FEDERAL ACQUISITION CIRCULAR

December 9, 1997

Number 97-03

Federal Acquisition Circular (FAC) 97-03 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 97-03 is effective February 9, 1998, except for Items VI, IX, and XIV, which are effective December 9, 1997.

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FAC 97-03 ITEM SUMMARY

Federal Acquisition Circular (FAC) 97-03 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Part 30 Deviations (FAR Case 97-014)

This final rule amends FAR 1.402 to remove the prohibition against authorizing deviations from FAR Part 30, Cost Accounting Standards Administration, except for subsections 30.201-3 and 30.201-4, or the Cost Accounting Standards Board rules and regulations.

Replacement pages: 1-9 thru 1-13.

Item II—Information Technology Management Reform Act of 1996 (FAR Case 96-319)

The interim rule published on August 8, 1996, as Item I of FAC 90-41 is converted to a final rule. This rule implements the Information Technology Management Reform Act of 1996 (Division E of Public Law 104-106). The final rule differs from the interim rule in that it makes a clarifying revision to paragraph (c) of the definition of "information technology" at FAR 2.101.

Replacement pages: 2-3 and 2-4.

Item III—Final Overhead Settlement (FAR Case 95-017)

This final rule amends FAR Parts 4, 42, and 52 to improve the process of final settlement of contractor indirect cost rates under cost-reimbursement contracts by (1) extending the time period within which a contractor must submit an indirect cost rate proposal from 90 days to 6 months after the end of the contractor's fiscal year, (2) permitting extensions to the 6-month time period for exceptional circumstances only, and (3) providing a specific reference to the Defense Contract Audit Agency pamphlet that contains guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data.

<u>Replacement pages</u>: 4-7 and 4-8; 42-11 thru 42-16; 52-77 and 52-78; and 52-81 thru 52-84.

Item IV—Reorganization of FAR Part 13, Simplified Acquisition Procedures (FAR Case 94-772)

This final rule revises FAR Part 13 to reorganize its contents in a more process-oriented manner and to emphasize the use of electronic contracting and the Governmentwide commercial

purchase card. FAR Part 52 is amended to permit agency provisions and clauses to be incorporated by reference in solicitations and contracts, if the full text of the provisions and clauses may be accessed electronically by prospective contractors. A new clause is added at FAR 52.213-4 for use in simplified acquisitions; the clause is a compilation of the required and most commonly used clauses that apply to simplified acquisitions, and may be used in lieu of individual clauses prescribed in the FAR.

Replacement pages: Structure iii and iv; 4-9 and 4-10; 6-1 and 6-2; 8-3 and 8-4; 12-1 thru 12-4; 12-7 and 12-8; 13-1 thru 13-12 (13-13 added); 16-17 thru 16-20; 19-49; 32-49 and 32-50; 41-3 and 41-4; 43-3 and 43-4; 49-1 and 49-2; 49-21 and 49-22; 52-1 and 52-2; 52-9 and 52-10; 52-43 thru 52-44.2; 52-363 thru 52-365; Matrix 7 and 8; 53-5 and 53-6; and 53-9 and 53-10.

Item V—Reporting Trade Sanction Exemptions (FAR Case 97-021)

This final rule amends FAR Subpart 25.10 to eliminate requirements for agencies to notify Congress when exercising the authority at FAR 25.1002(c) for exemption of certain procurements from trade sanctions imposed by the President. The rule instead requires agencies to notify the United States Trade Representative of such exemptions within 30 days after contract award.

Replacement pages: 25-15 thru 25-17.

Item VI—New Mexico Gross Receipts and Compensating Tax (FAR Case 97-018)

This final rule amends FAR 29.401-6 to identify the Defense Special Weapons Agency as an agency that has entered into an agreement with the State of New Mexico regarding taxation.

Replacement pages: 29-3 thru 29-5.

Item VII—Compensation of Certain Contractor Personnel (FAR Case 96-325)

The interim rule published on January 2, 1997, as Item XI of FAC 90-45 is converted to a final rule with a minor clarifying amendment at FAR 31.205-6(p)(1). The rule implements Section 809 of the Fiscal Year 1997 National Defense Authorization Act (Pub. L. 104-201). Section 809 places a Governmentwide ceiling of \$250,000 per year on allowable compensation costs for contractor personnel in senior management positions under contracts awarded during fiscal year 1997.

