations.* Discuss, as applicable, standardization concepts, the industrial readiness program, the Defense Production Act, the Occupational Safety and Health Act, foreign sales implications, and any other matters germane to the plan not covered elsewhere.

(20) *Milestones for the acquisition cycle.* Address the following steps and any others appropriate:

- Acquisition plan approval.
- Statement of work.
- Specifications.
- Data requirements.
- Completion of acquisition-package preparation.
- Purchase request.
- Justification and approval for other than full and open competition where applicable and/or any required D&F approval.
- Issuance of synopsis.
- Issuance of solicitation.
- Evaluation of proposals, audits, and field reports.
- Beginning and completion of negotiations.
- Contract preparation, review, and clearance.
- Contract award.

(21) *Identification of participants in acquisition plan preparation.* List the individuals who participated in preparing the acquisition plan, giving contact information for each.

7.106 Additional requirements for major systems.

(a) In planning for the solicitation of a major system (see Part 34) development contract, planners shall consider requiring offerors to include, in their offers, proposals to incorporate in the design of a major system—

(1) Items which are currently available within the supply system of the agency responsible for the major system, available elsewhere in the national supply system, or commercially available from more than one source; and

(2) Items which the Government will be able to acquire competitively in the future if they are likely to be needed in substantial quantities during the system’s service life.

(b) In planning for the solicitation of a major system (see Part 34) production contract, planners shall consider requiring offerors to include, in their offers, proposals identifying opportunities to assure that the Government will be able to obtain, on a competitive basis, items acquired in connection with the system that are likely to be acquired in substantial quantities during the service life of the system. Proposals submitted in response to such requirements may include the following:

(1) Proposals to provide the Government the right to use technical data to be provided under the contract for competitive future acquisitions, together with the cost to the Government, if any, of acquiring such technical data and the right to use such data.

(2) Proposals for the qualification or development of multiple sources of supply for competitive future acquisitions.

(c) In determining whether to apply paragraphs (a) and (b) of this section, planners shall consider the purposes for which the system is being acquired and the technology necessary to meet the system’s required capabilities. If such proposals are required, the contracting officer shall consider them in evaluating competing offers. In noncompetitive awards, the factors in paragraphs (a) and (b) of this section, may be considered by the contracting officer as objectives in negotiating the contract.

7.107 Additional requirements for acquisitions involving bundling.

(a) Bundling may provide substantial benefits to the Government. However, because of the potential impact on small business participation, the head of the agency must conduct market research to determine whether bundling is necessary and justified (15 U.S.C. 644(e)(2)). Market research may indicate that bundling is necessary and justified if an agency or the Government would derive measurably substantial benefits (see 10.001(a)(2)(iv) and (a)(3)(vi)).

(b) Measurably substantial benefits may include, individually or in any combination or aggregate, cost savings or price reduction, quality improvements that will save time or improve or enhance performance or efficiency, reduction in acquisition cycle times, better terms and conditions, and any other benefits. The agency must quantify the identified benefits and explain how their impact would be measurably substantial. Except as provided in paragraph (d) of this section, the agency may determine bundling to be necessary and justified if, as compared to the benefits that it would derive from contracting to meet those requirements if not

bundled, it would derive measurably substantial benefits equivalent to—

(1) Ten percent of the estimated contract or order value (including options) if the value is \$75 million or less; or

(2) Five percent of the estimated contract or order value (including options) or \$7.5 million, whichever is greater, if the value exceeds \$75 million.

(c) Without power of delegation, the service acquisition executive for the military departments, the Under Secretary of Defense for Acquisition, Technology and Logistics for the defense agencies, or the Deputy Secretary or equivalent for the civilian agencies may determine that bundling is necessary and justified when—

(1) The expected benefits do not meet the thresholds in paragraphs (b)(1) and (b)(2) of this section but are critical to the agency’s mission success; and

(2) The acquisition strategy provides for maximum practicable participation by small business concerns.

(d) Reduction of administrative or personnel costs alone is not sufficient justification for bundling unless the cost savings are expected to be at least 10 percent of the estimated contract or order value (including options) of the bundled requirements.

(e) Substantial bundling is any bundling that results in a contract or order that meets the dollar amounts specified in 7.104(d)(2). When the proposed acquisition strategy involves substantial bundling, the acquisition strategy must additionally—

(1) Identify the specific benefits anticipated to be derived from bundling;

(2) Include an assessment of the specific impediments to participation by small business concerns as contractors that result from bundling;

(3) Specify actions designed to maximize small business participation as contractors, including provisions that encourage small business teaming;

(4) Specify actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract, or order, that may be awarded to meet the requirements;

(5) Include a specific determination that the anticipated benefits of the proposed bundled contract or order justify its use; and

(6) Identify alternative strategies that would reduce or minimize the scope of the bundling, and the rationale for not choosing those alternatives.

(f) The contracting officer must justify bundling in acquisition strategy documentation.

(g) In assessing whether cost savings would be achieved through bundling, the contracting officer must consider the cost that has been charged or, where data is available, could be charged by small business concerns for the same or similar work.

(h) The requirements of this section, except for paragraph (e), do not apply if a cost comparison analysis will be performed in accordance with OMB Circular A-76.

7.108 Additional requirements for telecommuting.

In accordance with section 1428 of Public Law 108-136, an agency shall generally not discourage a contractor from allowing its employees to telecommute in the performance of Government contracts. Therefore, agencies shall not—

(a) Include in a solicitation a requirement that prohibits an offeror from permitting its employees to telecommute unless the contracting officer first determines that the requirements of the agency, including security requirements, cannot be met if telecommuting is permitted. The contracting officer shall document the basis for the determination in writing and specify the prohibition in the solicitation; or

(b) When telecommuting is not prohibited, unfavorably evaluate an offer because it includes telecommuting, unless the contracting officer first determines that the requirements of the agency, including security requirements, would be adversely impacted if telecommuting is permitted. The contracting officer shall document the basis for the determination in writing and address the evaluation procedures in the solicitation.

11.000 Scope of part.

This part prescribes policies and procedures for describing agency needs.

11.001 Definitions.

As used in this part—

“Reconditioned” means restored to the original normal operating condition by readjustments and material replacement.

“Remanufactured” means factory rebuilt to original specifications.

11.002 Policy.

(a) In fulfilling requirements of 10 U.S.C. 2305(a)(1), 10 U.S.C. 2377, 41 U.S.C. 253a(a), and 41 U.S.C. 264b, agencies shall—

(1) Specify needs using market research in a manner designed to—

(i) Promote full and open competition (see Part 6), or maximum practicable competition when using simplified acquisition procedures, with due regard to the nature of the supplies or services to be acquired; and

(ii) Only include restrictive provisions or conditions to the extent necessary to satisfy the needs of the agency or as authorized by law.

(2) To the maximum extent practicable, ensure that acquisition officials—

(i) State requirements with respect to an acquisition of supplies or services in terms of—

- (A) Functions to be performed;
- (B) Performance required; or
- (C) Essential physical characteristics;

(ii) Define requirements in terms that enable and encourage offerors to supply commercial items, or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items, in response to the agency solicitations;

(iii) Provide offerors of commercial items and nondevelopmental items an opportunity to compete in any acquisition to fill such requirements;

(iv) Require prime contractors and subcontractors at all tiers under the agency contracts to incorporate commercial items or nondevelopmental items as components of items supplied to the agency; and

(v) Modify requirements in appropriate cases to ensure that the requirements can be met by commercial items or, to the extent that commercial items suitable to meet the agency's needs are not available, nondevelopmental items.

(b) The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205a, *et seq.*), designates the metric system of measurement as the preferred system of weights and measures for United States trade and commerce, and it requires that each agency use the metric system of measurement in its

acquisitions, except to the extent that such use is impracticable or is likely to cause significant inefficiencies or loss of markets to United States firms. Requiring activities are responsible for establishing guidance implementing this policy in formulating their requirements for acquisitions.

(c) To the extent practicable and consistent with Subpart 9.5, potential offerors should be given an opportunity to comment on agency requirements or to recommend application and tailoring of requirements documents and alternative approaches. Requiring agencies should apply specifications, standards, and related documents initially for guidance only, making final decisions on the application and tailoring of these documents as a product of the design and development process. Requiring agencies should not dictate detailed design solutions prematurely (see 7.101 and 7.105(a)(8)).

(d)(1) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*), Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management, and Executive Order 13221 of July 31, 2001, Energy-Efficient Standby Power Devices, establish requirements for acquiring—

- (i) Products containing recovered materials;
- (ii) Environmentally preferable products and services;
- (iii) Energy-efficient products and services;
- (iv) Products and services that utilize renewable energy technologies; and
- (v) Products containing energy-efficient standby power devices.

(2) Executive agencies shall consider use of recovered materials, energy- and water-efficient products and services, products containing energy-efficient standby power devices, environmentally preferable purchasing criteria developed by the EPA, and environmental objectives (see Subparts 23.2 and 23.4, and 23.703(b)) when—

- (i) Developing, reviewing, or revising Federal and military specifications, product descriptions (including commercial item descriptions) and standards;
- (ii) Describing Government requirements for supplies and services; and
- (iii) Developing source-selection factors.

(e) Some or all of the performance levels or performance specifications in a solicitation may be identified as targets rather than as fixed or minimum requirements.

(f) In accordance with Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), requiring activities must prepare requirements documents for electronic and information technology that comply with the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board at 36 CFR part 1194 (see Subpart 39.2)

(g) Agencies shall not include in a solicitation a requirement that prohibits an offeror from permitting its employees to telecommute unless the contracting officer executes a written determination in accordance with FAR 7.108(a).

Subpart 11.1—Selecting and Developing Requirements Documents

11.101 Order of precedence for requirements documents.

(a) Agencies may select from existing requirements documents, modify or combine existing requirements documents, or create new requirements documents to meet agency needs, consistent with the following order of precedence:

- (1) Documents mandated for use by law.
- (2) Performance-oriented documents.
- (3) Detailed design-oriented documents.
- (4) Standards, specifications and related publications issued by the Government outside the Defense or Federal series for the non-repetitive acquisition of items.

(b) Agencies shall prepare requirements documents to achieve maximum practicable—

- (1) Energy efficiency, including using products containing energy-efficient standby power devices and renewable energy technologies; and
- (2) Use of recovered material, other materials that are environmentally preferable, energy- and water-efficient products, and renewable energy technologies (see Subparts 23.2, 23.4, and 23.7).

(c) In accordance with OMB Circular A-119, “Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,” agencies must use voluntary consensus standards, when they exist, in lieu of Government-unique standards, except where inconsistent with law or otherwise impractical. The private sector manages and administers voluntary consensus standards. Such standards are not mandated by law (*e.g.*, industry standards such as ISO 9000).

11.102 Standardization program.

Agencies shall select existing requirements documents or develop new requirements documents that meet the needs of the agency in accordance with the guidance contained in the Federal Standardization Manual, FSPM-0001, and, for DoD components, DoD 4120.24-M, Defense Standardization Program Policies and Procedures. The Federal Standardization Manual may be obtained from the General Services Administration (see address in 11.201(d)(1)). DoD 4120.24-M may be obtained from DoD (see address in 11.201(d)(2)).

11.103 Market acceptance.

(a) Section 8002(c) of Pub. L. 103-355 provides that, in accordance with agency procedures, the head of an agency may, under appropriate circumstances, require offerors to demonstrate that the items offered—

- (1) Have either—
 - (i) Achieved commercial market acceptance; or

(ii) Been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements; and

(2) Otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation.

(b) Appropriate circumstances may, for example, include situations where the agency’s minimum need is for an item that has a demonstrated reliability, performance or product support record in a specified environment. Use of market acceptance is inappropriate when new or evolving items may meet the agency’s needs.

(c) In developing criteria for demonstrating that an item has achieved commercial market acceptance, the contracting officer shall ensure the criteria in the solicitation—

- (1) Reflect the minimum need of the agency and are reasonably related to the demonstration of an item’s acceptability to meet the agency’s minimum need;
- (2) Relate to an item’s performance and intended use, not an offeror’s capability;
- (3) Are supported by market research;
- (4) Include consideration of items supplied satisfactorily under recent or current Government contracts, for the same or similar items; and
- (5) Consider the entire relevant commercial market, including small business concerns.

(d) Commercial market acceptance shall not be used as a sole criterion to evaluate whether an item meets the Government’s requirements.

(e) When commercial market acceptance is used, the contracting officer shall document the file to—

- (1) Describe the circumstances justifying the use of commercial market acceptance criteria; and
- (2) Support the specific criteria being used.

11.104 Use of brand name or equal purchase descriptions.

(a) While the use of performance specifications is preferred to encourage offerors to propose innovative solutions, the use of brand name or equal purchase descriptions may be advantageous under certain circumstances.

(b) Brand name or equal purchase descriptions must include, in addition to the brand name, a general description of those salient physical, functional, or performance characteristics of the brand name item that an “equal” item must meet to be acceptable for award. Use brand name or equal descriptions when the salient characteristics are firm requirements.

11.105 Items peculiar to one manufacturer.

Agency requirements shall not be written so as to require a particular brand name, product, or a feature of a product, peculiar to one manufacturer, thereby precluding consider-

paragraph (a) of this section unless the FAR Council has already determined in writing that the law is applicable. The Administrator, OFPP, will include the law on the list in paragraph (a) of this section unless the FAR Council makes a determination that it is applicable within 60 days of receiving the petition.

13.006 Inapplicable provisions and clauses.

While certain statutes still apply, pursuant to Public Law 103-355, the following provisions and clauses are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold:

- (a) 52.203-5, Covenant Against Contingent Fees.
- (b) 52.203-6, Restrictions on Subcontractor Sales to the Government.
- (c) 52.203-7, Anti-Kickback Procedures.
- (d) 52.215-2, Audits and Records—Negotiation.
- (e) 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation.
- (f) 52.223-6, Drug-Free Workplace, except for individuals.
- (g) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products.

Subpart 13.1—Procedures

13.101 General.

- (a) In making purchases, contracting officers shall—
 - (1) Comply with the policy in 7.202 relating to economic purchase quantities, when practicable;
 - (2) Satisfy the procedures described in Subpart 19.6 with respect to Certificates of Competency before rejecting a quotation, oral or written, from a small business concern determined to be nonresponsible (see Subpart 9.1); and
 - (3) Provide for the inspection of supplies or services as prescribed in 46.404.
- (b) In making purchases, contracting officers should—
 - (1) Include related items (such as small hardware items or spare parts for vehicles) in one solicitation and make award on an “all-or-none” or “multiple award” basis provided suppliers are so advised when quotations or offers are requested;
 - (2) Incorporate provisions and clauses by reference in solicitations and in awards under requests for quotations, provided the requirements in 52.102 are satisfied;
 - (3) Make maximum effort to obtain trade and prompt payment discounts (see 14.408-3). Prompt payment discounts shall not be considered in the evaluation of quotations; and
 - (4) Use bulk funding to the maximum extent practicable. Bulk funding is a system whereby the contracting officer receives authorization from a fiscal and accounting officer to obligate funds on purchase documents against a specified lump sum of funds reserved for the purpose for a specified

period of time rather than obtaining individual obligational authority on each purchase document. Bulk funding is particularly appropriate if numerous purchases using the same type of funds are to be made during a given period.

13.102 Source list.

(a) Contracting officers should use the Central Contractor Registration database (see Subpart 4.11) at <http://www.ccr.gov> as their primary sources of vendor information. Offices maintaining additional vendor source files or listings should identify the status of each source (when the status is made known to the contracting office) in the following categories:

- (1) Small business.
- (2) Small disadvantaged business.
- (3) Women-owned small business.
- (4) HUBZone small business.
- (5) Service-disabled veteran-owned small business.
- (6) Veteran-owned small business.

(b) The status information may be used as the basis to ensure that small business concerns are provided the maximum practicable opportunities to respond to solicitations issued using simplified acquisition procedures.

13.103 Use of standing price quotations.

Authorized individuals do not have to obtain individual quotations for each purchase. Standing price quotations may be used if—

- (a) The pricing information is current; and
- (b) The Government obtains the benefit of maximum discounts before award.

13.104 Promoting competition.

The contracting officer must promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the Government, considering the administrative cost of the purchase.

- (a) The contracting officer must not—
 - (1) Solicit quotations based on personal preference; or
 - (2) Restrict solicitation to suppliers of well-known and widely distributed makes or brands.
- (b) If using simplified acquisition procedures and not using either FACNET or providing access to the notice of proposed contract action and solicitation information through the Governmentwide point of entry (GPE), maximum practicable competition ordinarily can be obtained by soliciting quotations or offers from sources within the local trade area. Unless the contract action requires synopsis pursuant to 5.101 and an exception under 5.202 is not applicable, consider solicitation of at least three sources to promote competition to the maximum extent practicable. Whenever practicable, request quotations or offers from two sources not included in the previous solicitation.

13.105 Synopsis and posting requirements.

(a) The contracting officer must comply with the public display and synopsis requirements of 5.101 and 5.203 unless—

(1)(i) FACNET is used for an acquisition at or below the simplified acquisition threshold; or

(ii) The GPE is used at or below the simplified acquisition threshold for providing widespread public notice of acquisition opportunities and offerors are provided a means of responding to the solicitation electronically; or

(2) An exception in 5.202 applies.

(b) When acquiring commercial items or supplies or services procured in accordance with 12.102(f)(1), the contracting officer may use a combined synopsis and solicitation. In these cases, a separate solicitation is not required. The contracting officer must include enough information to permit suppliers to develop quotations or offers.

13.106 Soliciting competition, evaluation of quotations or offers, award and documentation.

13.106-1 Soliciting competition.

(a) *Considerations.* In soliciting competition, the contracting officer shall consider the guidance in 13.104 and the following before requesting quotations or offers:

(1)(i) The nature of the article or service to be purchased and whether it is highly competitive and readily available in several makes or brands, or is relatively noncompetitive.

(ii) An electronic commerce method that employs widespread electronic public notice is not available; and

(iii) The urgency of the proposed purchase.

(iv) The dollar value of the proposed purchase.

(v) Past experience concerning specific dealers' prices.

(2) When soliciting quotations or offers, the contracting officer shall notify potential quoters or offerors of the basis on which award will be made (price alone or price and other factors, *e.g.*, past performance and quality). Contracting officers are encouraged to use best value. Solicitations are not required to state the relative importance assigned to each evaluation factor and subfactor, nor are they required to include subfactors.

(b) *Soliciting from a single source.* (1) For purchases not exceeding the simplified acquisition threshold, contracting officers may solicit from one source if the contracting officer determines that the circumstances of the contract action deem only one source reasonably available (*e.g.*, urgency, exclusive licensing agreements, or industrial mobilization).

(2) For sole source acquisitions of commercial items in excess of the simplified acquisition threshold conducted pursuant to Subpart 13.5, the requirements at 13.501(a) apply.

(c) *Soliciting orally.* (1) The contracting officer shall solicit quotations orally to the maximum extent practicable, if—

(i) The acquisition does not exceed the simplified acquisition threshold;

(ii) Oral solicitation is more efficient than soliciting through available electronic commerce alternatives; and

(iii) Notice is not required under 5.101.

(2) However, an oral solicitation may not be practicable for contract actions exceeding \$25,000 unless covered by an exception in 5.202.

(d) *Written solicitations.* If obtaining electronic or oral quotations is uneconomical or impracticable, the contracting officer should issue paper solicitations for contract actions likely to exceed \$25,000. The contracting officer shall issue a written solicitation for construction requirements exceeding \$2,000.

(e) *Use of options.* Options may be included in solicitations, provided the requirements of Subpart 17.2 are met and the aggregate value of the acquisition and all options does not exceed the dollar threshold for use of simplified acquisition procedures.

(f) *Inquiries.* An agency should respond to inquiries received through any medium (including FACNET) if doing so would not interfere with the efficient conduct of the acquisition. For an acquisition conducted through FACNET, an agency must respond to telephonic or facsimile inquiries only if it is unable to receive inquiries through FACNET.

13.106-2 Evaluation of quotations or offers.

(a) *General.* (1) The contracting officer shall evaluate quotations or offers—

(i) In an impartial manner; and

(ii) Inclusive of transportation charges from the shipping point of the supplier to the delivery destination.

(2) Quotations or offers shall be evaluated on the basis established in the solicitation.

(3) All quotations or offers shall be considered (see paragraph (b) of this subsection).

(b) *Evaluation procedures.* (1) The contracting officer has broad discretion in fashioning suitable evaluation procedures. The procedures prescribed in Parts 14 and 15 are not mandatory. At the contracting officer's discretion, one or more, but not necessarily all, of the evaluation procedures in Part 14 or 15 may be used.

(2) If telecommuting is not prohibited, agencies shall not unfavorably evaluate an offer because it includes telecommuting unless the contracting officer executes a written determination in accordance with FAR 7.108(b).