Replacement pages: 31-19 and 31-20.

Item VIII—Independent Research and Development/Bid and Proposal Costs for Fiscal Year 1996 and Beyond (FAR Case 95-032)

This final rule amends the cost principle at FAR 31.205-18, Independent Research and Development (IR&D) and Bid and Proposal (B&P) Costs, and deletes FAR Subpart 42.10, Negotiating Advance Agreements for Independent Research and Development/Bid and Proposal Costs. The rule removes, for fiscal year 1996 and beyond, the requirements to calculate or negotiate a ceiling for IR&D/B&P costs. In addition, the rule clarifies that costs incurred in preparing, submitting, and supporting offers on potential cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

Replacement pages: Structure vii and viii; 31-25 thru 31-27 (31-28 removed); 42-1 and 42-2; and 42-17 thru 42-20.

Item IX—Travel Reimbursement (FAR Case 97-007)

This interim rule amends FAR 31.205-46 to raise, from \$25 to \$75, the maximum travel expense amount that contractor personnel may claim without providing a supporting receipt. This change is consistent with a recent amendment to the Federal Travel Regulation.

Replacement pages: 31-39 and 31-40.

Item X—Protests to GAO (FAR Case 97-009)

This final rule amends the protest procedures at FAR 33.101 and 33.104 to conform with revisions made to the General Accounting Office Bid Protest Regulations.

Replacement pages: 33-1 thru 33-6.

Item XI—Novation and Related Agreements (FAR Case 95-034)

This final rule amends FAR Subpart 42.12 to expand and clarify procedures for processing novation agreements, and for determining when use of a novation agreement is appropriate.

<u>Replacement pages</u>: 42-1 and 42-2; 42-19 thru 42-28 (42-29 removed); and 53-9 and 53-10.

Item XII—Commercial Bills of Lading, Small Package Shipments (FAR Case 97-017)

This final rule amends FAR 47.303-17 to raise the threshold for requiring receipted freight bills for small package shipments from \$25 to \$100, and the maximum amount that the Government may pay for invoiced but unsupported transportation charges from \$100

to \$250. These increased amounts are considered to more accurately reflect shipping costs in today's business environment.

Replacement pages: 47-15 and 47-16.

Item XIII—Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance (FAR Case 96-022)

This final rule revises Standard Form 1406, Preaward Survey of Prospective Contractor—Quality Assurance, to delete references to canceled specifications, and to conform the language in the form to the current language in FAR Part 46.

Replacement pages: 53-5 and 53-6; and 53-113 and 53-114.

Item XIV—Technical Amendments

This document makes technical corrections to FAR 19.811-1, 42.203, and the FAR Matrix at 52.215-15 and 52.215-17. Standard Forms 33, 1435, 1436, and 1437 are reissued to reflect changes to internal references as a result of the rewrite of FAR Part 15. Standard Form 279 is reissued to provide accounting for purchases under the commercial test. The amendments are as follows:

PART 19—SMALL BUSINESS PROGRAMS

1. Section 19.811-1 is amended in the introductory text of paragraph (c) by revising the first and second sentences to read as follows:

19.811-1 Sole source.

* * * * * *

(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. * * *

* * * * *

Replacement pages: 19-45 and 19-46.

PART 41-ACQUISITION OF UTILITY SERVICES

41.204 [Corrected]

2. Section 41.204 is corrected in the second sentence of paragraph (c)(2) by removing the word "supplies" and inserting "supplier".

Replacement pages: 41-3 and 41-4.

PART 42—CONTRACT ADMINISTRATION

42.203 [Amended]

3. Section 42.203 is amended at the end of paragraph (a) by removing 4.201(c) and inserting 4.201(d).

Replacement pages: 42-3 and 42-4.

PART 52-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.301 [Amended]

4. Section 52.301 is amended at entries 52.215-15 and 52.215-17 by correcting the UCF entry to read "I" in each instance.