(3) If using price and other factors, ensure that quotations or offers can be evaluated in an efficient and minimally burdensome fashion. Formal evaluation plans and establishing a competitive range, conducting discussions, and scoring quotations or offers are not required. Contracting offices may conduct comparative evaluations of offers. Evaluation of other factors, such as past performance—

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

(ii) May be based on information such as the contracting officer's knowledge of and previous experience with the supply or service being acquired, customer surveys, or other reasonable basis.

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

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

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

13.106-3 Award and documentation.

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

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

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

(i) Market research;

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

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

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

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

(vi) Comparison to an independent Government estimate; or

(vii) Any other reasonable basis.

(3) Occasionally an item can be obtained only from a supplier that quotes a minimum order price or quantity that either unreasonably exceeds stated quantity requirements or results in an unreasonable price for the quantity required. In

these instances, the contracting officer should inform the requiring activity of all facts regarding the quotation or offer and ask it to confirm or alter its requirement. The file shall be documented to support the final action taken.

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

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

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

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

(i) Explaining the absence of competition if only one source is solicited and the acquisition does not exceed the simplified acquisition threshold (does not apply to an acquisition of utility services available from only one source); or

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

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

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

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

Subpart 14.4—Opening of Bids and Award of Contract

14.400 Scope of subpart.

This subpart contains procedures for the receipt, handling, opening, and disposition of bids including mistakes in bids, and subsequent award of contracts.

14.401 Receipt and safeguarding of bids.

(a) All bids (including modifications) received before the time set for the opening of bids shall be kept secure. Except as provided in paragraph (b) of this section, the bids shall not be opened or viewed, and shall remain in a locked bid box, a safe, or in a secured, restricted-access electronic bid box. If an invitation for bids is cancelled, bids shall be returned to the bidders. Necessary precautions shall be taken to ensure the security of the bid box or safe. Before bid opening, information concerning the identity and number of bids received shall be made available only to Government employees. Such disclosure shall be only on a “need to know” basis. When bid samples are submitted, they shall be handled with sufficient care to prevent disclosure of characteristics before bid opening.

(b) Envelopes marked as bids but not identifying the bidder or the solicitation may be opened solely for the purpose of identification, and then only by an official designated for this purpose. If a sealed bid is opened by mistake (e.g., because it is not marked as being a bid), the envelope shall be signed by the opener, whose position shall also be written thereon, and delivered to the designated official. This official shall immediately write on the envelope (1) an explanation of the opening, (2) the date and time opened, and (3) the invitation for bids number, and shall sign the envelope. The official shall then immediately reseal the envelope.

14.402 Opening of bids.

14.402-1 Unclassified bids.

(a) The bid opening officer shall decide when the time set for opening bids has arrived and shall inform those present of that decision. The officer shall then (1) personally and publicly open all bids received before that time, (2) if practical, read the bids aloud to the persons present, and (3) have the bids recorded. The original of each bid shall be carefully safeguarded, particularly until the abstract of bids required by 14.403 has been made and its accuracy verified.

(b) Performance of the procedure in paragraph (a) of this section may be delegated to an assistant, but the bid opening officer remains fully responsible for the actions of the assistant.

(c) Examination of bids by interested persons shall be permitted if it does not interfere unduly with the conduct of Government business. Original bids shall not be allowed to pass

out of the hands of a Government official unless a duplicate bid is not available for public inspection. The original bid may be examined by the public only under the immediate supervision of a Government official and under conditions that preclude possibility of a substitution, addition, deletion, or alteration in the bid.

14.402-2 Classified bids.

The general public may not attend bid openings for classified acquisitions. A bidder or its representative may attend and record the results if the individual has the appropriate security clearance. The contracting officer also may make the bids available at a later time to properly cleared individuals who represent bidders. No public record shall be made of bids or bid prices received in response to classified invitations for bids.

14.402-3 Postponement of openings.

(a) A bid opening may be postponed even after the time scheduled for bid opening (but otherwise in accordance with 14.208) when—

(1) The contracting officer has reason to believe that the bids of an important segment of bidders have been delayed in the mails, or in the communications system specified for transmission of bids, for causes beyond their control and without their fault or negligence (e.g., flood, fire, accident, weather conditions, strikes, or Government equipment black-out or malfunction when bids are due); or

(2) Emergency or unanticipated events interrupt normal governmental processes so that the conduct of bid opening as scheduled is impractical.

(b) At the time of a determination to postpone a bid opening under paragraph (a)(1) of this section, an announcement of the determination shall be publicly posted. If practical before issuance of a formal amendment of the invitation, the determination shall be otherwise communicated to prospective bidders who are likely to attend the scheduled bid opening.

(c) In the case of paragraph (a)(2) of this section, and when urgent Government requirements preclude amendment of the solicitation as prescribed in 14.208, the time specified for opening of bids will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume. In such cases, the time of actual bid opening shall be deemed to be the time set for bid opening for the purpose of determining “late bids” under 14.304. A note should be made on the abstract of bids or otherwise added to the file explaining the circumstances of the postponement.

14.403 Recording of bids.

(a) Standard Form 1409, Abstract of Offers, or Optional Form 1419, Abstract of Offers—Construction (or automated

equivalent), shall be completed and certified as to its accuracy by the bid opening officer as soon after bid opening as practicable. Where bid items are too numerous to warrant complete recording of all bids, abstract entries for individual bids may be limited to item numbers and bid prices. In preparing these forms, the extra columns and SF 1410, Abstract of Offers—Continuation, and OF 1419A, Abstract of Offer—Construction, Continuation Sheet, may be used to label and record such information as the contracting activity deems necessary.

(b) Abstracts of offers for unclassified acquisitions shall be available for public inspection. Such abstracts shall not contain information regarding failure to meet minimum standards of responsibility, apparent collusion of bidders, or other notations properly exempt from disclosure to the public in accordance with agency regulations implementing Subpart 24.2.

(c) The forms identified in paragraph (a) of this section need not be used by the Defense Energy Support Center for acquisitions of coal or petroleum products or by the Defense Supply Center Philadelphia for perishable subsistence items.

(d) If an invitation for bids is cancelled before the time set for bid opening, this fact shall be recorded together with a statement of the number of bids invited and the number of bids received.

14.404 Rejection of bids.

14.404-1 Cancellation of invitations after opening.

(a)(1) Preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the invitation.

(2) Every effort shall be made to anticipate changes in a requirement before the date of opening and to notify all prospective bidders of any resulting modification or cancellation. This will permit bidders to change their bids and prevent unnecessary exposure of bid prices.

(3) As a general rule, after the opening of bids, an invitation should not be cancelled and resolicited due solely to increased requirements for the items being acquired. Award should be made on the initial invitation for bids and the additional quantity should be treated as a new acquisition.

(b) When it is determined before award but after opening that the requirements of 11.201 (relating to the availability and identification of specifications) have not been met, the invitation shall be cancelled.

(c) Invitations may be cancelled and all bids rejected before award but after opening when, consistent with subparagraph (a)(1) of this section, the agency head determines in writing that—

(1) Inadequate or ambiguous specifications were cited in the invitation;

(2) Specifications have been revised;

(3) The supplies or services being contracted for are no longer required;

(4) The invitation did not provide for consideration of all factors of cost to the Government, such as cost of transporting Government-furnished property to bidders' plants;

(5) Bids received indicate that the needs of the Government can be satisfied by a less expensive article differing from that for which the bids were invited;

(6) All otherwise acceptable bids received are at unreasonable prices, or only one bid is received and the contracting officer cannot determine the reasonableness of the bid price;

(7) The bids were not independently arrived at in open competition, were collusive, or were submitted in bad faith (see Subpart 3.3 for reports to be made to the Department of Justice);

(8) No responsive bid has been received from a responsible bidder;

(9) A cost comparison as prescribed in OMB Circular A-76 and Subpart 7.3 shows that performance by the Government is more economical; or

(10) For other reasons, cancellation is clearly in the public's interest.

(d) Should administrative difficulties be encountered after bid opening that may delay award beyond bidders' acceptance periods, the several lowest bidders whose bids have not expired (irrespective of the acceptance period specified in the bid) should be requested, before expiration of their bids, to extend in writing the bid acceptance period (with consent of sureties, if any) in order to avoid the need for resoliciting.

(e) Under some circumstances, completion of the acquisition after cancellation of the invitation for bids may be appropriate.

(1) If the invitation for bids has been cancelled for the reasons specified in subparagraphs (c)(6), (7), or (8) of this subsection, and the agency head has authorized, in the determination in paragraph (c) of this subsection, the completion of the acquisition through negotiation, the contracting officer shall proceed in accordance with paragraph (f) of this subsection.

(2) If the invitation for bids has been cancelled for the reasons specified in subparagraphs (c)(1), (2), (4), (5), or (10) of this subsection, or for the reasons in subparagraphs (c)(6), (7), or (8) of this subsection and completion through negotiation is not authorized under subparagraph (e)(1) of this subsection, the contracting officer shall proceed with a new acquisition.

(f) When the agency head has determined, in accordance with paragraph (e)(1) of this subsection, that an invitation for bids should be canceled and that use of negotiation is in the Government's interest, the contracting officer may negotiate (in accordance with Part 15, as appropriate) and make award without issuing a new solicitation provided—

Subpart 15.3—Source Selection

15.300 Scope of subpart.

This subpart prescribes policies and procedures for selection of a source or sources in competitive negotiated acquisitions.

15.301 [Reserved]

15.302 Source selection objective.

The objective of source selection is to select the proposal that represents the best value.

15.303 Responsibilities.

(a) Agency heads are responsible for source selection. The contracting officer is designated as the source selection authority, unless the agency head appoints another individual for a particular acquisition or group of acquisitions.

(b) The source selection authority shall—

(1) Establish an evaluation team, tailored for the particular acquisition, that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a comprehensive evaluation of offers;

(2) Approve the source selection strategy or acquisition plan, if applicable, before solicitation release;

(3) Ensure consistency among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements;

(4) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation (10 U.S.C. 2305(b)(1) and 41 U.S.C. 253b(d)(3));

(5) Consider the recommendations of advisory boards or panels (if any); and

(6) Select the source or sources whose proposal is the best value to the Government (10 U.S.C. 2305(b)(4)(B) and 41 U.S.C. 253b(d)(3)).

(c) The contracting officer shall—

(1) After release of a solicitation, serve as the focal point for inquiries from actual or prospective offerors;

(2) After receipt of proposals, control exchanges with offerors in accordance with 15.306; and

(3) Award the contract(s).

15.304 Evaluation factors and significant subfactors.

(a) The award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition.

(b) Evaluation factors and significant subfactors must—

(1) Represent the key areas of importance and emphasis to be considered in the source selection decision; and

(2) Support meaningful comparison and discrimination between and among competing proposals.

(c) The evaluation factors and significant subfactors that apply to an acquisition and their relative importance, are within the broad discretion of agency acquisition officials, subject to the following requirements:

(1) Price or cost to the Government shall be evaluated in every source selection (10 U.S.C. 2305(a)(3)(A)(ii) and 41 U.S.C. 253a(c)(1)(B)) (also see Part 36 for architect-engineer contracts);

(2) The quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience (10 U.S.C. 2305(a)(3)(A)(i) and 41 U.S.C. 253a(c)(1)(A)); and

(3)(i) Except as set forth in paragraph (c)(3)(iv) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed \$1,000,000.

(ii) Except as set forth in paragraph (c)(3)(iv) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions issued on or after January 1, 1999, for acquisitions expected to exceed \$100,000. Agencies should develop phase-in schedules that meet or exceed this schedule.

(iii) For solicitations involving bundling that offer a significant opportunity for subcontracting, the contracting officer must include a factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans (15 U.S.C. 637(d)(4)(G)(ii)).

(iv) Past performance need not be evaluated if the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition.

(4) The extent of participation of small disadvantaged business concerns in performance of the contract shall be evaluated in unrestricted acquisitions expected to exceed \$500,000 (\$1,000,000 for construction) subject to certain limitations (see 19.201 and 19.1202).

(5) For solicitations involving bundling that offer a significant opportunity for subcontracting, the contracting officer must include proposed small business subcontracting participation in the subcontracting plan as an evaluation factor (15 U.S.C. 637(d)(4)(G)(i)).

(6) If telecommuting is not prohibited, agencies shall not unfavorably evaluate an offer that includes telecommuting unless the contracting officer executes a written determination in accordance with FAR 7.108(b).

(d) All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation (10 U.S.C. 2305(a)(2)(A)(i) and 41 U.S.C. 253a(b)(1)(A)) (see 15.204-5(c)). The rating method need not be disclosed in the solicitation. The general approach for evaluating past performance information shall be described.

(e) The solicitation shall also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—

- (1) Significantly more important than cost or price;
- (2) Approximately equal to cost or price; or
- (3) Significantly less important than cost or price (10 U.S.C. 2305(a)(3)(A)(iii) and 41 U.S.C. 253a(c)(1)(C)).

15.305 Proposal evaluation.

(a) Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. An agency shall evaluate competitive proposals and then assess their relative qualities solely on the factors and subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file.

(1) *Cost or price evaluation.* Normally, competition establishes price reasonableness. Therefore, when contracting on a firm-fixed-price or fixed-price with economic price adjustment basis, comparison of the proposed prices will usually satisfy the requirement to perform a price analysis, and a cost analysis need not be performed. In limited situations, a cost analysis (see 15.403-1(c)(1)(i)(B)) may be appropriate to establish reasonableness of the otherwise successful offeror's price. When contracting on a cost-reimbursement basis, evaluations shall include a cost realism analysis to determine what the Government should realistically expect to pay for the proposed effort, the offeror's understanding of the work, and the offeror's ability to perform the contract. (See 37.115 for uncompensated overtime evaluation.) The contracting officer shall document the cost or price evaluation.

(2) *Past performance evaluation.* (i) Past performance information is one indicator of an offeror's ability to perform the contract successfully. The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance shall be considered. This comparative assessment of past performance information is separate from the responsibility determination required under Subpart 9.1.

(ii) The solicitation shall describe the approach for evaluating past performance, including evaluating offerors with no relevant performance history, and shall provide offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the Government requirement. The solicitation shall also authorize offerors to provide information on problems encountered on the identified contracts and the offeror's corrective actions. The Government shall consider this information, as well as information obtained from any other sources, when evaluating the offeror's past performance. The

source selection authority shall determine the relevance of similar past performance information.

(iii) The evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.

(iv) In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance.

(v) The evaluation should include the past performance of offerors in complying with subcontracting plan goals for small disadvantaged business (SDB) concerns (see Subpart 19.7), monetary targets for SDB participation (see 19.1202), and notifications submitted under 19.1202-4(b).

(3) *Technical evaluation.* When tradeoffs are performed (see 15.101-1), the source selection records shall include—

(i) An assessment of each offeror's ability to accomplish the technical requirements; and

(ii) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

(4) *Cost information* Cost information may be provided to members of the technical evaluation team in accordance with agency procedures.

(5) *Small business subcontracting evaluation.* Solicitations must be structured to give offers from small business concerns the highest rating for the evaluation factors in 15.304(c)(3)(iii) and (c)(5).

(b) The source selection authority may reject all proposals received in response to a solicitation, if doing so is in the best interest of the Government.

(c) For restrictions on the use of support contractor personnel in proposal evaluation, see 37.203(d).

15.306 Exchanges with offerors after receipt of proposals.

(a) *Clarifications and award without discussions.*

(1) Clarifications are limited exchanges, between the Government and offerors, that may occur when award without discussions is contemplated.

(2) If award will be made without conducting discussions, offerors may be given the opportunity to clarify certain aspects of proposals (e.g., the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors.

(3) Award may be made without discussions if the solicitation states that the Government intends to evaluate proposals and make award without discussions. If the solicitation contains such a notice and the Government determines it is

**Subpart 25.5—Evaluating Foreign Offers—
Supply Contracts**

25.501 General.

The contracting officer—

(a) Must apply the evaluation procedures of this subpart to each line item of an offer unless either the offer or the solicitation specifies evaluation on a group basis (see 25.503);

(b) May rely on the offeror’s certification of end product origin when evaluating a foreign offer;

(c) Must identify and reject offers of end products that are prohibited or sanctioned in accordance with Subparts 25.6 and 25.7; and

(d) Must not use the Buy American Act evaluation factors prescribed in this subpart to provide a preference for one foreign offer over another foreign offer.

25.502 Application.

(a) Unless otherwise specified in agency regulations, perform the following steps in the order presented:

(1) Eliminate all offers or offerors that are unacceptable for reasons other than price; *e.g.*, nonresponsive, debarred or suspended, sanctioned (see Subpart 25.6), or a prohibited source (see Subpart 25.7).

(2) Rank the remaining offers by price.

(3) If the solicitation specifies award on the basis of factors in addition to cost or price, apply the evaluation factors as specified in this section and use the evaluated cost or price in determining the offer that represents the best value to the Government.

(b) For acquisitions subject to the Trade Agreements Act (see Subpart 25.4)—

(1) Consider only offers of U.S.-made, designated country, Caribbean Basin country, or FTA country end products, unless no offers of such end products were received;

(2) If the agency gives the same consideration given eligible offers to offers of U.S.-made end products that are not domestic end products, award on the low offer. Otherwise, evaluate in accordance with agency procedures; and

(3) If there were no offers of U.S.-made, designated country, Caribbean Basin country, or FTA country end products, make a nonavailability determination (see 25.103(b)(2)) and award on the low offer (see 25.403(c)).

(c) For acquisitions not subject to the Trade Agreements Act, but subject to the Buy American Act (an FTA or the Israeli Trade Act also may apply), the following applies:

(1) If the low offer is a domestic offer or an eligible offer under an FTA or the Israeli Trade Act, award on that offer.

(2) If the low offer is a noneligible offer and there were no domestic offers (see 25.103(b)(3)), award on the low offer.

(3) If the low offer is a noneligible offer and there is an eligible offer that is lower than the lowest domestic offer, award on the low offer. The Buy American Act provides an evaluation preference only for domestic offers.

(4) Otherwise, apply the appropriate evaluation factor provided in 25.105 to the low offer.

(i) If the evaluated price of the low offer remains less than the lowest domestic offer, award on the low offer.

(ii) If the price of the lowest domestic offer is less than the evaluated price of the low offer, award on the lowest domestic offer.

(d) *Ties.* (1) If application of an evaluation factor results in a tie between a domestic offer and a foreign offer, award on the domestic offer.

(2) If no evaluation preference was applied (*i.e.*, offers afforded nondiscriminatory treatment under the Buy American Act), resolve ties between domestic and foreign offers by a witnessed drawing of lots by an impartial individual.

(3) Resolve ties between foreign offers from small business concerns (under the Buy American Act, a small business offering a manufactured article that does not meet the definition of “domestic end product” is a foreign offer) or foreign offers from a small business concern and a large business concern in accordance with 14.408-6(a).

25.503 Group offers.

(a) If the solicitation or an offer specifies that award can be made only on a group of line items or on all line items contained in the solicitation or offer, reject the offer—

(1) If any part of the award would consist of sanctioned or prohibited end products (see Subparts 25.6 and 25.7); or

(2) If the Trade Agreements Act applies and any part of the offer consists of items restricted in accordance with 25.403(c).

(b) If an offer restricts award to a group of line items or to all line items contained in the offer, determine for each line item whether to apply an evaluation factor (see 25.504-4, Example 1).

(1) First, evaluate offers that do not specify an award restriction on a line item basis in accordance with 25.502, determining a tentative award pattern by selecting for each line item the offer with the lowest evaluated price.

(2) Evaluate an offer that specifies an award restriction against the offered prices of the tentative award pattern, applying the appropriate evaluation factor on a line item basis.

(3) Compute the total evaluated price for the tentative award pattern and the offer that specified an award restriction.

(4) Unless the total evaluated price of the offer that specified an award restriction is less than the total evaluated price of the tentative award pattern, award based on the tentative award pattern.

(c) If the solicitation specifies that award will be made only on a group of line items or all line items contained in the solicitation, determine the category of end products on the basis of each line item, but determine whether to apply an evaluation factor on the basis of the group of items (see 25.504-4, Example 2).

(1) If the proposed price of domestic end products exceeds 50 percent of the total proposed price of the group, evaluate the entire group as a domestic offer. Evaluate all other groups as foreign offers.

(2) For foreign offers, if the proposed price of domestic end products and eligible products exceeds 50 percent of the total proposed price of the group, evaluate the entire group as an eligible offer.

(3) Apply the evaluation factor to the entire group in accordance with 25.502.

25.504 Evaluation examples.

The following examples illustrate the application of the evaluation procedures in 25.502 and 25.503. The examples assume that the contracting officer has eliminated all offers that are unacceptable for reasons other than price or a trade agreement (see 25.502(a)(1)). The evaluation factor may change as provided in agency regulations.

25.504-1 Buy American Act.

(a)(1) *Example 1.*

- Offer A \$12,000 Domestic end product, small business
- Offer B \$11,700 Domestic end product, small business
- Offer C \$10,000 U.S.-made end product (not domestic), small business

(2) *Analysis:* This acquisition is for end products for use in the United States and is set aside for small business concerns. The Buy American Act applies. Since the acquisition value is less than \$25,000 and the acquisition is set aside, none of the trade agreements apply. Perform the steps in 25.502(a). Offer C is evaluated as a foreign end product because it is the product of a small business, but is not a domestic end product (see 25.502(c)(4)). Since Offer B is a domestic offer, apply the 12 percent factor to Offer C (see 25.105(b)(2)). The resulting evaluated price of \$11,200 remains lower than Offer B. The cost of Offer B is therefore unreasonable (see 25.105(c)). Award on Offer C at \$10,000 (see 25.502(c)(4)(i)).

(b)(1) *Example 2.*

- Offer A \$11,000 Domestic end product, small business
- Offer B \$10,700 Domestic end product, small business
- Offer C \$10,200 U.S.-made end product (not domestic), small business

(2) *Analysis:* This acquisition is for end products for use in the United States and is set aside for small business concerns. The Buy American Act applies. Perform the steps in 25.502(a). Offer C is evaluated as a foreign end product because it is the product of a small business but is not a domestic end product (see 25.502(c)(4)). After applying the 12 percent factor, the evaluated price of Offer C is \$11,424. Award on Offer B at \$10,700 (see 25.502(c)(4)(ii)).

25.504-2 Trade Agreements Act/Caribbean Basin Trade Initiative/FTAs.

Example 1.

- Offer A \$204,000 U.S.-made end product (not domestic)
- Offer B \$203,000 U.S.-made end product (domestic), small business
- Offer C \$200,000 Eligible product
- Offer D \$195,000 Noneligible product (not U.S.-made)

Analysis: Eliminate Offer D because the Trade Agreements Act applies and there is an offer of a U.S.-made or an eligible product (see 25.502(b)(1)). If the agency gives the same consideration given eligible offers to offers of U.S.-made end products that are not domestic offers, it is unnecessary to determine if U.S.-made end products are domestic (large or small business). No further analysis is necessary. Award on the low remaining offer, Offer C (see 25.502(b)(2)).

25.504-3 FTA/Israeli Trade Act.

(a) *Example 1.*

- Offer A \$105,000 Domestic end product, small business
- Offer B \$100,000 Eligible product

Analysis: Since the low offer is an eligible offer, award on the low offer (see 25.502(c)(1)).

(b) *Example 2.*

- Offer A \$105,000 Eligible product
- Offer B \$103,000 Noneligible product

Analysis: Since the acquisition is not subject to the Trade Agreements Act, the contracting officer can consider the non-eligible offer. Since no domestic offer was received, make a nonavailability determination and award on Offer B (see 25.502(c)(2)).

(c) *Example 3.*

- Offer A \$105,000 Domestic end product, large business
- Offer B \$103,000 Eligible product
- Offer C \$100,000 Noneligible product

Analysis: Since the acquisition is not subject to the Trade Agreements Act, the contracting officer can consider the non-eligible offer. Because the eligible offer (Offer B) is lower

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PART 33—PROTESTS, DISPUTES, AND APPEALS

Sec.

33.000	Scope of part.	33.204	Policy.
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33.101	Definitions.	33.206	Initiation of a claim.
33.102	General.	33.207	Contractor certification.
33.103	Protests to the agency.	33.208	Interest on claims.
33.104	Protests to GAO.	33.209	Suspected fraudulent claims.
33.105	[Reserved]	33.210	Contracting officer's authority.
33.106	Solicitation provision and contract clause.	33.211	Contracting officer's decision.
	Subpart 33.2—Disputes and Appeals	33.212	Contracting officer's duties upon appeal.
33.201	Definitions.	33.213	Obligation to continue performance.
33.202	Contract Disputes Act of 1978.	33.214	Alternative dispute resolution (ADR).
33.203	Applicability.	33.215	Contract clauses.

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- (3) Coordinate with the contract administration office or contracting office, as appropriate; and
- (4) Prepare a written decision that shall include a—
 - (i) Description of the claim or dispute;
 - (ii) Reference to the pertinent contract terms;
 - (iii) Statement of the factual areas of agreement and disagreement;
 - (iv) Statement of the contracting officer’s decision, with supporting rationale;
 - (v) Paragraph substantially as follows:

This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number. With regard to appeals to the agency board of contract appeals, you may, solely at your election, proceed under the board’s small claim procedure for claims of \$50,000 or less or its accelerated procedure for claims of \$100,000 or less. Instead of appealing to the agency board of contract appeals, you may bring an action directly in the United States Court of Federal Claims (except as provided in the Contract Disputes Act of 1978, 41 U.S.C. 603, regarding Maritime Contracts) within 12 months of the date you receive this decision; and

(vi) Demand for payment prepared in accordance with 32.610(b) in all cases where the decision results in a finding that the contractor is indebted to the Government.

(b) The contracting officer shall furnish a copy of the decision to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. This requirement shall apply to decisions on claims initiated by or against the contractor.

(c) The contracting officer shall issue the decision within the following statutory time limitations:

(1) For claims of \$100,000 or less, 60 days after receiving a written request from the contractor that a decision be rendered within that period, or within a reasonable time after receipt of the claim if the contractor does not make such a request.

(2) For claims over \$100,000, 60 days after receiving a certified claim; provided, however, that if a decision will not be issued within 60 days, the contracting officer shall notify the contractor, within that period, of the time within which a decision will be issued.

(d) The contracting officer shall issue a decision within a reasonable time, taking into account—

- (1) The size and complexity of the claim;
 - (2) The adequacy of the contractor’s supporting data;
- and

(3) Any other relevant factors.

(e) The contracting officer shall have no obligation to render a final decision on any claim exceeding \$100,000 which contains a defective certification, if within 60 days after receipt of the claim, the contracting officer notifies the contractor, in writing, of the reasons why any attempted certification was found to be defective.

(f) In the event of undue delay by the contracting officer in rendering a decision on a claim, the contractor may request the tribunal concerned to direct the contracting officer to issue a decision in a specified time period determined by the tribunal.

(g) Any failure of the contracting officer to issue a decision within the required time periods will be deemed a decision by the contracting officer denying the claim and will authorize the contractor to file an appeal or suit on the claim.

(h) The amount determined payable under the decision, less any portion already paid, should be paid, if otherwise proper, without awaiting contractor action concerning appeal. Such payment shall be without prejudice to the rights of either party.

33.212 Contracting officer’s duties upon appeal.

To the extent permitted by any agency procedures controlling contacts with agency BCA personnel, the contracting officer shall provide data, documentation, information, and support as may be required by the agency BCA for use on a pending appeal from the contracting officer’s decision.

33.213 Obligation to continue performance.

(a) In general, before passage of the Act, the obligation to continue performance applied only to claims arising under a contract. However, the Act, at 41 U.S.C. 605(b), authorizes agencies to require a contractor to continue contract performance in accordance with the contracting officer’s decision pending a final resolution of any claim arising under, or relating to, the contract. (A claim arising under a contract is a claim that can be resolved under a contract clause, other than the clause at 52.233-1, Disputes, that provides for the relief sought by the claimant; however, relief for such claim can also be sought under the clause at 52.233-1. A claim relating to a contract is a claim that cannot be resolved under a contract clause other than the clause at 52.233-1.) This distinction is recognized by the clause with its Alternate I (see 33.215).

(b) In all contracts that include the clause at 52.233-1, Disputes, with its Alternate I, in the event of a dispute not arising under, but relating to, the contract, the contracting officer shall consider providing, through appropriate agency procedures, financing of the continued performance; provided, that the Government’s interest is properly secured.

33.214 Alternative dispute resolution (ADR).

(a) The objective of using ADR procedures is to increase the opportunity for relatively inexpensive and expeditious resolution of issues in controversy. Essential elements of ADR include—

- (1) Existence of an issue in controversy;
- (2) A voluntary election by both parties to participate in the ADR process;
- (3) An agreement on alternative procedures and terms to be used in lieu of formal litigation; and
- (4) Participation in the process by officials of both parties who have the authority to resolve the issue in controversy.

(b) If the contracting officer rejects a contractor's request for ADR proceedings, the contracting officer shall provide the contractor a written explanation citing one or more of the conditions in 5 U.S.C. 572(b) or such other specific reasons that ADR procedures are inappropriate for the resolution of the dispute. In any case where a contractor rejects a request of an agency for ADR proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

(c) ADR procedures may be used at any time that the contracting officer has authority to resolve the issue in controversy. If a claim has been submitted, ADR procedures may be applied to all or a portion of the claim. When ADR procedures are used subsequent to the issuance of a contracting officer's final decision, their use does not alter any of the time limitations or procedural requirements for filing an appeal of the contracting officer's final decision and does not constitute a reconsideration of the final decision.

(d) When appropriate, a neutral person may be used to facilitate resolution of the issue in controversy using the procedures chosen by the parties.

(e) The confidentiality of ADR proceedings shall be protected consistent with 5 U.S.C. 574.

(f)(1) A solicitation shall not require arbitration as a condition of award, unless arbitration is otherwise required by law. Contracting officers should have flexibility to select the appropriate ADR procedure to resolve the issues in controversy as they arise.

(2) An agreement to use arbitration shall be in writing and shall specify a maximum award that may be issued by the arbitrator, as well as any other conditions limiting the range of possible outcomes.

(g) Binding arbitration, as an ADR procedure, may be agreed to only as specified in agency guidelines. Such guidelines shall provide advice on the appropriate use of binding arbitration and when an agency has authority to settle an issue in controversy through binding arbitration.

33.215 Contract clauses.

(a) Insert the clause at 52.233-1, Disputes, in solicitations and contracts, unless the conditions in 33.203(b) apply. If it is determined under agency procedures that continued performance is necessary pending resolution of any claim arising under or relating to the contract, the contracting officer shall use the clause with its Alternate I.

(b) Insert the clause at 52.233-4 in all solicitations and contracts.

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Subpart 39.2—Electronic and Information Technology

39.201 Scope of subpart.

(a) This subpart implements Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), and the Architectural and Transportation Barriers Compliance Board Electronic and Information Technology (EIT) Accessibility Standards (36 CFR part 1194).

(b) Further information on Section 508 is available via the Internet at <http://www.section508.gov>.

(c) When acquiring EIT, agencies must ensure that—

(1) Federal employees with disabilities have access to and use of information and data that is comparable to the access and use by Federal employees who are not individuals with disabilities; and

(2) Members of the public with disabilities seeking information or services from an agency have access to and use of information and data that is comparable to the access to and use of information and data by members of the public who are not individuals with disabilities.

39.202 Definition.

Undue burden, as used in this subpart, means a significant difficulty or expense.

39.203 Applicability.

(a) Unless an exception at 39.204 applies, acquisitions of EIT supplies and services must meet the applicable accessibility standards at 36 CFR part 1194.

(b)(1) Exception determinations are required prior to contract award, except for indefinite-quantity contracts (see paragraph (b)(2) of this section).

(2) Exception determinations are not required prior to award of indefinite-quantity contracts, except for requirements that are to be satisfied by initial award. Contracting offices that award indefinite-quantity contracts must indicate to requiring and ordering activities which supplies and services the contractor indicates as compliant, and show where full details of compliance can be found (*e.g.*, vendor's or other exact website location).

(3) Requiring and ordering activities must ensure supplies or services meet the applicable accessibility standards at 36 CFR part 1194, unless an exception applies, at the time of issuance of task or delivery orders. Accordingly, indefinite-quantity contracts may include noncompliant items; however, any task or delivery order issued for noncompliant items must meet an applicable exception.

(c)(1) When acquiring commercial items, an agency must comply with those accessibility standards that can be met with supplies or services that are available in the commercial marketplace in time to meet the agency's delivery requirements.

(2) The requiring official must document in writing the nonavailability, including a description of market research performed and which standards cannot be met, and provide documentation to the contracting officer for inclusion in the contract file.

39.204 Exceptions.

The requirements in 39.203 do not apply to EIT that—

(a) Is purchased in accordance with Subpart 13.2 (micro-purchases) prior to April 1, 2005. However, for micro-purchases, contracting officers and other individuals designated in accordance with 1.603-3 are strongly encouraged to comply with the applicable accessibility standards to the maximum extent practicable;

(b) Is for a national security system;

(c) Is acquired by a contractor incidental to a contract;

(d) Is located in spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment; or

(e) Would impose an undue burden on the agency.

(1) *Basis.* In determining whether compliance with all or part of the applicable accessibility standards in 36 CFR part 1194 would be an undue burden, an agency must consider—

(i) The difficulty or expense of compliance; and

(ii) Agency resources available to its program or component for which the supply or service is being acquired.

(2) *Documentation.* (i) The requiring official must document in writing the basis for an undue burden decision and provide the documentation to the contracting officer for inclusion in the contract file.

(ii) When acquiring commercial items, an undue burden determination is not required to address individual standards that cannot be met with supplies or service available in the commercial marketplace in time to meet the agency delivery requirements (see 39.203(c)(2) regarding documentation of nonavailability).

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FEDERAL ACQUISITION REGULATION

- 52.227-10 Filing of Patent Applications—Classified Subject Matter.
- 52.227-11 Patent Rights—Retention by the Contractor (Short Form).
- 52.227-12 Patent Rights—Retention by the Contractor (Long Form).
- 52.227-13 Patent Rights—Acquisition by the Government.
- 52.227-14 Rights in Data—General.
- 52.227-15 Representation of Limited Rights Data and Restricted Computer Software.
- 52.227-16 Additional Data Requirements.
- 52.227-17 Rights in Data—Special Works.
- 52.227-18 Rights in Data—Existing Works.
- 52.227-19 Commercial Computer Software—Restricted Rights.
- 52.227-20 Rights in Data—SBIR Program.
- 52.227-21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.
- 52.227-22 Major System—Minimum Rights.
- 52.227-23 Rights to Proposal Data (Technical).
- 52.228-1 Bid Guarantee.
- 52.228-2 Additional Bond Security.
- 52.228-3 Workers' Compensation Insurance (Defense Base Act).
- 52.228-4 Workers' Compensation and War-Hazard Insurance Overseas.
- 52.228-5 Insurance—Work on a Government Installation.
- 52.228-6 [Reserved]
- 52.228-7 Insurance—Liability to Third Persons.
- 52.228-8 Liability and Insurance—Leased Motor Vehicles.
- 52.228-9 Cargo Insurance.
- 52.228-10 Vehicular and General Public Liability Insurance.
- 52.228-11 Pledges of Assets.
- 52.228-12 Prospective Subcontractor Requests for Bonds.
- 52.228-13 Alternative Payment Protections.
- 52.228-14 Irrevocable Letter of Credit.
- 52.228-15 Performance and Payment Bonds—Construction.
- 52.228-16 Performance and Payment Bonds—Other Than Construction.
- 52.229-1 State and Local Taxes.
- 52.229-2 North Carolina State and Local Sales and Use Tax.
- 52.229-3 Federal, State, and Local Taxes.
- 52.229-4 Federal, State, and Local Taxes (State and Local Adjustments).
- 52.229-5 [Reserved]
- 52.229-6 Taxes—Foreign Fixed-Price Contracts.
- 52.229-7 Taxes—Fixed-Price Contracts with Foreign Governments.
- 52.229-8 Taxes—Foreign Cost-Reimbursement Contracts.
- 52.229-9 Taxes—Cost-Reimbursement Contracts with Foreign Governments.
- 52.229-10 State of New Mexico Gross Receipts and Compensating Tax.
- 52.230-1 Cost Accounting Standards Notices and Certification.
- 52.230-2 Cost Accounting Standards.
- 52.230-3 Disclosure and Consistency of Cost Accounting Practices.
- 52.230-4 Consistency in Cost Accounting Practices.
- 52.230-5 Cost Accounting Standards—Educational Institution.
- 52.230-6 Administration of Cost Accounting Standards.
- 52.231 [Reserved]
- 52.232-1 Payments.
- 52.232-2 Payments under Fixed-Price Research and Development Contracts.
- 52.232-3 Payments under Personal Services Contracts.
- 52.232-4 Payments under Transportation Contracts and Transportation-Related Services Contracts.
- 52.232-5 Payments under Fixed-Price Construction Contracts.
- 52.232-6 Payment under Communication Service Contracts with Common Carriers.
- 52.232-7 Payments under Time-and-Materials and Labor-Hour Contracts.
- 52.232-8 Discounts for Prompt Payment.
- 52.232-9 Limitation on Withholding of Payments.
- 52.232-10 Payments under Fixed-Price Architect-Engineer Contracts.
- 52.232-11 Extras.
- 52.232-12 Advance Payments.
- 52.232-13 Notice of Progress Payments.
- 52.232-14 Notice of Availability of Progress Payments Exclusively for Small Business Concerns.
- 52.232-15 Progress Payments Not Included.
- 52.232-16 Progress Payments.
- 52.232-17 Interest.
- 52.232-18 Availability of Funds.
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- 52.232-20 Limitation of Cost.
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- 52.232-25 Prompt Payment.
- 52.232-26 Prompt Payment for Fixed-Price Architect-Engineer Contracts.
- 52.232-27 Prompt Payment for Construction Contracts.
- 52.232-28 Invitation to Propose Performance-Based Payments.
- 52.232-29 Terms for Financing of Purchases of Commercial Items.
- 52.232-30 Installment Payments for Commercial Items.
- 52.232-31 Invitation to Propose Financing Terms.
- 52.232-32 Performance-Based Payments.
- 52.232-33 Payment by Electronic Funds Transfer—Central Contractor Registration.

52.232-34	Payment by Electronic Funds Transfer—Other than Central Contractor Registration.	52.237-5	Payment by Contractor to Government.
52.232-35	Designation of Office for Government Receipt of Electronic Funds Transfer Information.	52.237-6	Incremental Payment by Contractor to Government.
52.232-36	Payment by Third Party.	52.237-7	Indemnification and Medical Liability Insurance.
52.232-37	Multiple Payment Arrangements.	52.237-8	Restriction on Severance Payments to Foreign Nationals.
52.232-38	Submission of Electronic Funds Transfer Information with Offer.	52.237-9	Waiver of Limitation on Severance Payments to Foreign Nationals.
52.233-1	Disputes.	52.237-10	Identification of Uncompensated Overtime.
52.233-2	Service of Protest.	52.238	[Reserved]
52.233-3	Protest after Award.	52.239-1	Privacy or Security Safeguards.
52.233-4	Applicable Law for Breach of Contract Claim.	52.240	[Reserved]
52.234-1	Industrial Resources Developed Under Defense Production Act Title III.	52.241	Utility Services Provisions and Clauses.
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52.236-1	Performance of Work by the Contractor.	52.241-2	Order of Precedence—Utilities.
52.236-2	Differing Site Conditions.	52.241-3	Scope and Duration of Contract.
52.236-3	Site Investigation and Conditions Affecting the Work.	52.241-4	Change in Class of Service.
52.236-4	Physical Data.	52.241-5	Contractor's Facilities.
52.236-5	Material and Workmanship.	52.241-6	Service Provisions.
52.236-6	Superintendence by the Contractor.	52.241-7	Change in Rates or Terms and Conditions of Service for Regulated Services.
52.236-7	Permits and Responsibilities.	52.241-8	Change in Rates or Terms and Conditions of Service for Unregulated Services.
52.236-8	Other Contracts.	52.241-9	Connection Charge.
52.236-9	Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.	52.241-10	Termination Liability.
52.236-10	Operations and Storage Areas.	52.241-11	Multiple Service Locations.
52.236-11	Use and Possession Prior to Completion.	52.241-12	Nonrefundable, Nonrecurring Service Charge.
52.236-12	Cleaning Up.	52.241-13	Capital Credits.
52.236-13	Accident Prevention.	52.242-1	Notice of Intent to Disallow Costs.
52.236-14	Availability and Use of Utility Services.	52.242-2	Production Progress Reports.
52.236-15	Schedules for Construction Contracts.	52.242-3	Penalties for Unallowable Costs.
52.236-16	Quantity Surveys.	52.242-4	Certification of Final Indirect Costs.
52.236-17	Layout of Work.	52.242-5	[Reserved]
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52.236-23	Responsibility of the Architect-Engineer Contractor.	52.242-11	F.o.b. Origin—Government Bills of Lading or Indicia Mail.
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52.236-26	Preconstruction Conference.	52.242-14	Suspension of Work.
52.236-27	Site Visit (Construction).	52.242-15	Stop-Work Order.
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52.237-1	Site Visit.	52.242-17	Government Delay of Work.
52.237-2	Protection of Government Buildings, Equipment, and Vegetation.	52.243-1	Changes—Fixed-Price.
52.237-3	Continuity of Services.	52.243-2	Changes—Cost-Reimbursement.
52.237-4	Payment by Government to Contractor.	52.243-3	Changes—Time-and-Materials or Labor-Hours.
		52.243-4	Changes.

itation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration, or 52.232-34, Payment by Electronic Funds Transfer—Other Than Central Contractor Registration), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.*—(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for disposition of the overpayment.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or

any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 265 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. 423 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause.
- (3) The clause at 52.212-5.
- (4) Addenda to this solicitation or contract, including any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.
- (6) Other paragraphs of this clause.
- (7) The Standard Form 1449.
- (8) Other documents, exhibits, and attachments.
- (9) The specification.