Replacement pages: Matrix 11 and Matrix 12.

PART 53—FORMS

53.204-2 [Amended]

5. Section 53.204-2 is amended in paragraph (a) by revising the revision date to read "(Rev. 10/97)".

Replacement pages: 53-5 and 53-6.

53.214 [Amended]

6. Section 53.214 is amended in paragraph (c) by revising the revision date to read "(Rev. 9/97)".

Replacement pages: 53-5 and 53-6.

53.215-1 [Amended]

7. Section 53.215-1 is amended in paragraph (c) by revising the revision date to read "(Rev. 9/97)".

Replacement pages: 53-7 and 53-8.

53.249 [Amended]

8. Section 53.249 is amended in paragraphs (a)(2), (a)(3), and (a)(4) by revising the revision dates to read "(Rev. 9/97)", and by removing the last sentence of each paragraph.

Replacement pages: 53-9 and 53-10.

53.301-33, 53.301-279, 53.301-1435, 53.301-1436, and 53.301-1437 [Corrected]

9. Standard Forms 33, 1435, 1436, and 1437 are reissued to reflect changes to internal references as a result of the rewrite of FAR Part 15. Standard Form 279 is reissued to provide accounting for purchases under the commercial test.

<u>Replacement pages</u>: 53-1 and 53-2; 53-5 thru 53-10; 53-29; 53-79; and 53-165 thru 53-173.

Subscription Problems Form

10. The form entitled "Subscription Problems," which was omitted from the 1997 FAR Reissue, is included in this FAC (2 copies).

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appropriate FAR number and title. Supplementary material for which there is no counterpart in the FAR shall be codified using chapter, part, subpart, section, or subsection numbers of 70 and up (*e.g.*, for the Department of Interior, whose assigned chapter number in Title 48 is 14, Part 1470, Subpart 1401.70, section 1401.370, or subsection 1401.301-70).

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

1.304 Agency control and compliance procedures.

- (a) Under the authorities of 1.301(c), agencies shall control and limit issuance of agency acquisition regulations and, in particular, local agency directives that restrain the flexibilities found in the FAR, and shall establish formal procedures for the review of these documents to assure compliance with this Part 1.
 - (b) Agency acquisition regulations shall not—
- (1) Unnecessarily repeat, paraphrase, or otherwise restate material contained in the FAR or higher-level agency acquisition regulations; or
- (2) Except as required by law or as provided in Subpart 1.4, conflict or be inconsistent with FAR content.
- (c) Agencies shall evaluate all regulatory coverage in agency acquisition regulations to determine if it could apply to other agencies. Coverage that is not peculiar to one agency shall be recommended for inclusion in the FAR.

Subpart 1.4—Deviations from the FAR

1.400 Scope of subpart.

This subpart prescribes the policies and procedures for authorizing deviations from the FAR. Exceptions pertaining to the use of forms prescribed by the FAR are covered in Part 53 rather than in this subpart.

1.401 Definition.

"Deviation" means any one or combination of the following:

- (a) The issuance or use of a policy, procedure, solicitation provision (see definition in 52.101(a)), contract clause (see definition in 52.101(a)), method, or practice of conducting acquisition actions of any kind at any stage of the acquisition process that is inconsistent with the FAR.
- (b) The omission of any solicitation provision or contract clause when its prescription requires its use.
- (c) The use of any solicitation provision or contract clause with modified or alternate language that is not authorized by the FAR (see definitions of "modification" and "alternate" in 52.101(a)).
- (d) The use of a solicitation provision or contract clause prescribed by the FAR on a "substantially as follows" or "substantially the same as" basis (see definitions in

- 52.101(a)), if such use is inconsistent with the intent, principle, or substance of the prescription or related coverage on the subject matter in the FAR.
- (e) The authorization of lesser or greater limitations on the use of any solicitation provision, contract clause, policy, or procedure prescribed by the FAR.
- (f) The issuance of policies or procedures that govern the contracting process or otherwise control contracting relationships that are not incorporated into agency acquisition regulations in accordance with 1.301(a).