(t) *Central Contractor Registration (CCR).* (1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the CCR database; (B) comply with the requirements of Subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via the internet at <http://www.ccr.gov> or by calling 1-888-227-2423 or 269-961-5757.

(End of clause)

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

As prescribed in 12.301(b)(4), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (OCT 2004)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(2) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78)

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

— (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (JUL 1995), with Alternate I (OCT 1995) (41 U.S.C. 253g and 10 U.S.C. 2402).

— (2) 52.219-3, Notice of Total HUBZone Set-Aside (JAN 1999) (15 U.S.C. 657a).

— (3) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JAN 1999) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).

— (4)(i) 52.219-5, Very Small Business Set-Aside (JUNE 2003) (Pub. L. 103-403, section 304, Small Business Reauthorization and Amendments Act of 1994).

— (ii) Alternate I (MAR 1999) of 52.219-5.

— (iii) Alternate II (JUNE 2003) of 52.219-5.

- (5)(i) 52.219-6, Notice of Total Small Business Set-Aside (JUNE 2003) (15 U.S.C. 644).
 - (ii) Alternate I (OCT 1995) of 52.219-6.
 - (iii) Alternate II (MAR 2004) of 52.219-6.
 - (6)(i) 52.219-7, Notice of Partial Small Business Set-Aside (JUNE 2003) (15 U.S.C. 644).
 - (ii) Alternate I (OCT 1995) of 52.219-7.
 - (iii) Alternate II (MAR 2004) of 52.219-7.
 - (7) 52.219-8, Utilization of Small Business Concerns (MAY 2004) (15 U.S.C. 637(d)(2) and (3)).
 - (8)(i) 52.219-9, Small Business Subcontracting Plan (JAN 2002) (15 U.S.C. 637(d)(4)).
 - (ii) Alternate I (OCT 2001) of 52.219-9.
 - (iii) Alternate II (OCT 2001) of 52.219-9.
 - (9) 52.219-14, Limitations on Subcontracting (DEC 1996) (15 U.S.C. 637(a)(14)).
 - (10)(i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (JUNE 2003) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
 - (ii) Alternate I (JUNE 2003) of 52.219-23.
 - (11) 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting (OCT 1999) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
 - (12) 52.219-26, Small Disadvantaged Business Participation Program—Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
 - (13) 52.219-27, Notice of Total Service-Disabled Veteran-Owned Small Business Set-Aside (MAY 2004).
 - (14) 52.222-3, Convict Labor (JUNE 2003) (E.O. 11755).
 - (15) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (JUNE 2004) (E.O. 13126).
 - (16) 52.222-21, Prohibition of Segregated Facilities (FEB 1999).
 - (17) 52.222-26, Equal Opportunity (APR 2002) (E.O. 11246).
 - (18) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).
 - (19) 52.222-36, Affirmative Action for Workers with Disabilities (JUN 1998) (29 U.S.C. 793).
 - (20) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).
 - (21)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products (AUG 2000) (42 U.S.C. 6962(c)(3)(A)(ii)).
 - (ii) Alternate I (AUG 2000) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)).
 - (22) 52.225-1, Buy American Act—Supplies (JUNE 2003) (41 U.S.C. 10a-10d).
 - (23)(i) 52.225-3, Buy American Act—Free Trade Agreements—Israeli Trade Act (OCT 2004) (41 U.S.C. 10a-10d, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, Pub. L. 108-77, 108-78).
 - (ii) Alternate I (JAN 2004) of 52.225-3.
 - (iii) Alternate II (JAN 2004) of 52.225-3.
 - (24) 52.225-5, Trade Agreements (OCT 2004) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).
 - (25) 52.225-13, Restrictions on Certain Foreign Purchases (DEC 2003) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
 - (26) 52.225-15, Sanctioned European Union Country End Products (FEB 2000) (E.O. 12849).
 - (27) 52.225-16, Sanctioned European Union Country Services (FEB 2000) (E.O. 12849).
 - (28) 52.232-29, Terms for Financing of Purchases of Commercial Items (FEB 2002) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
 - (29) 52.232-30, Installment Payments for Commercial Items (OCT 1995) (41 U.S.C. 255(f), 10 U.S.C. 2307(f)).
 - (30) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003) (31 U.S.C. 3332).
 - (31) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (MAY 1999) (31 U.S.C. 3332).
 - (32) 52.232-36, Payment by Third Party (MAY 1999) (31 U.S.C. 3332).
 - (33) 52.239-1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).
 - (34)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631).
 - (ii) Alternate I (Apr 2003) of 52.247-64.
- (c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:
- [Contracting Officer check as appropriate.]
 - (1) 52.222-41, Service Contract Act of 1965, as Amended (MAY 1989) (41 U.S.C. 351, *et seq.*).
 - (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (MAY 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).
 - (3) 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts) (MAY 1989) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

— (4) 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment (FEB 2002) (29 U.S.C. 206 and 41 U.S.C. 351, *et seq.*).

— (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA) (MAY 1989) (41 U.S.C. 351, *et seq.*).

(d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records—Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in paragraphs (i) through (vi) of this paragraph in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(i) 52.219-8, Utilization of Small Business Concerns (MAY 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (APR 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUNE 1998) (29 U.S.C. 793).

(v) 52.222-41, Service Contract Act of 1965, as Amended (MAY 1989), flow down required for all subcontracts subject to the Service Contract Act of 1965 (41 U.S.C. 351, *et seq.*).

(vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

(2) While not required, the contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

Alternate I (Feb 2000). As prescribed in 12.301(b)(4), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated paragraph (d) to read “paragraphs (a), (b), and (c) of this clause”.

52.213-1 Fast Payment Procedure.

As prescribed in 13.404, insert the following clause:

FAST PAYMENT PROCEDURE (FEB 1998)

(a) *General.* The Government will pay invoices based on the Contractor's delivery to a post office or common carrier (or, if shipped by other means, to the point of first receipt by the Government).

(b) *Responsibility for supplies.* (1) Title to the supplies passes to the Government upon delivery to—

(i) A post office or common carrier for shipment to the specific destination; or

(ii) The point of first receipt by the Government, if shipment is by means other than Postal Service or common carrier.

(2) Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall—

(i) Assume all responsibility and risk of loss for supplies not received at destination, damaged in transit, or not conforming to purchase requirements; and

(ii) Replace, repair, or correct those supplies promptly at the Contractor's expense, if instructed to do so by the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

(c) *Preparation of invoice.* (1) Upon delivery to a post office or common carrier (or, if shipped by other means, the point of first receipt by the Government), the Contractor shall—

(i) Prepare an invoice as provided in this contract, order, or blanket purchase agreement; and

(ii) Display prominently on the invoice “FAST PAY.”

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The Contractor shall not include the cost of parcel post insurance. If transportation charges are stated separately on the invoice, the Contractor shall retain related paid freight bills or other transportation billings paid separately for a period of 3 years and shall furnish the bills to the Government upon request.

(3) If this contract, order, or blanket purchase agreement requires the preparation of a receiving report, the Contractor shall prepare the receiving report on the prescribed form or, alternatively, shall include the following information on the invoice, in addition to that required in paragraph (c)(1) of this clause:

(i) A statement in prominent letters “NO RECEIVING REPORT PREPARED.”

(ii) Shipment number.

(iii) Mode of shipment.

(iv) At line item level—

(A) National stock number and/or manufacturer's part number;

(B) Unit of measure;

(C) Ship-To Point;

(D) Mark-For Point, if in the contract; and

(E) FEDSTRIP/MILSTRIP document number, if in the contract.

(4) If this contract, order, or blanket purchase agreement does not require preparation of a receiving report on a prescribed form, the Contractor shall include on the invoice the following information at the line item level, in addition to that required in paragraph (c)(1) of this clause:

(i) Ship-To Point.

(ii) Mark-For Point.

(iii) FEDSTRIP/MILSTRIP document number, if in the contract.

(5) Where a receiving report is not required, the Contractor shall include a copy of the invoice in each shipment.

(d) *Certification of invoice.* The Contractor certifies by submitting an invoice to the Government that the supplies being billed to the Government have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated by the contract, order, or blanket purchase agreement.

(e) *Fast pay container identification.* The Contractor shall mark all outer shipping containers “FAST PAY.”

(End of clause)

52.213-2 Invoices.

As prescribed in 13.302-5(b), insert the following clause:

INVOICES (APR 1984)

The Contractor's invoices must be submitted before payment can be made. The Contractor will be paid on the basis of the invoice, which must state—

(a) The starting and ending dates of the subscription delivery; and

(b) Either that orders have been placed in effect for the addressees required, or that the orders will be placed in effect upon receipt of payment.

(End of clause)

52.213-3 Notice to Supplier.

As prescribed in 13.302-5(c), insert the following clause:

NOTICE TO SUPPLIER (APR 1984)

This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Contracting Officer. If you cannot perform in exact accordance with this order, WITHHOLD PERFORMANCE, and notify the Contracting Officer immediately, giving your quotation.

(End of clause)

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

As prescribed in 13.302-5(d), insert the following clause:

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS (OTHER THAN COMMERCIAL ITEMS) (OCT 2004)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.222-3, Convict Labor (JUNE 2003) (E.O. 11755).

(ii) 52.222-21, Prohibition of Segregated Facilities (FEB 1999) (E.O. 11246).

(iii) 52.222-26, Equal Opportunity (APR 2002) (E.O. 11246).

(iv) 52.225-13, Restrictions on Certain Foreign Purchases (DEC 2003) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

(v) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(vi) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78).

(2) Listed below are additional clauses that apply:

(i) 52.232-1, Payments (APR 1984).

(ii) 52.232-8, Discounts for Prompt Payment (FEB 2002).

(iii) 52.232-11, Extras (APR 1984).

(iv) 52.232-25, Prompt Payment (OCT 2003).

(v) 52.233-1, Disputes (JULY 2002).

(vi) 52.244-6, Subcontracts for Commercial Items (JULY 2004).

(vii) 52.253-1, Computer Generated Forms (JAN 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (JUNE 2004) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

(ii) 52.222-20, Walsh-Healey Public Contracts Act (DEC 1996) (41 U.S.C. 35-45) (Applies to supply contracts over \$10,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212) (Applies to contracts of \$25,000 or more).

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUNE 1998) (29 U.S.C. 793). (Applies to contracts over \$10,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, *United States* includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

(v) 52.222-37, Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212) (Applies to contracts of \$25,000 or more).

(vi) 52.222-41, Service Contract Act of 1965, As Amended (MAY 1989) (41 U.S.C. 351, *et seq.*) (Applies to service contracts over \$2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer continental shelf lands).

(vii) 52.223-5, Pollution Prevention and Right-to-Know Information (AUG 2003) (E.O. 13148) (Applies to services performed on Federal facilities).

(viii) 52.225-1, Buy American Act—Supplies (JUNE 2003) (41 U.S.C. 10a-10d) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service con-

tract exceeds the micro-purchase threshold and the acquisition—

(A) Is set aside for small business concerns; or

(B) Cannot be set aside for small business concerns (see 19.502-2), and does not exceed \$25,000).

(ix) 52.232-33, Payment by Electronic Funds Transfer—Central Contractor Registration (OCT 2003). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)

(x) 52.232-34, Payment by Electronic Funds Transfer—Other than Central Contractor Registration (May 1999). (Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)

(xi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at 47.504(d).)

(2) Listed below are additional clauses that may apply:

(i) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (JULY 1995) (Applies to contracts over \$25,000).

(ii) 52.211-17, Delivery of Excess Quantities (SEPT 1989) (Applies to fixed-price supplies).

(iii) 52.247-29, F.o.b. Origin (JUNE 1988) (Applies to supplies if delivery is f.o.b. origin).

(iv) 52.247-34, F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) *FAR 52.252-2, Clauses Incorporated by Reference (FEB 1998)*. This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

(d) *Inspection/Acceptance*. The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights—

tor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which—

(1) The actual subcontract; or

(2) The actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

(d)(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Contractor agrees not to raise the following matters as a defense:

(i) The Contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.

(iv) The Contractor or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)(i) Except as prohibited by paragraph (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—

(A) The Contractor certifies to the Contracting Officer that, to the best of the Contractor's knowledge and belief, the Contractor is entitled to the offset in the amount requested; and

(B) The Contractor proves that the cost or pricing data were available before the “as of” date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data were known by the Contractor to be understated before the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the “as of” date specified on its Certificate of Current Cost or Pricing Data.

(e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Contractor to the date the Government is repaid by the Contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Contractor or subcontractor knowingly submitted cost or pricing data that were incomplete, inaccurate, or noncurrent.

(End of clause)

52.215-12 Subcontractor Cost or Pricing Data.

As prescribed in 15.408(d), insert the following clause:

SUBCONTRACTOR COST OR PRICING DATA (OCT 1997)

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4, when entered into, the Contractor shall insert either—

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of cost or pricing data for the subcontract; or

(2) The substance of the clause at FAR 52.215-13, Subcontractor Cost or Pricing Data—Modifications.

(End of clause)

52.215-13 Subcontractor Cost or Pricing Data—Modifications.

As prescribed in 15.408(e), insert the following clause:

SUBCONTRACTOR COST OR PRICING DATA—
MODIFICATIONS (OCT 1997)

(a) The requirements of paragraphs (b) and (c) of this clause shall—

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.403-4, the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.403-1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.406-2 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later.

(End of clause)

52.215-14 Integrity of Unit Prices.

As prescribed in 15.408(f)(1), insert the following clause:

INTEGRITY OF UNIT PRICES (OCT 1997)

(a) Any proposal submitted for the negotiation of prices for items of supplies shall distribute costs within contracts on a basis that ensures that unit prices are in proportion to the items' base cost (*e.g.*, manufacturing or acquisition costs). Any method of distributing costs to line items that distorts unit prices shall not be used. For example, distributing costs equally among line items is not acceptable except when there is little or no variation in base cost. Nothing in this paragraph requires submission of cost or pricing data not otherwise required by law or regulation.

(b) When requested by the Contracting Officer, the Offeror/Contractor shall also identify those supplies that it will

not manufacture or to which it will not contribute significant value.

(c) The Contractor shall insert the substance of this clause, less paragraph (b), in all subcontracts for other than: acquisitions at or below the simplified acquisition threshold in FAR Part 2; construction or architect-engineer services under FAR Part 36; utility services under FAR Part 41; services where supplies are not required; commercial items; and petroleum products.

(End of clause)

Alternate I (Oct 1997). As prescribed in 15.408(f)(2), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) The Offeror/Contractor shall also identify those supplies that it will not manufacture or to which it will not contribute significant value.

52.215-15 Pension Adjustments and Asset Reversions.

As prescribed in 15.408(g), insert the following clause:

PENSION ADJUSTMENTS AND ASSET REVERSIONS
(OCT 2004)

(a) The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined-benefit pension plan or otherwise recapture such pension fund assets.

(b) For segment closings, pension plan terminations, or curtailment of benefits, the amount of the adjustment shall be—

(1) For contracts and subcontracts that are subject to full coverage under the Cost Accounting Standards (CAS) Board rules and regulations (48 CFR Chapter 99), the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12); and

(2) For contracts and subcontracts that are not subject to full coverage under the CAS, the amount measured, assigned, and allocated in accordance with 48 CFR 9904.413-50(c)(12), except the numerator of the fraction at 48 CFR 9904.413-50(c)(12)(vi) shall be the sum of the pension plan costs allocated to all non-CAS covered contracts and subcontracts that are subject to Federal Acquisition Regulation (FAR) Subpart 31.2 or for which cost or pricing data were submitted.

(c) For all other situations where assets revert to the Contractor, or such assets are constructively received by it for any reason, the Contractor shall, at the Government's option, make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which cost or pricing data were submitted or that are subject to FAR Subpart 31.2.

52.217-1 [Reserved]**52.217-2 Cancellation Under Multi-year Contracts.**

As prescribed in 17.109(a), insert the following clause:

CANCELLATION UNDER MULTI-YEAR CONTRACTS
(OCT 1997)

(a) “Cancellation,” as used in this clause, means that the Government is canceling its requirements for all supplies or services in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur by the date or within the time period specified in the Schedule, unless a later date is agreed to, if the Contracting Officer—

(1) Notifies the Contractor that funds are not available for contract performance for any subsequent program year; or

(2) Fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

(b) Except for cancellation under this clause or termination under the Default clause, any reduction by the Contracting Officer in the requirements of this contract shall be considered a termination under the Termination for Convenience of the Government clause.

(c) If cancellation under this clause occurs, the Contractor will be paid a cancellation charge not over the cancellation ceiling specified in the Schedule as applicable at the time of cancellation.

(d) The cancellation charge will cover only—

(1) Costs—

(i) Incurred by the Contractor and/or subcontractor;

(ii) Reasonably necessary for performance of the contract; and

(iii) That would have been equitably amortized over the entire multi-year contract period but, because of the cancellation, are not so amortized; and

(2) A reasonable profit or fee on the costs.

(e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the Termination for Convenience of the Government clause of this contract. The Contractor shall submit the claim promptly but no later than 1 year from the date—

(1) Of notification of the nonavailability of funds; or

(2) Specified in the Schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.

(f) The Contractor’s claim may include—

(1) Reasonable nonrecurring costs (see Subpart 15.4 of the Federal Acquisition Regulation) which are applicable to and normally would have been amortized in all supplies or services which are multi-year requirements;

(2) Allocable portions of the costs of facilities acquired or established for the conduct of the work, to the extent that it is impracticable for the Contractor to use the facilities in its commercial work, and if the costs are not charged to the contract through overhead or otherwise depreciated;

(3) Costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force; and

(4) Costs not amortized solely because the cancellation had precluded anticipated benefits of Contractor or subcontractor learning.

(g) The claim shall not include—

(1) Labor, material, or other expenses incurred by the Contractor or subcontractors for performance of the canceled work;

(2) Any cost already paid to the Contractor;

(3) Anticipated profit or unearned fee on the canceled work; or

(4) For service contracts, the remaining useful commercial life of facilities. “Useful commercial life” means the commercial utility of the facilities rather than their physical life with due consideration given to such factors as location of facilities, their specialized nature, and obsolescence.

(h) This contract may include an Option clause with the period for exercising the option limited to the date in the contract for notification that funds are available for the next succeeding program year. If so, the Contractor agrees not to include in option quantities any costs of a startup or nonrecurring nature that have been fully set forth in the contract. The Contractor further agrees that the option quantities will reflect only those recurring costs and a reasonable profit or fee necessary to furnish the additional option quantities.

(i) Quantities added to the original contract through the Option clause of this contract shall be included in the quantity canceled for the purpose of computing allowable cancellation charges.

(End of clause)

52.217-3 Evaluation Exclusive of Options.

As prescribed in 17.208(a), insert a provision substantially the same as in the following in solicitations when the solicitation includes an option clause and does not include one of the provisions prescribed in 17.208(b) or (c):

EVALUATION EXCLUSIVE OF OPTIONS (APR 1984)

The Government will evaluate offers for award purposes by including only the price for the basic requirement; *i.e.*, options will not be included in the evaluation for award purposes.

(End of provision)

52.217-4 Evaluation of Options Exercised at Time of Contract Award.

As prescribed in 17.208(b), insert a provision substantially the same as the following:

EVALUATION OF OPTIONS EXERCISED AT TIME OF CONTRACT AWARD (JUNE 1988)

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate the total price for the basic requirement together with any option(s) exercised at the time of award.

(End of provision)

52.217-5 Evaluation of Options.

As prescribed in 17.208(c), insert a provision substantially the same as the following:

EVALUATION OF OPTIONS (JULY 1990)

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

(End of provision)

52.217-6 Option for Increased Quantity.

As prescribed in 17.208(d), insert a clause substantially the same as the following:

OPTION FOR INCREASED QUANTITY (MAR 1989)

The Government may increase the quantity of supplies called for in the Schedule at the unit price specified. The Contracting Officer may exercise the option by written notice to the Contractor within *[insert in the clause the period of time in which the Contracting Officer has to exercise the option]*. Delivery of the added items shall continue at the same rate as the like items called for under the contract, unless the parties otherwise agree.

(End of clause)

52.217-7 Option for Increased Quantity—Separately Priced Line Item.

As prescribed in 17.208(e), insert a clause substantially the same as the following:

OPTION FOR INCREASED QUANTITY—SEPARATELY PRICED LINE ITEM (MAR 1989)

The Government may require the delivery of the numbered line item, identified in the Schedule as an option item, in the quantity and at the price stated in the Schedule. The Contract-

ing Officer may exercise the option by written notice to the Contractor within *[insert in the clause the period of time in which the Contracting Officer has to exercise the option]*. Delivery of added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

(End of clause)

52.217-8 Option to Extend Services.

As prescribed in 17.208(f), insert a clause substantially the same as the following:

OPTION TO EXTEND SERVICES (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within _____ *[insert the period of time within which the Contracting Officer may exercise the option]*.

(End of clause)

52.217-9 Option to Extend the Term of the Contract.

As prescribed in 17.208(g), insert a clause substantially the same as the following:

OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000)

(a) The Government may extend the term of this contract by written notice to the Contractor within _____ *[insert the period of time within which the Contracting Officer may exercise the option]*; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least _____ days *[60 days unless a different number of days is inserted]* before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed _____ (months)(years).

(End of clause)

52.218 [Reserved]

52.219-1 Small Business Program Representations.

As prescribed in 19.307(a)(1), insert the following provision:

SMALL BUSINESS PROGRAM REPRESENTATIONS
(MAY 2004)

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

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

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

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

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

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

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

(5) [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (b)(4) of this provision.] The offeror represents as part of its offer that it is, is not a service-disabled veteran-owned small business concern.

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

(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 change in ownership and control, principal office, or HUBZone employee percentage has occurred since it was certified by the Small Business Administration in accordance with 13 CFR part 126; and

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (b)(6)(i) of this provision is accurate for the HUBZone small business concern or concerns that are participating in the joint venture. [The offeror shall enter the name or names of the HUBZone small business concern or concerns that are participating in the joint venture: _____.] Each HUBZone small business concern participating in the joint venture shall submit a separate signed copy of the HUBZone representation.

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

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

(1) Means a small business concern—

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

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

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

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

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

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

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

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

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

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

(d) *Notice.* (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm’s status as a small, HUBZone small, small disadvantaged, or women-owned small business concern in order to obtain a contract to be awarded under the preference programs established pursuant to section 8(a), 8(d), 9, or 15 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall—

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

- (ii) Be subject to administrative remedies, including suspension and debarment; and
- (iii) Be ineligible for participation in programs conducted under the authority of the Act.

(End of provision)

Alternate I (Apr 2002). As prescribed in 19.308(a)(2), add the following paragraph (b)(7) to the basic provision:

(7) [Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.] The offeror shall check the category in which its ownership falls:

- _____ Black American.
- _____ Hispanic American.
- _____ Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).
- _____ Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, U.S. Trust Territory of the Pacific Islands (Republic of Palau), Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).
- _____ Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).
- _____ Individual/concern, other than one of the preceding.

52.219-2 Equal Low Bids.

As prescribed in 19.308(c), insert the following provision:

EQUAL LOW BIDS (OCT 1995)

- (a) This provision applies to small business concerns only.
 - (b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.
-

(c) Failure to identify the labor surplus areas as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

(End of provision)

52.219-3 Notice of Total HUBZone Set-Aside.

As prescribed in 19.1308(a), insert the following clause:

NOTICE OF TOTAL HUBZONE SET-ASIDE (JAN 1999)

(a) *Definition.* "HUBZone small business concern," as used in this clause, means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) *General.* (1) Offers are solicited only from HUBZone small business concerns. Offers received from concerns that are not HUBZone small business concerns shall not be considered.

(2) Any award resulting from this solicitation will be made to a HUBZone small business concern.

(c) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(d) A HUBZone joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (c) of this clause will be performed by the HUBZone small business participant or participants.

(e) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.

As prescribed in 19.1308(b), insert the following clause:

NOTICE OF PRICE EVALUATION PREFERENCE FOR HUBZONE SMALL BUSINESS CONCERNS (OCT 2004)

(a) *Definition.* "HUBZone small business concern," as used in this clause, means a small business concern that

appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

(b) *Evaluation preference.* (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference;

(ii) Otherwise successful offers from small business concerns;

(iii) Otherwise successful offers of eligible products under the Trade Agreements Act when the dollar threshold for application of the Act is exceeded (see 25.402 of the Federal Acquisition Regulation (FAR)); and

(iv) Otherwise successful offers where application of the factor would be inconsistent with a Memorandum of Understanding or other international agreement with a foreign government.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) A concern that is both a HUBZone small business concern and a small disadvantaged business concern will receive the benefit of both the HUBZone small business price evaluation preference and the small disadvantaged business price evaluation adjustment (see FAR clause 52.219-23). Each applicable price evaluation preference or adjustment shall be calculated independently against an offeror's base offer. These individual preference amounts shall be added together to arrive at the total evaluated price for that offer.

(c) *Waiver of evaluation preference.* A HUBZone small business concern may elect to waive the evaluation preference, 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 if the offeror has waived the evaluation preference.

Offeror elects to waive the evaluation preference.

(d) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern's employees or the employees of other HUBZone small business concerns.

(e) A HUBZone joint venture agrees that in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the HUBZone small business participant or participants.

(f) A HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business manufacturer concerns. This paragraph does not apply in connection with construction or service contracts.

(End of clause)

52.219-5 Very Small Business Set-Aside.

As prescribed in 19.905, insert the following clause:

VERY SMALL BUSINESS SET-ASIDE (JUNE 2003)

(a) *Definition.* "Very Small Business Concern," as used in this clause, means a concern whose headquarters is located within the geographical area served by a designated SBA district (see 13 CFR 125.7(b)); which, together with its affiliates, has no more than 15 employees and has average annual receipts that do not exceed \$1 million.

(b) *Eligibility.* (1) Only those firms headquartered in the _____ Small Business Administration (SBA) district [*Contracting Officer shall insert the applicable SBA designated district. If the geographic area is served by the SBA Los Angeles or Santa Ana District offices, list both*] are eligible for this acquisition.

(2) Offers or quotations under this acquisition are solicited from very small business concerns only. Offers that are from other than an eligible very small business concern shall not be considered and shall be rejected. The offeror represents that it is an eligible very small business concern by submission of an offer or quotation.

(c) *Agreement.* A very 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.

(End of clause)

Alternate I (Mar 1999). As prescribed in 19.905(a), delete paragraph (c) of the basic clause.

Alternate II (June 2003). As prescribed in 19.905(b), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.* A very small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by domestic firms in the United States or its outlying areas.

52.219-6 Notice of Total Small Business Set-Aside.

As prescribed in 19.508(c), insert the following clause:

NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE
(JUNE 2003)

(a) *Definition.* "Small business concern," as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *General.* (1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

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

(End of clause)

Alternate I (Oct 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(c), delete paragraph (c).

Alternate II (Mar 2004). As prescribed in 19.508(c), substitute the following paragraph (b) for paragraph (b) of the basic clause:

(b) *General.* (1) Offers are solicited only from small business concerns and Federal Prison Industries, Inc. (FPI). Offers received from concerns that are not small business concerns or FPI shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to either a small business concern or FPI.

52.219-7 Notice of Partial Small Business Set-Aside.

As prescribed in 19.508(d), insert the following clause:

NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE
(JUNE 2003)

(a) *Definitions.* "Small business concern", as used in this clause, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the size standards in this solicitation.

(b) *General.* (1) A portion of this requirement, identified elsewhere in this solicitation, has been set aside for award to one or more small business concerns.

(2) Offers on the non-set-aside portion will be evaluated first and award will be made on that portion in accordance with the provisions of this solicitation.

(3) The set-aside portion will be awarded at the highest unit price(s) in the contract(s) for the non-set-aside portion, adjusted to reflect transportation and other costs appropriate for the selected contractor(s).

(4) The contractor(s) for the set-aside portion will be selected from among the small business concerns that submitted responsive offers on the non-set-aside portion. Negotiations will be conducted with the concern that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue until a contract or contracts are awarded for the entire set-aside portion.

(5) The Government reserves the right to not consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

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

(End of clause)

Alternate I (Oct 1995). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(c), delete paragraph (c).

Alternate II (Mar 2004). As prescribed in 19.508(d), add the following paragraph (d) to the basic clause:

(d) Notwithstanding paragraph (b) of this clause, offers from Federal Prison Industries, Inc., will be solicited and considered for both the set-aside and non-set-aside portion of this requirement.

52.219-8 Utilization of Small Business Concerns.

As prescribed in 19.708(a), insert the following clause:

UTILIZATION OF SMALL BUSINESS CONCERNS
(MAY 2004)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business con-

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

“Component” means an article, material, or supply incorporated directly into an end product.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Domestic end product” means—

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Foreign end product” means an end product other than a domestic end product.

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

(b) The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.

(c) Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(d) The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the solicitation entitled “Buy American Act Certificate.”

(End of clause)

52.225-2 Buy American Act Certificate.

As prescribed in 25.1101(a)(2), insert the following provision:

BUY AMERICAN ACT CERTIFICATE (JUNE 2003)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end

product and that 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. The terms “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.”

(b) Foreign End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

[List as necessary]

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

(End of provision)

52.225-3 Buy American Act—Free Trade Agreements—Israeli Trade Act.

As prescribed in 25.1101(b)(1)(i), insert the following clause:

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—ISRAELI TRADE ACT (OCT 2004)

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

“Component” means an article, material, or supply incorporated directly into an end product.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Domestic end product” means—

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reason-

ably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Free Trade Agreement country” means Canada, Chile, Mexico, or Singapore.

“Free Trade Agreement country end product” means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Foreign end product” means an end product other than a domestic end product.

“Israeli end product” means an article that—

(1) Is wholly the growth, product, or manufacture of Israel; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Israel into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

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

(b) *Components of foreign origin.* Offerors may obtain from the Contracting Officer a list of foreign articles that the Contracting Officer will treat as domestic for this contract.

(c) *Delivery of end products.* The Contracting Officer has determined that FTAs and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.” If the Contractor specified in its offer that the Contractor would supply an FTA country end product or an Israeli end product, then the Contractor shall supply an FTA country end product, an Israeli end product or, at the Contractor's option, a domestic end product.

(End of clause)

Alternate I (Jan 2004). As prescribed in 25.1101 (b)(1)(ii), add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (c) for paragraph (c) of the basic clause:

“Canadian end product” means an article that—

(1) Is wholly the growth, product, or manufacture of Canada; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(c) *Delivery of end products.* The Contracting Officer has determined that NAFTA applies to this acquisition. Unless otherwise specified, NAFTA applies to all items in the Schedule. The Contractor shall deliver under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.” If the Contractor specified in its offer that the Contractor would supply a Canadian end product, then the Contractor shall supply a Canadian end product or, at the Contractor's option, a domestic end product.

Alternate II (Jan 2004). As prescribed in 25.1101(b)(1)(iii), add the following definition to paragraph (a) of the basic clause, and substitute the following paragraph (c) for paragraph (c) of the basic clause:

“Canadian end product” means an article that—

(1) Is wholly the growth, product, or manufacture of Canada; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(c) *Delivery of end products.* The Contracting Officer has determined that NAFTA and the Israeli Trade Act apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver

under this contract only domestic end products except to the extent that, in its offer, it specified delivery of foreign end products in the provision entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.” If the Contractor specified in its offer that the Contractor would supply a Canadian end product or an Israeli end product, then the Contractor shall supply a Canadian end product, an Israeli end product or, at the Contractor's option, a domestic end product.

52.225-4 Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate.

As prescribed in 25.1101(b)(2)(i), insert the following provision:

BUY AMERICAN ACT—FREE TRADE AGREEMENTS—
ISRAELI TRADE ACT CERTIFICATE (JAN 2004)

(a) The offeror certifies that each end product, except those listed in paragraph (b) or (c) of this provision, is a domestic end product and that the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.”

(b) The offeror certifies that the following supplies are FTA country end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

FTA Country or Israeli End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

[List as necessary]

(c) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (b) of this provision) as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act.” The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products.

Other Foreign End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

[List as necessary]

(d) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal Acquisition Regulation.

(End of provision)

Alternate I (Jan 2004). As prescribed in 25.1101 (b)(2)(ii), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

Canadian End Products:

Line Item No.

[List as necessary]

Alternate II (Jan 2004). As prescribed in 25.1101(b)(2)(iii), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled “Buy American Act—Free Trade Agreements—Israeli Trade Act”:

CANADIAN OR ISRAELI END PRODUCTS:

LINE ITEM NO. COUNTRY OF ORIGIN

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

[List as necessary]

52.225-5 Trade Agreements.

As prescribed in 25.1101(c)(1), insert the following clause:

TRADE AGREEMENTS (OCT 2004)

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

“Caribbean Basin country” means any of the following countries: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, British Virgin Islands, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago.

“Caribbean Basin country end product”—

(1) Means an article that—

(i)(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under 19 U.S.C. 2703(b).

(A) For this reason, the following articles are not Caribbean Basin country end products:

(1) Tuna, prepared or preserved in any manner in airtight containers;

(2) Petroleum, or any product derived from petroleum;

(3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (*i.e.*, Afghanistan, Cuba, Laos, North Korea, and Vietnam); and

(4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;

(B) Access to the HTSUS to determine duty-free status of articles of these types is available at <http://www.customs.ustreas.gov/impoexpo/impoexpo.htm>. In particular, see the following:

(1) General Note 3(c), Products Eligible for Special Tariff treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act; and

(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Designated country” means any of the following countries:

Aruba	Kiribati
Austria	Korea, Republic of
Bangladesh	Latvia
Belgium	Lesotho
Benin	Liechtenstein
Bhutan	Lithuania

Botswana	Luxembourg
Burkina Faso	Malawi
Burundi	Maldives
Canada	Mali
Cape Verde	Malta
Central African Republic	Mozambique
Chad	Nepal
Comoros	Netherlands
Cyprus	Niger
Czech Republic	Norway
Denmark	Poland
Djibouti	Portugal
Equatorial Guinea	Rwanda
Estonia	Sao Tome and Principe
Finland	Sierra Leone
France	Singapore
Gambia	Slovak Republic
Germany	Slovenia
Greece	Somalia
Guinea	Spain
Guinea-Bissau	Sweden
Haiti	Switzerland
Hong Kong	Tanzania U.R.
Hungary	Togo
Iceland	Tuvalu
Ireland	Uganda
Israel	United Kingdom
Italy	Vanuatu
Japan	Western Samoa
	Yemen

“Designated country end product” means an article that—

(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Free Trade Agreement country” means Canada, Chile, Mexico, or Singapore.

“Free Trade Agreement country end product” means an article that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

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

“U.S.-made end product” means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

(b) *Delivery of end products.* The Contracting Officer has determined that the Trade Agreements Act and FTAs apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made, designated country, Caribbean Basin country, or FTA country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled “Trade Agreements Certificate.”

(End of clause)

52.225-6 Trade Agreements Certificate.

As prescribed in 25.1101(c)(2), insert the following provision:

TRADE AGREEMENTS CERTIFICATE (JAN 2004)

(a) The offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a U.S.-made, designated country, Caribbean Basin country, or FTA country end product, as defined in the clause of this solicitation entitled “Trade Agreements.”

(b) The offeror shall list as other end products those supplies that are not U.S.-made, designated country, Caribbean Basin country, or FTA country end products.

Other End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

[List as necessary]

(c) The Government will evaluate offers in accordance with the policies and procedures of Part 25 of the Federal

Acquisition Regulation. For line items subject to the Trade Agreements Act, the Government will evaluate offers of U.S.-made, designated country, Caribbean Basin country, or FTA country end products without regard to the restrictions of the Buy American Act. The Government will consider for award only offers of U.S.-made, designated country, Caribbean Basin country, or FTA country end products unless the Contracting Officer determines that there are no offers for those products or that the offers for those products are insufficient to fulfill the requirements of this solicitation.

(End of provision)

52.225-7 Waiver of Buy American Act for Civil Aircraft and Related Articles.

As prescribed in 25.1101(d), insert the following provision:

WAIVER OF BUY AMERICAN ACT FOR CIVIL AIRCRAFT AND RELATED ARTICLES (FEB 2000)

(a) *Definition.* “Civil aircraft and related articles,” as used in this provision, means—

(1) All aircraft other than aircraft to be purchased for use by the Department of Defense or the U.S. Coast Guard;

(2) The engines (and parts and components for incorporation into the engines) of these aircraft;

(3) Any other parts, components, and subassemblies for incorporation into the aircraft; and

(4) Any ground flight simulators, and parts and components of these simulators, for use with respect to the aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft, and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act.

(b) The U.S. Trade Representative has waived the Buy American Act for acquisitions of civil aircraft and related articles from countries that are parties to the Agreement on Trade in Civil Aircraft. Those countries are Austria, Belgium, Bulgaria, Canada, Denmark, Egypt, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Macao, the Netherlands, Norway, Portugal, Romania, Spain, Sweden, Switzerland, and the United Kingdom.

(c) For the purpose of this waiver, an article is a product of a country only if—

(1) It is wholly the growth, product, or manufacture of that country; or

(2) In the case of an article that consists in whole or in part of materials from another country, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

(d) The waiver is subject to modification or withdrawal by the U.S. Trade Representative.

(End of provision)

52.225-8 Duty-Free Entry.

As prescribed in 25.1101(e), insert the following clause:

DUTY-FREE ENTRY (FEB 2000)

(a) *Definition.* “Customs territory of the United States” means the States, the District of Columbia, and Puerto Rico.

(b) Except as otherwise approved by the Contracting Officer, the Contractor shall not include in the contract price any amount for duties on supplies specifically identified in the Schedule to be accorded duty-free entry.

(c) Except as provided in paragraph (d) of this clause or elsewhere in this contract, the following procedures apply to supplies not identified in the Schedule to be accorded duty-free entry:

(1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$10,000 that are to be imported into the customs territory of the United States for delivery to the Government under this contract, either as end products or for incorporation into end products. The Contractor shall furnish the notice to the Contracting Officer at least 20 calendar days before the importation. The notice shall identify the—

- (i) Foreign supplies;
- (ii) Estimated amount of duty; and
- (iii) Country of origin.

(2) The Contracting Officer will determine whether any of these supplies should be accorded duty-free entry and will notify the Contractor within 10 calendar days after receipt of the Contractor’s notification.

(3) Except as otherwise approved by the Contracting Officer, the contract price shall be reduced by (or the allowable cost shall not include) the amount of duty that would be payable if the supplies were not entered duty-free.

(d) The Contractor is not required to provide the notification under paragraph (c) of this clause for purchases of foreign supplies if—

(1) The supplies are identical in nature to items purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) Segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(e) The Contractor shall claim duty-free entry only for supplies to be delivered to the Government under this contract, either as end products or incorporated into end products, and shall pay duty on supplies, or any portion of them, other than scrap, salvage, or competitive sale authorized by the Contracting Officer, diverted to nongovernmental use.

(f) The Government will execute any required duty-free entry certificates for supplies to be accorded duty-free entry and will assist the Contractor in obtaining duty-free entry for these supplies.

(g) Shipping documents for supplies to be accorded duty-free entry shall consign the shipments to the contracting agency in care of the Contractor and shall include the—

- (1) Delivery address of the Contractor (or contracting agency, if appropriate);
- (2) Government prime contract number;
- (3) Identification of carrier;
- (4) Notation “UNITED STATES GOVERNMENT, _____ [agency] _____, Duty-free entry to be claimed pursuant to Item No(s) _____ [from Tariff Schedules] _____, Harmonized Tariff Schedules of the United States. Upon arrival of shipment at port of entry, District Director of Customs, please release shipment under 19 CFR part 142 and notify [cognizant contract administration office] for execution of Customs Forms 7501 and 7501-A and any required duty-free entry certificates.”;
- (5) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight); and
- (6) Estimated value in United States dollars.

(h) The Contractor shall instruct the foreign supplier to—

- (1) Consign the shipment as specified in paragraph (g) of this clause;
- (2) Mark all packages with the words “UNITED STATES GOVERNMENT” and the title of the contracting agency; and
- (3) Include with the shipment at least two copies of the bill of lading (or other shipping document) for use by the District Director of Customs at the port of entry.

(i) The Contractor shall provide written notice to the cognizant contract administration office immediately after notification by the Contracting Officer that duty-free entry will be accorded foreign supplies or, for duty-free supplies identified in the Schedule, upon award by the Contractor to the overseas supplier. The notice shall identify the—

- (1) Foreign supplies;
- (2) Country of origin;
- (3) Contract number; and
- (4) Scheduled delivery date(s).

(j) The Contractor shall include the substance of this clause in any subcontract if—

- (1) Supplies identified in the Schedule to be accorded duty-free entry will be imported into the customs territory of the United States; or
- (2) Other foreign supplies in excess of \$10,000 may be imported into the customs territory of the United States.

(End of clause)

domestic construction material, and the offeror shall be required to furnish such domestic construction material. An offer based on use of the foreign construction material for which an exception was requested—

- (i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or
- (ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (May 2002). As prescribed in 25.1102(b)(2), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determinations of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of the clause at FAR 52.225-9.

52.225-11 Buy American Act—Construction Materials under Trade Agreements.