1.402 Policy.

Unless precluded by law, executive order, or regulation, deviations from the FAR may be granted as specified in this subpart when necessary to meet the specific needs and requirements of each agency. The development and testing of new techniques and methods of acquisition should not be stifled simply because such action would require a FAR deviation. The fact that deviation authority is required should not, of itself, deter agencies in their development and testing of new techniques and acquisition methods. Refer to 31.101 for instructions concerning deviations pertaining to the subject matter of Part 31, Contract Cost Principles and Procedures. Deviations are not authorized with respect to 30.201-3 and 30.201-4, or the requirements of the Cost Accounting Standards Board (CASB) rules and regulations (48 CFR Chapter 99 (FAR Appendix)). Refer to 30.201-5 for instructions concerning waivers pertaining to Cost Accounting Standards.

1.403 Individual deviations.

Individual deviations affect only one contracting action, and, unless 1.405(e) is applicable, may be authorized by agency heads or their designees. The justification and agency approval shall be documented in the contract file.

1.404 Class deviations.

Class deviations affect more than one contracting action. When it is known that a class deviation will be required on a permanent basis, an agency should propose an appropriate FAR revision to cover the matter. For civilian agencies other than NASA, a copy of each approved class deviation shall be furnished to the FAR Secretariat.

- (a) For civilian agencies except NASA, class deviations may be authorized by agency heads or their designees, unless 1.405(e) is applicable. Delegation of this authority shall not be made below the head of a contracting activity. Authorization of class deviations by agency officials is subject to the following limitations:
- (1) An agency official who may authorize a class deviation, before doing so, shall consult with the chairperson of the Civilian Agency Acquisition Council (CAA

Council), unless that agency official determines that urgency precludes such consultation.

- (2) Recommended revisions to the FAR shall be transmitted to the FAR Secretariat by agency heads or their designees for authorizing class deviations.
- (b) For DOD, class deviations shall be controlled, processed, and approved in accordance with the Defense FAR Supplement.
- (c) For NASA, class deviations shall be controlled and approved by the Associate Administrator for Procurement. Deviations shall be processed in accordance with agency regulations.

1.405 Deviations pertaining to treaties and executive agreements.

- (a) "Executive agreements," as used in this section, means Government-to-Government agreements, including agreements with international organizations, to which the United States is a party.
- (b) Any deviation from the FAR required to comply with a treaty to which the United States is a party is authorized, unless the deviation would be inconsistent with FAR coverage based on a law enacted after the execution of the treaty.
- (c) Any deviation from the FAR required to comply with an executive agreement is authorized unless the deviation would be inconsistent with FAR coverage based on law.
- (d) For civilian agencies other than NASA, a copy of the text deviation authorized under paragraph (b) or (c) of this section shall be transmitted to the FAR Secretariat through a central agency control point.
- (e) For civilian agencies other than NASA, if a deviation required to comply with a treaty or an executive agreement is not authorized by paragraph (b) or (c) of this section, then the request for deviation shall be processed through the FAR Secretariat to the Civilian Agency Acquisition Council.

Subpart 1.5—Agency and Public Participation

1.501 Solicitation of agency and public views.

1.501-1 Definition.

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

1.501-2 Opportunity for public comments.

- (a) Views of agencies and nongovernmental parties or organizations will be considered in formulating acquisition policies and procedures.
- (b) The opportunity to submit written comments on proposed significant revisions shall be provided by placing a notice in the *Federal Register*. Each of these notices shall include—
- (1) The text of the revision or, if it is impracticable to publish the full text, a summary of the proposal;
- (2) The address and telephone number of the individual from whom copies of the revision, in full text, can be requested and to whom comments thereon should be addressed; and
- (3) When 1.501-3(b) is applicable, a statement that the revision is effective on a temporary basis pending completion of the public comment period.
- (c) A minimum of 30 days and, normally, at least 60 days will be given for the receipt of comments.

1.501-3 Exceptions.