As prescribed in 25.1102(c), insert the following clause:

BUY AMERICAN ACT—CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (OCT 2004)

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

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

“Designated country” means any of the following countries:

- | | |
|--------------------------|-----------------------|
| Aruba | Kiribati |
| Austria | Korea, Republic of |
| Bangladesh | Latvia |
| Belgium | Lesotho |
| Benin | Liechtenstein |
| Bhutan | Lithuania |
| Botswana | Luxembourg |
| Burkina Faso | Malawi |
| Burundi | Maldives |
| Canada | Mali |
| Cape Verde | Malta |
| Central African Republic | Mozambique |
| Chad | Nepal |
| Comoros | Netherlands |
| Cyprus | Niger |
| Czech Republic | Norway |
| Denmark | Poland |
| Djibouti | Portugal |
| Equatorial Guinea | Rwanda |
| Estonia | Sao Tome and Principe |
| Finland | Sierra Leone |
| France | Singapore |
| Gambia | Slovak Republic |
| Germany | Slovenia |
| Greece | Somalia |
| Guinea | Spain |
| Guinea-Bissau | Sweden |
| Haiti | Switzerland |
| Hong Kong | Tanzania U.R. |
| Hungary | Togo |
| Iceland | Tuvalu |
| Ireland | Uganda |
| Israel | United Kingdom |
| Italy | Vanuatu |
| Japan | Western Samoa |
| | Yemen |

“Designated country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different construction material distinct from the materials from which it was transformed.

“Domestic construction material” means—

(1) An unmanufactured construction material mined or produced in the United States; or

(2) A construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic.

“Foreign construction material” means a construction material other than a domestic construction material.

“Free Trade Agreement country” means Canada, Chile, Mexico, or Singapore.

“Free Trade Agreement country construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

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

(b) *Construction materials.* (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country and FTA country construction materials.

(2) The Contractor shall use only domestic, designated country, or FTA country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

[Contracting Officer to list applicable excepted materials or indicate “none”]

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that—

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American Act is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) *Request for determination of inapplicability of the Buy American Act.* (1)(i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including—

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American Act applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American Act applies, use of foreign construction material is noncompliant with the Buy American Act.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON			
<u>Construction Material Description</u>	<u>Unit of Measure</u>	<u>Quantity</u>	<u>Price (Dollars)*</u>
<i>Item 1:</i>			
Foreign construction material _____	_____	_____	_____
Domestic construction material _____	_____	_____	_____
<i>Item 2:</i>			
Foreign construction material _____	_____	_____	_____
Domestic construction material _____	_____	_____	_____

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued).]

(End of clause)

Alternate I (Jan 2004). As prescribed in 25.1102(c)(3), delete the definitions of “Free Trade Agreement country” and “Free Trade Agreement country construction material” from the definitions in paragraph (a) of the basic clause, add the following definition of “Chilean construction material” to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

“Chilean construction material” means a construction material that—

(1) Is wholly the growth, product, or manufacture of Chile; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Chile into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials*. (1) This clause implements the Buy American Act (41 U.S.C. 10a - 10d) by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the Trade Agreements Act, the Chile Free Trade Agreement, and the Singapore Free Trade Agreement apply to this acquisition. Therefore, the Buy American Act restrictions are waived for designated country and Chilean construction materials.

(2) The Contractor shall use only domestic, designated country, or Chilean construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

**52.225-12 Notice of Buy American Act Requirement—
Construction Materials under Trade Agreements.**

As prescribed in 25.1102(d)(1), insert the following provision:

NOTICE OF BUY AMERICAN ACT REQUIREMENT—
CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS
(JAN 2004)

(a) *Definitions*. “Construction material,” “designated country construction material,” “domestic construction material,” “foreign construction material,” and “FTA country construction material,” as used in this provision, are defined in the clause of this solicitation entitled “Buy American Act—Construction Materials under Trade Agreements” (Federal Acquisition Regulation (FAR) clause 52.225-11).

(b) *Requests for determination of inapplicability*. An offeror requesting a determination regarding the inapplicability of the Buy American Act should submit the request to the Contracting Officer in time to allow a determination before submission of offers. The offeror shall include the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11 in the request. If an offeror has not requested a determination regarding the inapplicability of the Buy American Act before submitting its offer, or has not received a response to a previous request, the offeror shall include the information and supporting data in the offer.

(c) *Evaluation of offers*. (1) The Government will evaluate an offer requesting exception to the requirements of the Buy American Act, based on claimed unreasonable cost of domestic construction materials, by adding to the offered price the appropriate percentage of the cost of such foreign construction material, as specified in paragraph (b)(4)(i) of FAR clause 52.225-11.

(2) If evaluation results in a tie between an offeror that requested the substitution of foreign construction material based on unreasonable cost and an offeror that did not request an exception, the Contracting Officer will award to the offeror that did not request an exception based on unreasonable cost.

(d) *Alternate offers*. (1) When an offer includes foreign construction material, other than designated country or FTA country construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic, designated country, or FTA country construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic, designated country, or FTA country construction material, and the offeror shall be required to furnish such domestic, designated country, or FTA country construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

(End of provision)

Alternate I (May 2002). As prescribed in 25.1102(d)(2), substitute the following paragraph (b) for paragraph (b) of the basic provision:

(b) *Requests for determination of inapplicability.* An offeror requesting a determination regarding the inapplicability of the Buy American Act shall submit the request with its offer, including the information and applicable supporting data required by paragraphs (c) and (d) of FAR clause 52.225-11.

Alternate II (Jan 2004). As prescribed in 25.1102(d)(3), substitute the following paragraphs (a) and (d) for paragraphs (a) and (d) of the basic provision:

(a) *Definitions.* “Chilean construction material”, “construction material”, “designated country construction material”, “domestic construction material”, and “foreign construction material”, as used in this provision, are defined in the clause of this solicitation entitled “Buy American Act—Construction Materials under Trade Agreements” (Federal Acquisition Regulation (FAR) clause 52.225-11).

(d) *Alternate offers.* (1) When an offer includes foreign construction material, other than designated country or Chilean construction material, that is not listed by the Government in this solicitation in paragraph (b)(3) of FAR clause 52.225-11, the offeror also may submit an alternate offer based on use of equivalent domestic, designated country, or Chilean construction material.

(2) If an alternate offer is submitted, the offeror shall submit a separate Standard Form 1442 for the alternate offer, and a separate price comparison table prepared in accordance with paragraphs (c) and (d) of FAR clause 52.225-11 for the offer that is based on the use of any foreign construction material for which the Government has not yet determined an exception applies.

(3) If the Government determines that a particular exception requested in accordance with paragraph (c) of FAR clause 52.225-11 does not apply, the Government will evaluate only those offers based on use of the equivalent domestic, designated country, or Chilean construction material, and the offeror shall be required to furnish such domestic, designated country, or Chilean construction material. An offer based on use of the foreign construction material for which an exception was requested—

(i) Will be rejected as nonresponsive if this acquisition is conducted by sealed bidding; or

(ii) May be accepted if revised during negotiations.

52.225-13 Restrictions on Certain Foreign Purchases.

As prescribed in 25.1103(a), insert the following clause:

RESTRICTIONS ON CERTAIN FOREIGN PURCHASES
(DEC 2003)

(a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC’s implementing regulations at 31 CFR chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, Libya, and Sudan are prohibited, as are most imports from North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC’s List of Specially Designated Nationals and Blocked Persons at <http://www.epls.gov/TerList1.html>. More information about these restrictions, as well as updates, is available in the OFAC’s regulations at 31 CFR chapter V and/or on OFAC’s website at <http://www.treas.gov/ofac>.

(c) The Contractor shall insert this clause, including this paragraph (c), in all subcontracts.

(End of clause)

52.225-14 Inconsistency between English Version and Translation of Contract.

As prescribed at 25.1103(b), insert the following clause:

INCONSISTENCY BETWEEN ENGLISH VERSION AND
TRANSLATION OF CONTRACT (FEB 2000)

In the event of inconsistency between any terms of this contract and any translation into another language, the English language meaning shall control.

(End of clause)

52.233-1 Disputes.

As prescribed in 33.215, insert the following clause:

DISPUTES (JULY 2002)

(a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

(End of clause)

Alternate I (Dec 1991). As prescribed in 33.215, substitute the following paragraph (i) for paragraph (i) of the basic clause:

(i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

52.233-2 Service of Protest.

As prescribed in 33.106, insert the following provision:

SERVICE OF PROTEST (AUG 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from _____. [Contracting Officer designate the official or location where a protest may be served on the Contracting Officer.]

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

52.233-3 Protest after Award.

As prescribed in 33.106(b), insert the following clause:

PROTEST AFTER AWARD (AUG 1996)

(a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stop-page. Upon receipt of the final decision in the protest, the Contracting Officer shall either—

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the Contractor’s cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; *provided*, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government’s rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor’s intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due

the Contractor under any contract between the Contractor and the Government.

(End of clause)

Alternate I (June 1985). As prescribed in 33.106(b), substitute in paragraph (a)(2) the words “the Termination clause of this contract” for the words “the Default, or the Termination for Convenience of the Government clause of this contract.” In paragraph (b) substitute the words “an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected” for the words “an equitable adjustment in the delivery schedule or contract price, or both”.

52.233-4 Applicable Law for Breach of Contract Claim.

As prescribed in 33.215(b), insert the following clause:

APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM
(OCT 2004)

United States law will apply to resolve any claim of breach of this contract.

(End of clause)

52.234-1 Industrial Resources Developed Under Defense Production Act Title III.

As prescribed at 34.104, insert the following clause:

INDUSTRIAL RESOURCES DEVELOPED UNDER DEFENSE
PRODUCTION ACT TITLE III (DEC 1994)

(a) *Definitions.* “Title III industrial resource” means materials, services, processes, or manufacturing equipment (including the processes, technologies, and ancillary services for the use of such equipment) established or maintained under the authority of Title III, Defense Production Act (50 U.S.C. App. 2091-2093).

“Title III project contractor” means a contractor that has received assistance for the development or manufacture of an industrial resource under 50 U.S.C. App. 2091-2093, Defense Production Act.

(b) The Contractor shall refer any request from a Title III project contractor for testing and qualification of a Title III industrial resource to the Contracting Officer.

(c) Upon the direction of the Contracting Officer, the Contractor shall test Title III industrial resources for qualification. The Contractor shall provide the test results to the Defense Production Act Office, Title III Program, located at Wright Patterson Air Force Base, Ohio 45433-7739.

(d) When the Contracting Officer modifies the contract to direct testing pursuant to this clause, the Government will provide the Title III industrial resource to be tested and will make an equitable adjustment in the contract for the costs of testing and qualification of the Title III industrial resource.

(f)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (c), (d), or (e) of this clause, including the following information:

- (i) A description of the supplies or services to be subcontracted.
- (ii) Identification of the type of subcontract to be used.
- (iii) Identification of the proposed subcontractor.
- (iv) The proposed subcontract price.
- (v) The subcontractor’s current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.
- (vi) The subcontractor’s Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.
- (vii) A negotiation memorandum reflecting—
 - (A) The principal elements of the subcontract price negotiations;
 - (B) The most significant considerations controlling establishment of initial or revised prices;
 - (C) The reason cost or pricing data were or were not required;
 - (D) The extent, if any, to which the Contractor did not rely on the subcontractor’s cost or pricing data in determining the price objective and in negotiating the final price;
 - (E) The extent to which it was recognized in the negotiation that the subcontractor’s cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;
 - (F) The reasons for any significant difference between the Contractor’s price objective and the price negotiated; and
 - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (c), (d), or (e) of this clause.

(g) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor’s purchasing system shall constitute a determination—

- (1) Of the acceptability of any subcontract terms or conditions;
 - (2) Of the allowability of any cost under this contract;
- or
- (3) To relieve the Contractor of any responsibility for performing this contract.

(h) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).

(i) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(j) The Government reserves the right to review the Contractor’s purchasing system as set forth in FAR Subpart 44.3.

(k) Paragraphs (d) and (f) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

(End of clause)

Alternate I (Aug 1998). As prescribed in 44.204(a)(2)(i), substitute the following paragraph (f)(2) for paragraph (f)(2) of the basic clause:

(f)(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.

Alternate II (Aug 1998). As prescribed in 44.204(a)(2)(ii), substitute the following paragraph (f)(2) for paragraph (f)(2) of the basic clause:

(f)(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), (d), or (e) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (f)(1)(i) through (f)(1)(iv) of this clause.

52.244-3 [Reserved]

52.244-4 Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).

As prescribed in 44.204(b), insert the following clause:

SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND
CONSULTANTS (ARCHITECT-ENGINEER SERVICES)
(AUG 1998)

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer's written consent before making any substitution for these subcontractors, associates, or consultants.

(End of clause)

52.244-5 Competition in Subcontracting.

As prescribed in 44.204(c), insert the following clause:

COMPETITION IN SUBCONTRACTING (DEC 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

(End of clause)

52.244-6 Subcontracts for Commercial Items.

As prescribed in 44.403, insert the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS (JULY 2004)

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

“Commercial item” has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) 52.219-8, Utilization of Small Business Concerns (MAY 2004) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$500,000 (\$1,000,000 for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(ii) 52.222-26, Equal Opportunity (APR 2002) (E.O. 11246).

(iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (DEC 2001) (38 U.S.C. 4212(a));

(iv) 52.222-36, Affirmative Action for Workers with Disabilities (JUNE 1998) (29 U.S.C. 793).

(v) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (APR 2003) (46 U.S.C. Appx 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).

(2) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(d) The Contractor shall include the terms of this clause, including this paragraph (d), in subcontracts awarded under this contract.

(End of clause)

ment’s interest. If this contract is terminated, the Government shall be liable only for payment under the payment provisions of this contract for services rendered before the effective date of termination.

(End of clause)

52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).

As prescribed in 49.502(d), insert the following clause:

TERMINATION FOR CONVENIENCE OF THE GOVERNMENT
(EDUCATIONAL AND OTHER NONPROFIT INSTITUTIONS)
(SEPT 1996)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part if the Contracting Officer determines that a termination is in the Government’s interest. The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all applicable subcontracts and cancel or divert applicable commitments covering personal services that extend beyond the effective date of termination.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government any information and items that, if the contract had been completed, would have been required to be furnished, including—

(i) Materials or equipment produced, in process, or acquired for the work terminated; and

(ii) Completed or partially completed plans, drawings, and information.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, termination inventory other than that retained by the Government under paragraph (b)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(d) After termination, the Contractor shall submit a final termination settlement proposal to the Contracting Officer in the form and with the certification prescribed by the Contracting Officer. The Contractor shall submit the proposal promptly but no later than 1 year from the effective date of termination unless extended in writing by the Contracting Officer upon written request of the Contractor within this 1-year period. If the Contractor fails to submit the termination settlement proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the Contractor because of the termination and shall pay the amount determined.

(e) Subject to paragraph (d) of this clause, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. This amount may include reasonable cancellation charges incurred by the Contractor and any reasonable loss on outstanding commitments for personal services that the Contractor is unable to cancel; *provided*, that the Contractor exercised reasonable diligence in diverting such commitments to other operations. The contract shall be amended and the Contractor paid the agreed amount.

(f) The cost principles and procedures in Subpart 31.3 of the Federal Acquisition Regulation (FAR), in effect on the date of the contract, shall govern all costs claimed, agreed to, or determined under this clause; however, if the Contractor is not an educational institution, and is a nonprofit organization under Office of Management and Budget (OMB) Circular A-122, “Cost Principles for Nonprofit Organizations,” July 8, 1980, those cost principles shall apply; *provided*, that if the Contractor is a nonprofit institution listed in Attachment C of

OMB Circular A-122, the cost principles at FAR 31.2 for commercial organizations shall apply to such contractor.

(g) The Government may, under the terms and conditions it prescribes, make partial payments against costs incurred by the Contractor for the terminated portion of this contract, if the Contracting Officer believes the total of these payments will not exceed the amount to which the Contractor will be entitled.

(h) The Contractor has the right of appeal as provided under the Disputes clause, except that if the Contractor failed to submit the termination settlement proposal within the time provided in paragraph (d) of this clause and failed to request a time extension, there is no right of appeal.

(End of clause)

52.249-6 Termination (Cost-Reimbursement).

As prescribed in 49.503(a)(1), insert the following clause:

TERMINATION (COST-REIMBURSEMENT) (MAY 2004)

(a) The Government may terminate performance of work under this contract in whole or, from time to time, in part, if—

(1) The Contracting Officer determines that a termination is in the Government's interest; or

(2) The Contractor defaults in performing this contract and fails to cure the default within 10 days (unless extended by the Contracting Officer) after receiving a notice specifying the default. "Default" includes failure to make progress in the work so as to endanger performance.

(b) The Contracting Officer shall terminate by delivering to the Contractor a Notice of Termination specifying whether termination is for default of the Contractor or for convenience of the Government, the extent of termination, and the effective date. If, after termination for default, it is determined that the Contractor was not in default or that the Contractor's failure to perform or to make progress in performance is due to causes beyond the control and without the fault or negligence of the Contractor as set forth in the Excusable Delays clause, the rights and obligations of the parties will be the same as if the termination was for the convenience of the Government.

(c) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the Contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause), except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest of the Contractor under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts, the cost of which would be reimbursable in whole or in part, under this contract; approval or ratification will be final for purposes of this clause.

(6) Transfer title (if not already transferred) and, as directed by the Contracting Officer, deliver to the Government—

(i) The fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated;

(ii) The completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government; and

(iii) The jigs, dies, fixtures, and other special tools and tooling acquired or manufactured for this contract, the cost of which the Contractor has been or will be reimbursed under this contract.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the Contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in paragraph (c)(6) of this clause; *provided, however*, that the Contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(d) The Contractor shall submit complete termination inventory schedules no later than 120 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the Contractor within this 120-day period.

(e) After expiration of the plant clearance period as defined in Subpart 49.001 of the Federal Acquisition Regulation, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of termination inventory not previously disposed of, excluding items authorized for disposition by the Contracting Officer. The Contractor may request

FAC 2001-25 OCTOBER 5, 2004

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																				
					FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI		
Alternate I	33.106(b)	C	Yes	I		R		R		R		R				A		A	A		A		A		
52.233-4 Applicable Law for Breach of Contract Claim.	33.215(b)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.234-1 Industrial Resources Developed Under Defense Production Act Title III.	34.104	C	N	I	A	A	A	A																	
52.236-1 Performance of Work by the Contractor.	36.501(b)	C	Yes								A														
52.236-2 Differing Site Conditions.	36.502	C	Yes								A						A					O			
52.236-3 Site Investigation and Conditions Affecting the Work.	36.503	C	Yes								A						A					O			
52.236-4 Physical Data.	36.504	C	No								A											A			
52.236-5 Material and Workmanship.	36.505	C	Yes								R	R										A			
52.236-6 Superintendence by the Contractor.	36.506	C	Yes								A						A					O			
52.236-7 Permits and Responsibilities.	36.507	C	Yes								R	R					A					A			
52.236-8 Other Contracts.	36.508	C	Yes								A						A					O			
52.236-9 Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.	36.509	C	Yes								A						A					O			
52.236-10 Operations and Storage Areas.	36.510	C	Yes								A						A					O			
52.236-11 Use and Possession Prior to Completion.	36.511	C	Yes								A											O			
52.236-12 Cleaning Up.	36.512	C	Yes								A						A					O			
52.236-13 Accident Prevention.	36.513	C	Yes								A						A					O			

FAC 2001-25 OCTOBER 5, 2004

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT																				
					✓FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LG	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI		
52.236-14 Availability and Use of Utility Services.	36.514	C	Yes									A						A					A		
52.236-15 Schedules for Construction Contracts.	36.515	C	Yes									O													
52.236-16 Quantity Surveys.	36.516	C	Yes									O											O		
Alternate I	36.516	C	Yes									O													
52.236-17 Layout of Work.	36.517	C	Yes									A											A		
52.236-18 Work Oversight in Cost-Reimbursement Construction Contracts.	36.518	C	Yes										R												
52.236-19 Organization and Direction of the Work.	36.519	C	Yes										R												
52.236-21 Specifications and Drawings for Construction.	36.521	C	Yes									A						A					O		
Alternate I	36.521	C	Yes									A						A					O		
Alternate II	36.521	C	Yes									A						A					O		
52.236-22 Design Within Funding Limitations.	36.609-1(c)	C	Yes																A				O		
52.236-23 Responsibility of the Architect-Engineer Contractor.	36.609-2(b)	C	Yes																A						
52.236-24 Work Oversight in Architect-Engineer Contracts.	36.609-3	C	Yes																A						
52.236-25 Requirements for Registration of Designers.	36.609-4	C	Yes																A						
52.236-26 Preconstruction Conference.	36.522	C	Yes	I								A						A							

FAC 2001-25 OCTOBER 5, 2004

PART 53.3—ILLUSTRATION OF FORMS

53.301-1414

CONSENT OF SURETY	1. CONTRACT NUMBER	2. MODIFICATION NUMBER	3. DATED
--------------------------	--------------------	------------------------	----------

The Surety (Co-Sureties) consents (consent) to the foregoing contract modification and agrees (agree) that its (their) bond or bonds shall apply and extend to the contract as modified or amended.

4. INDIVIDUAL PRINCIPAL	a. NAME OF PRINCIPAL			c. SIGNATURE	<i>(Affix Seal)</i>
	b. BUSINESS ADDRESS			d. TYPED NAME	
	STREET ADDRESS			e. TYPED TITLE	
	CITY	STATE	ZIP CODE	f. DATE THIS CONSENT EXECUTED	
5. CORPORATE PRINCIPAL	a. CORPORATE NAME			c. PERSON EXECUTING CONSENT <i>(Signature)</i>	<i>(Affix Seal)</i>
	b. BUSINESS ADDRESS			d. TYPED NAME	
	STREET ADDRESS			e. TYPED TITLE	
	CITY	STATE	ZIP CODE	f. DATE THIS CONSENT EXECUTED	

6. CORPORATE/INDIVIDUAL SURETY (CO-SURETIES)

The Principal or authorized representative shall execute this consent of surety with the modification to which it pertains. If the representative (e.g., attorney-in-fact) that signs the consent is not a member of the partnership, or joint venture, or an officer of the corporation involved, a Power-of-Attorney or a Certificate of Corporate Principal must accompany the consent.

A	a. CORPORATE/INDIVIDUAL SURETY'S NAME			c. PERSON EXECUTING CONSENT <i>(Signature)</i>	<i>(Affix Seal)</i>
	b. BUSINESS ADDRESS			d. TYPED NAME	
	STREET ADDRESS			e. TYPED TITLE	
	CITY	STATE	ZIP CODE	f. DATE THIS CONSENT EXECUTED	
B	a. CORPORATE/INDIVIDUAL SURETY'S NAME			c. PERSON EXECUTING CONSENT <i>(Signature)</i>	<i>(Affix Seal)</i>
	b. BUSINESS ADDRESS			d. TYPED NAME	
	STREET ADDRESS			e. TYPED TITLE	
	CITY	STATE	ZIP CODE	f. DATE THIS CONSENT EXECUTED	
C	a. CORPORATE/INDIVIDUAL SURETY'S NAME			c. PERSON EXECUTING CONSENT <i>(Signature)</i>	<i>(Affix Seal)</i>
	b. BUSINESS ADDRESS			d. TYPED NAME	
	STREET ADDRESS			e. TYPED TITLE	
	CITY	STATE	ZIP CODE	f. DATE THIS CONSENT EXECUTED	

(Add similar signature blocks on the back of this form if necessary for additional co-Sureties)

CONSENT OF SURETY

1. CONTRACT NUMBER

2. MODIFICATION NUMBER

3. DATED

The Surety (Co-Sureties) consents (consent) to the foregoing contract modification and agrees (agree) that its (their) bond or bonds shall apply and extend to the contract as modified or amended.

4. INDIVIDUAL PRINCIPAL	a. NAME OF PRINCIPAL			c. SIGNATURE		<i>(Affix Seal)</i>
	b. BUSINESS ADDRESS			d. TYPED NAME		
	STREET ADDRESS			e. TYPED TITLE		
	CITY	STATE	ZIP CODE	f. DATE THIS CONSENT EXECUTED		
5. CORPORATE PRINCIPAL	a. CORPORATE NAME			c. PERSON EXECUTING CONSENT <i>(Signature)</i>		<i>(Affix Seal)</i>
	b. BUSINESS ADDRESS			d. TYPED NAME		
	STREET ADDRESS			e. TYPED TITLE		
	CITY	STATE	ZIP CODE	f. DATE THIS CONSENT EXECUTED		

6. CORPORATE/INDIVIDUAL SURETY (CO-SURETIES)

The Principal or authorized representative shall execute this consent of surety with the modification to which it pertains. If the representative (e.g., attorney-in-fact) that signs the consent is not a member of the partnership, or joint venture, or an officer of the corporation involved, a Power-of-Attorney or a Certificate of Corporate Principal must accompany the consent.

A	a. CORPORATE/INDIVIDUAL SURETY'S NAME			c. PERSON EXECUTING CONSENT <i>(Signature)</i>		<i>(Affix Seal)</i>
	b. BUSINESS ADDRESS			d. TYPED NAME		
	STREET ADDRESS			e. TYPED TITLE		
	CITY	STATE	ZIP CODE	f. DATE THIS CONSENT EXECUTED		
B	a. CORPORATE/INDIVIDUAL SURETY'S NAME			c. PERSON EXECUTING CONSENT <i>(Signature)</i>		<i>(Affix Seal)</i>
	b. BUSINESS ADDRESS			d. TYPED NAME		
	STREET ADDRESS			e. TYPED TITLE		
	CITY	STATE	ZIP CODE	f. DATE THIS CONSENT EXECUTED		
C	a. CORPORATE/INDIVIDUAL SURETY'S NAME			c. PERSON EXECUTING CONSENT <i>(Signature)</i>		<i>(Affix Seal)</i>
	b. BUSINESS ADDRESS			d. TYPED NAME		
	STREET ADDRESS			e. TYPED TITLE		
	CITY	STATE	ZIP CODE	f. DATE THIS CONSENT EXECUTED		

(Add similar signature blocks on the back of this form if necessary for additional co-Sureties)

FAC 2001-25 FILING INSTRUCTIONS

NOTE: The following pages reflect FAR final rule amendments that are effective November 4, 2004. Please do not file prior to this effective date.

Remove Pages

1.1-3 and 1.1-4
1.1-7 and 1.1-8

13.1-1 and 13.1-2

19.8-5 and 19.8-6

36.2-3 and 36.2-4
36.7-1 and 36.7-2

Part 53 TOC
pp. 53-1 and 53-2
53.2-3 and 53.2-4

Insert Pages

1.1-3 and 1.1-4
1.1-7 and 1.1-8

13.1-1 and 13.1-2

19.8-5 and 19.8-6

36.2-3 and 36.2-4
36.7-1 and 36.7-2

Part 53 TOC
pp. 53-1 and 53-2
53.2-3 and 53.2-4

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Policy Act of 1974 (Pub. L. 93-400), as amended by Pub. L. 96-83.

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

1.104 Applicability.

The FAR applies to all acquisitions as defined in Part 2 of the FAR, except where expressly excluded.

1.105 Issuance.

1.105-1 Publication and code arrangement.

(a) The FAR is published in—

(1) The daily issue of the *Federal Register*;

(2) Cumulated form in the *Code of Federal Regulations* (CFR); and

(3) A separate loose-leaf edition.

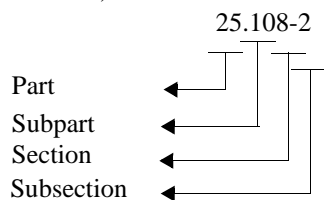
(b) The FAR is issued as Chapter 1 of Title 48, CFR. Subsequent chapters are reserved for agency acquisition regulations that implement or supplement the FAR (see Subpart 1.3). The CFR Staff will assign chapter numbers to requesting agencies.

(c) Each numbered unit or segment (e.g., part, subpart, section, etc.) of an agency acquisition regulation that is codified in the CFR shall begin with the chapter number. However, the chapter number assigned to the FAR will not be included in the numbered units or segments of the FAR.

1.105-2 Arrangement of regulations.

(a) *General.* The FAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.

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



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

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

(c) References and citations. (1) Unless otherwise stated, cross-references indicate parts, subparts, sections, subsections, paragraphs, subparagraphs, or subdivisions of this regulation.

(2) This regulation may be referred to as the Federal Acquisition Regulation or the FAR.

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

(i) Part would be “FAR Part 9” outside the FAR and “Part 9” within the FAR.

(ii) Subpart would be “FAR Subpart 9.1” outside the FAR and “Subpart 9.1” within the FAR.

(iii) Section would be “FAR 9.106” outside the FAR and “9.106” within the FAR.

(iv) Subsection would be “FAR 9.106-4” outside the FAR and “9.106-4” within the FAR.

(v) Paragraph would be “FAR 9.106-4(d)” outside the FAR and “9.106-4(d)” within the FAR.

(4) Citations of authority (e.g., statutes or Executive orders) in the FAR shall follow the *Federal Register* form guides.

1.105-3 Copies.

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

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

1.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more members of the public. The information collection and record-keeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply:

FAR segment	OMB Control Number
3.103	9000-0018
3.4	9000-0003
4.102	9000-0033
4.5	9000-0137
4.602	9000-0145
4.603	9000-0145

FAC 2001-25 NOVEMBER 4, 2004

1.106

FEDERAL ACQUISITION REGULATION

FAR segment	OMB Control Number	FAR segment	OMB Control Number
4.7	9000-0034		9000-0138
4.9	9000-0097	32.7	9000-0074
5.405	9000-0036	32.9	9000-0102
7.2	9000-0082	32.10	9000-0138
8.5	9000-0113	33	9000-0035
9.1	9000-0011	34.1	9000-0133
9.2	9000-0020	36.213-2	9000-0037
14.201	9000-0034	36.603	9000-0157
14.202-4	9000-0040		
14.202-5	9000-0039	41.202(c)	9000-0125
14.205	9000-0037	42.205(f)	9000-0026
14.214	9000-0105	42.7	9000-0013
14.407	9000-0038	42.12	9000-0076
14.5	9000-0041	42.13	9000-0076
15.2	9000-0037	42.14	9000-0056
15.209	9000-0034	45	9000-0075
15.4	9000-0013	46	9000-0077
15.404-1(f)	9000-0080	47	9000-0061
15.407-2	9000-0078	48	9000-0027
15.408	9000-0115	49	9000-0028
19.7	9000-0006	50	9000-0029
19.12	9000-0150	51.1	9000-0031
22.103	9000-0065	51.2	9000-0032
22.8	1215-0072	52.203-2	9000-0018
22.11	9000-0066	52.203-7	9000-0091
22.13	1215-0072	52.204-3	9000-0097
22.14	1215-0072	52.204-6	9000-0145
23.602	9000-0107	52.204-7	9000-0159
23.9	9000-0139	52.207-3	9000-0114
27.3	9000-0095	52.208-8	9000-0113
27.4	9000-0090	52.208-9	9000-0113
28.1	9000-0045	52.209-1(b)	9000-0020
28.2	9000-0045	52.209-1(c)	9000-0083
29.304	9000-0059	52.209-5	9000-0094
30.6	9000-0129	52.209-6	9000-0094
31.205-46	9000-0079	52.210-8	9000-0018
31.205-46(a)(3)	9000-0088	52.210-9	9000-0016
32	9000-0035	52.210-10	9000-0017
32.000	9000-0138	52.212-1	9000-0043
32.1	9000-0070 and 9000-0138	52.212-1(k) 52.212-2	9000-0159 9000-0043
32.2	9000-0138	52.212-3	9000-0136
32.4	9000-0073	52.212-4(t)	9000-0159
32.5	9000-0010 and	52.214-14	9000-0047

FAR segment	OMB Control Number
52.249-3	9000-0028
52.249-5	9000-0028
52.249-6	9000-0028
52.249-11	9000-0028
52.250-1	9000-0029
SF 24	9000-0045
SF 25	9000-0045
SF 25-A	9000-0045
SF 28	9000-0001
SF 34	9000-0045
SF 35	9000-0045
SF 273	9000-0045
SF 274	9000-0045
SF 275	9000-0045
SF 294	9000-0006
SF 295	9000-0007
SF 330	9000-0157
SF 1403	9000-0011
SF 1404	9000-0011
SF 1405	9000-0011
SF 1406	9000-0011
SF 1407	9000-0011
SF 1408	9000-0011
SF 1413	9000-0014
SF 1416	9000-0045
SF 1418	9000-0045
SF 1428	9000-0075
SF 1429	9000-0075
SF 1435	9000-0012
SF 1436	9000-0012
SF 1437	9000-0012
SF 1438	9000-0012
SF 1439	9000-0012
SF 1440	9000-0012
SF 1443	9000-0010
SF 1444	9000-0089
SF 1445	9000-0089
SF 1446	9000-0089
OF 312	9000-0150

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)).

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

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

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

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

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

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

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

1.107 Certifications.

In accordance with Section 29 of the Office of Federal Procurement Policy Act (41 U.S.C. 425), as amended by

13.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed the simplified acquisition threshold (see 2.101). Subpart 13.5 provides special authority for acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding \$5,000,000 (\$10,000,000 for acquisitions entered into under the authority of 12.102(f)(1)), including options. See Part 12 for policies applicable to the acquisition of commercial items exceeding the micro-purchase threshold. See 36.602-5 for simplified procedures to be used when acquiring architect-engineer services.

13.001 Definitions.

As used in this part—

“Authorized individual” means a person who has been granted authority, in accordance with agency procedures, to acquire supplies and services in accordance with this part.

“Governmentwide commercial purchase card” means a purchase card, similar in nature to a commercial credit card, issued to authorized agency personnel to use to acquire and to pay for supplies and services.

“Imprest fund” means a cash fund of a fixed amount established by an advance of funds, without charge to an appropriation, from an agency finance or disbursing officer to a duly appointed cashier, for disbursement as needed from time to time in making payment in cash for relatively small amounts.

“Third party draft” means an agency bank draft, similar to a check, that is used to acquire and to pay for supplies and services. (See Treasury Financial Management Manual, Section 3040.70.)

13.002 Purpose.

The purpose of this part is to prescribe simplified acquisition procedures in order to—

- (a) Reduce administrative costs;
- (b) Improve opportunities for small, small disadvantaged, and women-owned small business concerns to obtain a fair proportion of Government contracts;
- (c) Promote efficiency and economy in contracting; and
- (d) Avoid unnecessary burdens for agencies and contractors.

13.003 Policy.

(a) Agencies shall use simplified acquisition procedures to the maximum extent practicable for all purchases of supplies or services not exceeding the simplified acquisition threshold (including purchases at or below the micro-purchase threshold). This policy does not apply if an agency can meet its requirement using—

(1) Required sources of supply under Part 8 (e.g., Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts);

(2) Existing indefinite delivery/indefinite quantity contracts; or

(3) Other established contracts.

(b)(1) Each acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500 (\$15,000 for acquisitions as described in 13.201(g)(1)) and not exceeding \$100,000 (\$250,000 for acquisitions described in paragraph (1) of the Simplified Acquisition Threshold definition at 2.101) is reserved exclusively for small business concerns and shall be set aside (see 19.000 and Subpart 19.5). See 19.502-2 for exceptions.

(2) The contracting officer may set aside for HUBZone small business concerns (see 19.1305) or service-disabled veteran-owned small business concerns (see 19.1405) an acquisition of supplies or services that has an anticipated dollar value exceeding the micro-purchase threshold and not exceeding the simplified acquisition threshold. The contracting officer’s decision not to set aside an acquisition for HUBZone small business or service-disabled veteran-owned small business concerns participation below the simplified acquisition threshold is not subject to review under Subpart 19.4.

(3) Each written solicitation under a set-aside shall contain the appropriate provisions prescribed by Part 19. If the solicitation is oral, however, information substantially identical to that in the provision shall be given to potential quoters.

(c)(1) The contracting officer shall not use simplified acquisition procedures to acquire supplies and services if the anticipated award will exceed—

(i) The simplified acquisition threshold; or

(ii) \$5,000,000 (\$10,000,000 for acquisitions entered into under the authority of 12.102(f)(1)), including options, for acquisitions of commercial items using Subpart 13.5.

(2) Do not break down requirements aggregating more than the simplified acquisition threshold (or for commercial items, the threshold in Subpart 13.5) or the micro-purchase threshold into several purchases that are less than the applicable threshold merely to—

(i) Permit use of simplified acquisition procedures;

or

(ii) Avoid any requirement that applies to purchases exceeding the micro-purchase threshold.

(d) An agency that has specific statutory authority to acquire personal services (see 37.104) may use simplified acquisition procedures to acquire those services.

(e) Agencies shall use the Governmentwide commercial purchase card and electronic purchasing techniques to the maximum extent practicable in conducting simplified acquisitions.

(f) Agencies shall maximize the use of electronic commerce when practicable and cost-effective (see Subpart 4.5). Drawings and lengthy specifications can be provided off-line in hard copy or through other appropriate means.

(g) Authorized individuals shall make purchases in the simplified manner that is most suitable, efficient, and economical based on the circumstances of each acquisition. For acquisitions not expected to exceed—

(1) The simplified acquisition threshold for other than commercial items, use any appropriate combination of the procedures in Parts 13, 14, 15, 35, or 36, including the use of Standard Form 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair), for construction contracts (see 36.701(a)); or

(2) \$5,000,000 (\$10,000,000 for acquisitions entered into under the authority of 12.102(f)(1)) for commercial items, use any appropriate combination of the procedures in Parts 12, 13, 14, and 15 (see paragraph (d) of this section).

(h) In addition to other considerations, contracting officers shall—

(1) Promote competition to the maximum extent practicable (see 13.104);

(2) Establish deadlines for the submission of responses to solicitations that afford suppliers a reasonable opportunity to respond (see 5.203);

(3) Consider all quotations or offers that are timely received. For evaluation of quotations or offers received electronically, see 13.106-2(b)(3); and

(4) Use innovative approaches, to the maximum extent practicable, in awarding contracts using simplified acquisition procedures.

13.004 Legal effect of quotations.

(a) A quotation is not an offer and, consequently, cannot be accepted by the Government to form a binding contract. Therefore, issuance by the Government of an order in response to a supplier's quotation does not establish a contract. The order is an offer by the Government to the supplier to buy certain supplies or services upon specified terms and conditions. A contract is established when the supplier accepts the offer.

(b) When appropriate, the contracting officer may ask the supplier to indicate acceptance of an order by notification to the Government, preferably in writing, as defined at 2.101. In other circumstances, the supplier may indicate acceptance by furnishing the supplies or services ordered or by proceeding with the work to the point where substantial performance has occurred.

(c) If the Government issues an order resulting from a quotation, the Government may (by written notice to the supplier, at any time before acceptance occurs) withdraw, amend, or cancel its offer. (See 13.302-4 for procedures on termination or cancellation of purchase orders.)

13.005 Federal Acquisition Streamlining Act of 1994 list of inapplicable laws.

(a) The following laws are inapplicable to all contracts and subcontracts (if otherwise applicable to subcontracts) at or below the simplified acquisition threshold:

(1) 41 U.S.C. 57(a) and (b) (Anti-Kickback Act of 1986). (Only the requirement for the incorporation of the contractor procedures for the prevention and detection of violations, and the contractual requirement for contractor cooperation in investigations are inapplicable.)

(2) 40 U.S.C. 270a (Miller Act). (Although the Miller Act does not apply to contracts at or below the simplified acquisition threshold, alternative forms of payment protection for suppliers of labor and material (see 28.102) are still required if the contract exceeds \$25,000.)

(3) 40 U.S.C. 327 - 333 (Contract Work Hours and Safety Standards Act—Overtime Compensation).

(4) 41 U.S.C. 701(a)(1) (Section 5152 of the Drug-Free Workplace Act of 1988), except for individuals.

(5) 42 U.S.C. 6962 (Solid Waste Disposal Act). (The requirement to provide an estimate of recovered material utilized in contract performance does not apply unless the contract value exceeds \$100,000.)

(6) 10 U.S.C. 2306(b) and 41 U.S.C. 254(a) (Contract Clause Regarding Contingent Fees).

(7) 10 U.S.C. 2313 and 41 U.S.C. 254(c) (Authority to Examine Books and Records of Contractors).

(8) 10 U.S.C. 2402 and 41 U.S.C. 253g (Prohibition on Limiting Subcontractor Direct Sales to the United States).

(9) 15 U.S.C. 631 note (HUBZone Act of 1997), except for 15 U.S.C. 657a(b)(2)(B), which is optional for the agencies subject to the requirements of the Act.

(10) 31 U.S.C. 1354(a) (Limitation on use of appropriated funds for contracts with entities not meeting veterans' employment reporting requirements).

(b) The Federal Acquisition Regulatory (FAR) Council will include any law enacted after October 13, 1994, that sets forth policies, procedures, requirements, or restrictions for the acquisition of property or services, on the list set forth in paragraph (a) of this section. The FAR Council may make exceptions when it determines in writing that it is in the best interest of the Government that the enactment should apply to contracts or subcontracts not greater than the simplified acquisition threshold.

(c) The provisions of paragraph (b) of this section do not apply to laws that—

(1) Provide for criminal or civil penalties; or

(2) Specifically state that notwithstanding the language of Section 4101, Public Law 103-355, the enactment will be applicable to contracts or subcontracts in amounts not greater than the simplified acquisition threshold.

(d) Any individual may petition the Administrator, Office of Federal Procurement Policy (OFPP), to include any applicable provision of law not included on the list set forth in

costs, and other circumstances. Price indices may be used as guides to determine the changes in labor and material costs. Comparison of commercial prices for similar items may also be used.