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

1.502 Unsolicited proposed revisions.

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

1.503 Public meetings.

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

Subpart 1.6—Career Development, Contracting Authority, and Responsibilities

1.601 General.

(a) Unless specifically prohibited by another provision of law, authority and responsibility to contract for authorized supplies and services are vested in the agency head. The agency head may establish contracting activities and delegate broad authority to manage the agency's contracting functions to heads of such contracting activities. Contracts may be entered into and signed on behalf of the Government only by contracting officers. In some agencies, a relatively

small number of high level officials are designated contracting officers solely by virtue of their positions. Contracting officers below the level of a head of a contracting activity shall be selected and appointed under 1.603.

- (b) Agency heads may mutually agree to—
- (1) Assign contracting functions and responsibilities from one agency to another; and
- (2) Create joint or combined offices to exercise acquisition functions and responsibilities.

1.602 Contracting officers.

1.602-1 Authority.

- (a) Contracting officers have authority to enter into, administer, or terminate contracts and make related determinations and findings. Contracting officers may bind the Government only to the extent of the authority delegated to them. Contracting officers shall receive from the appointing authority (see 1.603-1) clear instructions in writing regarding the limits of their authority. Information on the limits of the contracting officers' authority shall be readily available to the public and agency personnel.
- (b) No contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met.

1.602-2 Responsibilities.

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

- (a) Ensure that the requirements of 1.602-1(b) have been met, and that sufficient funds are available for obligation:
- (b) Ensure that contractors receive impartial, fair, and equitable treatment; and
- (c) Request and consider the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate.

1.602-3 Ratification of unauthorized commitments.

(a) Definitions.

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

"Unauthorized commitment," as used in this subsection, means an agreement that is not binding solely because the Government representative who made it lacked the author-

- ity to enter into that agreement on behalf of the Government.
- (b) *Policy*. (1) Agencies should take positive action to preclude, to the maximum extent possible, the need for ratification actions. Although procedures are provided in this section for use in those cases where the ratification of an unauthorized commitment is necessary, these procedures may not be used in a manner that encourages such commitments being made by Government personnel.
- (2) Subject to the limitations in paragraph (c) of this subsection, the head of the contracting activity, unless a higher level official is designated by the agency, may ratify an unauthorized commitment.
- (3) The ratification authority in subparagraph (b)(2) of this subsection may be delegated in accordance with agency procedures, but in no case shall the authority be delegated below the level of chief of the contracting office.
- (4) Agencies should process unauthorized commitments using the ratification authority of this subsection instead of referring such actions to the General Accounting Office for resolution. (See 1.602-3(d).)
- (5) Unauthorized commitments that would involve claims subject to resolution under the Contract Disputes Act of 1978 should be processed in accordance with Subpart 33.2, Disputes and Appeals.
- (c) *Limitations*. The authority in subparagraph (b)(2) of this subsection may be exercised only when—
- (1) Supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;
- (2) The ratifying official has the authority to enter into a contractual commitment;
- (3) The resulting contract would otherwise have been proper if made by an appropriate contracting officer;
- (4) The contracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable;
- (5) The contracting officer recommends payment and legal counsel concurs in the recommendation, unless agency procedures expressly do not require such concurrence;
- (6) Funds are available and were available at the time the unauthorized commitment was made; and
- (7) The ratification is in accordance with any other limitations prescribed under agency procedures.
- (d) *Nonratifiable commitments*. Cases that are not ratifiable under this subsection may be subject to resolution as recommended by the General Accounting Office under its claim procedure (GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 4, Chapter 2), or as authorized by FAR Part 50. Legal advice should be obtained in these cases.

1.603 Selection, appointment, and termination of appointment.

1.603-1 General.

Subsection 414(4) of title 41, United States Code, requires agency heads to establish and maintain a procurement career management program and a system for the selection, appointment, and termination of appointment of contracting officers. Agency heads or their designees may select and appoint contracting officers and terminate their appointments. These selections and appointments shall be consistent with Office of Federal Procurement Policy's (OFPP) standards for skill-based training in performing contracting and purchasing duties as published in OFPP Policy Letter No. 92-3, Procurement Professionalism Program Policy—Training for Contracting Personnel, June 24, 1992.