19.808 Contract negotiation.

19.808-1 Sole source.

(a) The SBA is responsible for initiating negotiations with the agency within the time established by the agency. If the SBA does not initiate negotiations within the agreed time and the agency cannot allow additional time, the agency may, after notifying the SBA, proceed with the acquisition from other sources.

(b) The SBA should participate, whenever practicable, in negotiating the contracting terms. When mutually agreeable, the SBA may authorize the contracting activity to negotiate directly with the 8(a) contractor. Whether or not direct negotiations take place, the SBA is responsible for approving the resulting contract before award.

19.808-2 Competitive.

In competitive 8(a) acquisitions subject to Part 15, the contracting officer conducts negotiations directly with the competing 8(a) firms. Conducting competitive negotiations among 8(a) firms prior to SBA's formal acceptance of the acquisition for the 8(a) Program may be grounds for SBA's not accepting the acquisition for the 8(a) Program.

19.809 Preaward considerations.

The contracting officer should request a preaward survey of the 8(a) contractor whenever considered useful. If the results of the preaward survey or other information available to the contracting officer raise substantial doubt as to the firm's ability to perform, the contracting officer must refer the matter to SBA for Certificate of Competency consideration under Subpart 19.6.

19.810 SBA appeals.

(a) The SBA Administrator may submit the following matters for determination to the agency head if the SBA and the contracting officer fail to agree on them:

- (1) The decision not to make a particular acquisition available for award under the 8(a) Program.
- (2) A contracting officer's decision to reject a specific 8(a) firm for award of an 8(a) contract after SBA's acceptance of the requirement for the 8(a) Program.
- (3) The terms and conditions of a proposed 8(a) contract, including the contracting activity's NAICS code designation and estimate of the fair market price.

(b) Notification of a proposed appeal to the agency head by the SBA must be received by the contracting officer within 5 working days after the SBA is formally notified of the con-

tracting officer's decision. The SBA will provide the agency Director for Small and Disadvantaged Business Utilization a copy of this notification of the intent to appeal. The SBA must send the written appeal to the head of the contracting activity within 15 working days of SBA's notification of intent to appeal or the contracting activity may consider the appeal withdrawn. Pending issuance of a decision by the agency head, the contracting officer must suspend action on the acquisition. The contracting officer need not suspend action on the acquisition if the contracting officer makes a written determination that urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for a decision.

(c) If the SBA appeal is denied, the decision of the agency head shall specify the reasons for the denial, including the reasons why the selected firm was determined incapable of performance, if appropriate. The decision shall be made a part of the contract file.

19.811 Preparing the contracts.

19.811-1 Sole source.

(a) The contract to be awarded by the agency to the SBA shall be prepared in accordance with agency procedures and in the same detail as would be required in a contract with a business concern. The contracting officer shall use the Standard Form 26 as the award form, except for construction contracts, in which case the Standard Form 1442 shall be used as required in 36.701(a).

(b) The agency shall prepare the contract that the SBA will award to the 8(a) contractor in accordance with agency procedures, as if the agency were awarding the contract directly to the 8(a) contractor, except for the following:

- (1) The award form shall cite 41 U.S.C. 253(c)(5) or 10 U.S.C. 2304(c)(5) (as appropriate) as the authority for use of other than full and open competition.
- (2) Appropriate clauses shall be included, as necessary, to reflect that the contract is between the SBA and the 8(a) contractor.
- (3) The following items shall be inserted by the SBA:
 - (i) The SBA contract number.
 - (ii) The effective date.
 - (iii) The typed name of the SBA's contracting officer.
 - (iv) The signature of the SBA's contracting officer.
 - (v) The date signed.

(4) The SBA will obtain the signature of the 8(a) contractor prior to signing and returning the prime contract to the contracting officer for signature. The SBA will make every effort to obtain signatures and return the contract, and any subsequent bilateral modification, to the contracting officer within a maximum of 10 working days.

(c) Except in procurements where the SBA will make advance payments to its 8(a) contractor, the agency contracting officer may, as an alternative to the procedures in paragraphs (a) and (b) of this subsection, use a single contract document for both the prime contract between the agency and the SBA and its 8(a) contractor. The single contract document shall contain the information in paragraphs (b) (1), (2), and (3) of this subsection. Appropriate blocks on the Standard Form (SF) 26 or 1442 will be asterisked and a continuation sheet appended as a tripartite agreement which includes the following:

(1) Agency acquisition office, prime contract number, name of agency contracting officer and lines for signature, date signed, and effective date.

(2) The SBA office, the SBA contract number, name of the SBA contracting officer, and lines for signature and date signed.

(3) Name and lines for the 8(a) subcontractor's signature and date signed.

(d) For acquisitions not exceeding the simplified acquisition threshold, the contracting officer may use the alternative procedures in paragraph (c) of this subsection with the appropriate simplified acquisition forms.

19.811-2 Competitive.

(a) The contract will be prepared in accordance with 14.408-1(d), except that appropriate blocks on the Standard Form 26 or 1442 will be asterisked and a continuation sheet appended as a tripartite agreement which includes the following:

(1) The agency contracting activity, prime contract number, name of agency contracting officer, and lines for signature, date signed, and effective date.

(2) The SBA office, the SBA subcontract number, name of the SBA contracting officer and lines for signature and date signed.

(b) The process for obtaining signatures shall be as specified in 19.811-1(b)(4).

19.811-3 Contract clauses.

(a) The contracting officer shall insert the clause at 52.219-11, Special 8(a) Contract Conditions, in contracts between the SBA and the agency when the acquisition is accomplished using the procedures of 19.811-1(a) and (b).

(b) The contracting officer shall insert the clause at 52.219-12, Special 8(a) Subcontract Conditions, in contracts between the SBA and its 8(a) contractor when the acquisition is accomplished using the procedures of 19.811-1(a) and (b).

(c) The contracting officer shall insert the clause at 52.219-17, Section 8(a) Award, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of 19.805 and in sole source awards which utilize the alternative procedure in 19.811-1(c).

(d) The contracting officer shall insert the clause at 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, in competitive solicitations and contracts when the acquisition is accomplished using the procedures of 19.805.

(1) The clause at 52.219-18 with its Alternate I will be used when competition is to be limited to 8(a) concerns within one or more specific SBA districts pursuant to 19.804-2.

(2) The clause at 52.219-18 with its Alternate II will be used when the acquisition is for a product in a class for which the Small Business Administration has waived the nonmanufacturer rule (see 19.102(f)(4) and (5)).

(e) The contracting officer shall insert the clause at 52.219-14, Limitations on Subcontracting, in any solicitation and contract resulting from this subpart.

19.812 Contract administration.

(a) The contracting officer shall assign contract administration functions, as required, based on the location of the 8(a) contractor (see Federal Directory of Contract Administration Services Components (available via the Internet at <http://www.dcma.mil/casbook/casbook.htm>)).

(b) The agency shall distribute copies of the contract(s) in accordance with Part 4. All contracts and modifications, if any, shall be distributed to both the SBA and the firm in accordance with the timeframes set forth in 4.201.

(c) To the extent consistent with the contracting activity's capability and resources, 8(a) contractors furnishing requirements shall be afforded production and technical assistance, including, when appropriate, identification of causes of deficiencies in their products and suggested corrective action to make such products acceptable.

(d) An 8(a) contract, whether in the base or an option year, must be terminated for convenience if the 8(a) concern to which it was awarded transfers ownership or control of the firm or if the contract is transferred or novated for any reason to another firm, unless the Administrator of the SBA waives the requirement for contract termination (13 CFR 124.515). The Administrator may waive the termination requirement only if certain conditions exist. Moreover, a waiver of the requirement for termination is permitted only if the 8(a) firm's request for waiver is made to the SBA prior to the actual relinquishment of ownership or control, except in the case of death or incapacity where the waiver must be submitted within 60 days after such an occurrence. The clauses in the contract entitled "Special 8(a) Contract Conditions" and "Special 8(a) Subcontract Conditions" require the SBA and the 8(a) subcontractor to notify the contracting officer when ownership of the firm is being transferred. When the contracting officer receives information that an 8(a) contractor is planning to transfer ownership or control to another firm, the contracting officer must take action immediately to preserve the option of waiving the termination requirement. The contracting officer should deter-

36.209 Construction contracts with architect-engineer firms.

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

36.210 Inspection of site and examination of data.

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

36.211 Distribution of advance notices and solicitations.

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

36.212 Preconstruction orientation.

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

- (1) Statutory matters such as labor standards (Subpart 22.4), and subcontracting plan requirements (Subpart 19.7); and
- (2) Other matters of significant interest, including who has authority to decide matters such as contractual, administrative (*e.g.*, security, safety, and fire and environmental protection), and construction responsibilities.

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

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

- (1) Conduct the conference prior to the start of construction at the work site;
- (2) Notify the successful offeror of the date, time, and location of the conference (see 36.522); and
- (3) Inform the successful offeror of the proposed agenda and any need for attendance by subcontractors.

36.213 Special procedures for sealed bidding in construction contracting.

36.213-1 General.

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

36.213-2 Presolicitation notices.

(a) Unless the requirement is waived by the head of the contracting activity or a designee, the contracting officer shall issue presolicitation notices on any construction requirement when the proposed contract is expected to equal or exceed \$100,000. Presolicitation notices may also be used when the proposed contract is expected to be less than \$100,000. These notices shall be issued sufficiently in advance of the invitation for bids to stimulate the interest of the greatest number of prospective bidders.

(b) Presolicitation notices must—

- (1) Describe the proposed work in sufficient detail to disclose the nature and volume of work (in terms of physical characteristics and estimated price range) (see 36.204);
- (2) State the location of the work;
- (3) Include tentative dates for issuing invitations, opening bids, and completing contract performance;
- (4) State where plans will be available for inspection without charge;
- (5) Specify a date by which requests for the invitation for bids should be submitted;
- (6) State whether award is restricted to small businesses;
- (7) Specify any amount to be charged for solicitation documents; and
- (8) Be publicized through the Governmentwide point of entry in accordance with 5.204.

36.213-3 Invitations for bids.

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

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

(c) Contracting officers should assure that each invitation for bids includes the following information, when applicable:

(1) The appropriate wage determination of the Secretary of Labor (see Subpart 22.4), or, if the invitation for bids must be issued before the wage determination is received, a notice that the schedule of minimum wage rates to be paid under the contract will be issued as an amendment to the invitation for bids before the opening date for bids (see 14.208 and Subpart 22.4).

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

(3) The magnitude of the proposed construction project (see 36.204).

(4) The period of performance (see Subpart 11.4).

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

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

(7) Information concerning the prebid conference (see 14.207).

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

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

(10) Any instructions concerning reporting requirements.

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

36.213-4 Notice of award.

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

- (a) Identify the invitation for bids;
- (b) Identify the contractor's bid;

(c) State the award price;

(d) Advise the contractor that any required payment and performance bonds must be promptly executed and returned to the contracting officer;

(e) Specify the date of commencement of work, or advise that a notice to proceed will be issued.

36.214 Special procedures for price negotiation in construction contracting.

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

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

(1) When submission of cost or pricing data is not required (see 15.403-1 and 15.403-2), and any element of proposed cost differs significantly from the Government estimate, the contracting officer should request the offeror to submit cost information concerning that element (*e.g.*, wage rates or fringe benefits, significant materials, equipment allowances, and subcontractor costs).

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

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

36.215 Special procedure for cost-reimbursement contracts for construction.

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

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

36.700 Scope of subpart.

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

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

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

(b) Optional Form 347, Order for Supplies or Services, may be used for construction or dismantling, demolition, or removal of improvements contracts that are at or below the simplified acquisition threshold; provided, that the contracting officer includes the clauses required (see Subpart 36.5) in the simplified acquisitions (see Part 13).

(c) Contracting officers may use Optional Form 1419, Abstract of Offers—Construction, and Optional Form

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

(d) Contracting activities shall use Standard Form 1420, Performance Evaluation (Construction), in evaluating and reporting on the performance of construction contractors as required in 36.201.

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

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

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

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

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

(c) Standard Form 1421, Performance Evaluation (Architect-Engineer), shall be used in evaluating and reporting on the performance of architect-engineer contractors as required in 36.604.

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PART 53—FORMS

53.000	Scope of part.	53.222	Application of labor laws to Government acquisitions (SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH-347).
53.001	Definitions.	53.223	[Reserved]
	Subpart 53.1—General	53.224	[Reserved]
53.100	Scope of subpart.	53.225	[Reserved]
53.101	Requirements for use of forms.	53.226	[Reserved]
53.102	Current editions.	53.227	[Reserved]
53.103	Exceptions.	53.228	Bonds and insurance.
53.104	Overprinting.	53.229	Taxes (SF's 1094, 1094-A).
53.105	Computer generation.	53.230	[Reserved]
53.106	Special construction and printing.	53.231	[Reserved]
53.107	Obtaining forms.	53.232	Contract financing (SF 1443).
53.108	Recommendations concerning forms.	53.233	[Reserved]
53.109	Forms prescribed by other regulations.	53.234	[Reserved]
53.110	Continuation sheets.	53.235	Research and development contracting (SF 298).
53.111	Contract clause.	53.236	Construction and architect-engineer contracts.
	Subpart 53.2—Prescription of Forms	53.236-1	Construction.
53.200	Scope of subpart.	53.236-2	Architect-engineer services (SF's 252, 330, and 1421).
53.201	Federal acquisition system.	53.237	[Reserved]
53.201-1	Contracting authority and responsibilities (SF 1402).	53.238	[Reserved]
53.202	[Reserved]	53.239	[Reserved]
53.203	[Reserved]	53.240	[Reserved]
53.204	Administrative matters.	53.241	[Reserved]
53.204-1	Safeguarding classified information within industry (DD Form 254, DD Form 441).	53.242	Contract administration.
53.204-2	[Reserved]	53.242-1	Novation and change-of-name agreements (SF 30).
53.205	Publicizing contract actions.	53.243	Contract modifications (SF 30).
53.205-1	Paid advertisements.	53.244	[Reserved]
53.206	[Reserved]	53.245	Government property.
53.207	[Reserved]	53.246	[Reserved]
53.208	[Reserved]	53.247	Transportation (U.S. Government Bill of Lading).
53.209	Contractor qualifications.	53.248	[Reserved]
53.209-1	Responsible prospective contractors.	53.249	Termination of contracts.
53.210	[Reserved]	53.250	[Reserved]
53.211	[Reserved]	53.251	Contractor use of Government supply sources (OF 347).
53.212	Acquisition of commercial items.		Subpart 53.3—Illustration of Forms
53.213	Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348).	53.300	Scope of subpart.
53.214	Sealed bidding.	53.301	Standard forms.
53.215	Contracting by negotiation.	53.302	Optional forms.
53.215-1	Solicitation and receipt of proposals.	53.303	Agency forms.
53.216	Types of contracts.	53.301-18	SF 18, Request for Quotation.
53.216-1	Delivery orders and orders under basic ordering agreements (OF 347).	53.301-24	SF 24, Bid Bond.
53.217	[Reserved]	53.301-25	SF 25, Performance Bond.
53.218	[Reserved]	53.301-25-A	SF 25-A, Payment Bond.
53.219	Small business programs.	53.301-25-B	SF 25-B, Continuation Sheet (For SF's 24, 25, and 25-A).
53.220	[Reserved]	53.301-26	SF 26, Award/Contract.
53.221	[Reserved]	53.301-28	SF 28, Affidavit of Individual Surety.

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53.301-30	SF 30, Amendment of Solicitation/Modification of Contract.	53.301-1093	SF 1093, Schedule of Withholdings Under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act).
53.301-33	SF 33, Solicitation, Offer and Award.		
53.301-34	SF 34, Annual Bid Bond.		
53.301-35	SF 35, Annual Performance Bond.	53.301-1094	SF 1094, U.S. Tax Exemption Form.
53.301-44	SF 44, Purchase Order—Invoice—Voucher.	53.301-1094A	SF 1094A, Tax Exemption Forms Accountability Record.
53.301-98	SF 98, Notice of Intention to Make a Service Contract and Response to Notice.	53.301-1165	SF 1165, Receipt for Cash—Subvoucher.
53.301-98a	SF 98a, Notice of Intention to Make a Service Contract and Response to Notice (Attachment A).	53.301-1402	SF 1402, Certificate of Appointment.
53.301-99	SF 99, Notice of Award of Contract.	53.301-1403	SF 1403, Preaward Survey of Prospective Contractor (General).
53.301-120	SF 120, Report of Excess Personal Property.	53.301-1404	SF 1404, Preaward Survey of Prospective Contractor—Technical.
53.301-120-A	SF 120-A, Continuation Sheet (Report of Excess Personal Property).	53.301-1405	SF 1405, Preaward Survey of Prospective Contractor—Production.
53.301-126	SF 126, Report of Personal Property for Sale.	53.301-1406	SF 1406, Preaward Survey of Prospective Contractor—Quality Assurance.
53.301-126-A	SF 126-A, Report of Personal Property for Sale (Continuation Sheet).	53.301-1407	SF 1407, Preaward Survey of Prospective Contractor—Financial Capability.
53.301-252	SF 252, Architect-Engineer Contract.	53.301-1408	SF 1408, Preaward Survey of Prospective Contractor—Accounting System.
53.301-273	SF 273, Reinsurance Agreement for a Miller Act Performance Bond.	53.301-1409	SF 1409, Abstract of Offers.
53.301-274	SF 274, Reinsurance Agreement for a Miller Act Payment Bond.	53.301-1410	SF 1410, Abstract of Offers—Continuation.
53.301-275	SF 275, Reinsurance Agreement in Favor of the United States.	53.301-1413	SF 1413, Statement and Acknowledgment.
53.301-294	SF 294, Subcontracting Report for Individual Contracts.	53.301-1414	SF 1414, Consent of Surety.
53.301-295	SF 295, Summary Subcontract Report.	53.301-1415	SF 1415, Consent of Surety and Increase of Penalty.
53.301-298	SF 298, Report Documentation Page.	53.301-1416	SF 1416, Payment Bond for Other Than Construction Contracts.
53.301-308	SF 308, Request for Wage Determination and Response to Request.		
53.301-330	Architect-Engineer Qualifications.		
53.301-1034	SF 1034, Public Voucher for Purchases and Services Other Than Personal.	53.301-1418	SF 1418, Performance Bond for Other Than Construction Contracts.
53.301-1034A	SF 1034A, Public Voucher for Purchases and Services Other Than Personal—Memorandum Copy.	53.301-1420	SF 1420, Performance Evaluation—Construction Contracts.
53.301-1035	SF 1035, Public Voucher for Purchases and Services Other Than Personal, Continuation Sheet.	53.301-1421	SF 1421, Performance Evaluation (Architect-Engineer).
53.301-1035A	SF 1035A, Public Voucher for Purchases and Services Other Than Personal—Memorandum, Continuation Sheet.	53.301-1423	SF 1423, Inventory Verification Survey.
		53.301-1424	SF 1424, Inventory Disposal Report.
		53.301-1427	SF 1427, Inventory Schedule A—Continuation Sheet (Metals in Mill Product Form).
		53.301-1428	SF 1428, Inventory Schedule.

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.

The following standard forms are prescribed for use in reporting small, small disadvantaged and women-owned small business subcontracting data, as specified in Part 19:

(a) *SF 294 (Rev. 10/01), Subcontracting Report for Individual Contracts.* (See 19.704(a)(10).) SF 294 is authorized for local reproduction.

(b) *SF 295 (Rev. 10/01), Summary Subcontract Report.* (See 19.704(a)(10).) SF 295 is authorized for local reproduction.

(c) *OF 312 (10/00), Small Disadvantaged Business Participation Report.* (See Subpart 19.12.)

53.220 [Reserved]

53.221 [Reserved]

53.222 Application of labor laws to Government acquisitions (SF's 99, 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) *SF 99 (DOL), Notice of Award of Contract.*

(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. 6/89), 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. Pending issuance of a new edition of the form, the “prescribed by” reference at the bottom right of the form is revised to read “53.222(e)”.

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

(d) *SF 25-B (Rev. 10/83), Continuation Sheet* (For Standard Forms 24, 25, and 25-A). (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 1094-A (Rev. 12/96), Tax Exemption Forms Accountability Record. SF's 1094 and 1094-A are prescribed for use in establishing exemption from State or local taxes, as specified in 29.302(b).

53.230 [Reserved]

53.231 [Reserved]

53.232 Contract financing (SF 1443).

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

53.233 [Reserved]

53.234 [Reserved]

53.235 Research and development contracting (SF 298).

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

53.236 Construction and architect-engineer contracts.

53.236-1 Construction.

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

(a) *SF 1420 (10/83 Ed.), Performance Evaluation—Construction Contracts.* SF 1420 is prescribed for use in evaluating and reporting on the performance of construction contractors within approved dollar thresholds and as otherwise specified in 36.701(d).

(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. 6/95), 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, 330, and 1421).

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