1.603-2 **Selection.**

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

- (a) Experience in Government contracting and administration, commercial purchasing, or related fields;
- (b) Education or special training in business administration, law, accounting, engineering, or related fields;
- (c) Knowledge of acquisition policies and procedures, including this and other applicable regulations;
- (d) Specialized knowledge in the particular assigned field of contracting; and
- (e) Satisfactory completion of acquisition training courses.

1.603-3 Appointment.

- (a) Contracting officers shall be appointed in writing on an SF 1402, Certificate of Appointment, which shall state any limitations on the scope of authority to be exercised, other than limitations contained in applicable law or regulation. Appointing officials shall maintain files containing copies of all appointments that have not been terminated.
- (b) Agency heads are encouraged to delegate micropurchase authority to individuals who are employees of an executive agency or members of the Armed Forces of the United States who will be using the supplies or services being purchased. Individuals delegated this authority are not required to be appointed on an SF 1402, but shall be appointed in writing in accordance with agency procedures.

1.603-4 Termination.

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

Subpart 1.7—Determinations and Findings

1.700 Scope of subpart.

This subpart prescribes general policies and procedures for the use of determinations and findings (D&F's). Requirements for specific types of D&F's can be found with the appropriate subject matter.

1.701 Definition.

"Determination and Findings" means a special form of written approval by an authorized official that is required by statute or regulation as a prerequisite to taking certain contracting actions. The "determination" is a conclusion or decision supported by the "findings." The findings are statements of fact or rationale essential to support the determination and must cover each requirement of the statute or regulation.

1.702 General.

- (a) A D&F shall ordinarily be for an individual contract action. Unless otherwise prohibited, class D&F's may be executed for classes of contract actions (see 1.703). The approval granted by a D&F is restricted to the proposed contract action(s) reasonably described in that D&F. D&F's may provide for a reasonable degree of flexibility. Furthermore, in their application, reasonable variations in estimated quantities or prices are permitted, unless the D&F specifies otherwise.
- (b) When an option is anticipated, the D&F shall state the approximate quantity to be awarded initially and the extent of the increase to be permitted by the option.

1.703 Class determinations and findings.

- (a) A class D&F provides authority for a class of contracting actions. A class may consist of contracting actions for the same or related supplies or services or other contracting actions that require essentially identical justification.
- (b) The findings in a class D&F shall fully support the proposed action either for the class as a whole or for each action. A class D&F shall be for a specified period, with the expiration date stated in the document.
- (c) The contracting officer shall ensure that individual actions taken pursuant to the authority of a class D&F are within the scope of the D&F.

1.704 Content.

Each D&F shall set forth enough facts and circumstances to clearly and convincingly justify the specific determination made. As a minimum, each D&F shall include, in the prescribed agency format, the following information:

- (a) Identification of the agency and of the contracting activity and specific identification of the document as a "Determination and Findings."
- (b) Nature and/or description of the action being approved.
- (c) Citation of the appropriate statute and/or regulation upon which the D&F is based.
- (d) Findings that detail the particular circumstances, facts, or reasoning essential to support the determination. Necessary supporting documentation shall be obtained from appropriate requirements and technical personnel.
- (e) A determination, based on the findings, that the proposed action is justified under the applicable statute or regulation.
 - (f) Expiration date of the D&F, if required (see 1.706).
- (g) The signature of the official authorized to sign the D&F (see 1.707) and the date signed.

1.705 Supersession and modification.

- (a) If a D&F is superseded by another D&F, that action shall not render invalid any action taken under the original D&F prior to the date of its supersession.
- (b) A modification of the D&F will not require cancellation of the solicitation if the D&F, as modified, supports the contracting action.

1.706 Expiration.

Expiration dates are required for class D&F's and are optional for individual D&F's. Authority to act under an individual D&F expires when it is exercised or on an expiration date specified in the document, whichever occurs first. Authority to act under a class D&F expires on the expiration date specified in the document. When a solicitation has been furnished to prospective offerors before the expiration date, the authority under the D&F will continue until award of the contract(s) resulting from the solicitation.

1.707 Signatory authority.

When a D&F is required, it shall be signed by the appropriate official in accordance with agency regulations. Authority to sign or delegate signature authority for the various D&F's is as shown in the applicable FAR part.

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"authorized representative" means any person, persons, or, board (other than the contracting officer) authorized to act for the head of the agency or Secretary.

"Head of the contracting activity" includes the official who has overall responsibility for managing the contracting activity.

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

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

- (a) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency which—
 - (1) Requires the use of such equipment; or
- (2) Requires the use, to a significant extent, of such equipment in the performance of a service or the furnishing of a product.
- (b) The term "information technology" includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.
- (c) The term "information technology" does not include—
- (1) Any equipment that is acquired by a contractor incidental to a contract; or
- (2) Any equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

"Interim FACNET" means a contracting office has been certified as having implemented the electronic automated information systems capability to provide widespread public notice of contracting opportunities, issue solicitations, and receive responses to solicitations and associated requests for information. Such capability must allow the private sector to access notices of solicitations, access and review solicitations, and respond to solicitations.

"Major system" means that combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware,

- equipment, software, or any combination thereof, but exclude construction or other improvements to real property. A system shall be considered a major system if—
- (a) The Department of Defense is responsible for the system and the total expenditures for research, development, test, and evaluation for the system are estimated to be more than \$115,000,000 (based on fiscal year 1990 constant dollars) or the eventual total expenditure for the acquisition exceeds \$540,000,000 (based on fiscal year 1990 constant dollars);
- (b) A civilian agency is responsible for the system and total expenditures for the system are estimated to exceed \$750,000 (based on fiscal year 1980 constant dollars) or the dollar threshold for a "major system" established by the agency pursuant to Office of Management and Budget Circular A-109, entitled "Major System Acquisitions," whichever is greater; or
- (c) The system is designated a "major system" by the head of the agency responsible for the system (10 U.S.C. 2302 and 41 U.S.C. 403).

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

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

"Micro-purchase" means an acquisition of supplies or services (except construction), the aggregate amount of which does not exceed \$2,500, except that in the case of construction, the limit is \$2,000.

"Micro-purchase threshold" means \$2,500.

"National defense" means any activity related to programs for military or atomic energy production or construction, military assistance to any foreign nation, stockpiling, or space.

"Nondevelopmental item" means-

- (a) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
- (b) Any item described in paragraph (a) of this definition that requires only minor modification or modifications of a type customarily available in the commercial market-place in order to meet the requirements of the procuring department or agency; or
- (c) Any item of supply being produced that does not meet the requirements of paragraphs (a) or (b) solely because the item is not yet in use.

"Offer" means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract. Responses to invitations for bids (sealed bidding) are offers called "bids" or "sealed bids;" responses to

requests for proposals (negotiation) are offers called "proposals;" responses to requests for quotations (negotiation) are not offers and are called "quotes." For unsolicited proposals, see Subpart 15.6.

"Possessions" include the Virgin Islands, Johnston Island, American Samoa, Guam, Wake Island, Midway Island, and the Guano Islands, but does not include Puerto Rico, leased bases, or trust territories.

"Senior procurement executive" means the individual appointed pursuant to section 16(3) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(3)) who is responsible for management direction of the acquisition system of the executive agency, including implementation of the unique acquisition policies, regulations, and standards of the executive agency.

"Shall" denotes the imperative.

"Signature" or "signed" means the discrete, verifiable symbol of an individual which, when affixed to a writing with the knowledge and consent of the individual, indicates a present intention to authenticate the writing. This includes electronic symbols.

"Simplified acquisition procedures" means the methods prescribed in Part 13 for making purchases of supplies or services.

"Simplified acquisition threshold" means \$100,000, except that in the case of any contract to be awarded and performed, or purchase to be made, outside the United States in support of a contingency operation (as defined in

10 U.S.C. 101(a)(13)) or a humanitarian or peacekeeping operation (as defined in 10 U.S.C. 2302(7) and 41 U.S.C. 259(d)), the term means \$200,000.

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

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

"United States," when used in a geographic sense, means the 50 States and the District of Columbia.

Subpart 2.2—Contract Clause

2.201 Contract clause.

The contracting officer shall insert the clause at 52.202–1, Definitions, in solicitations and contracts except when the contract is not expected to exceed the simplified acquisition threshold. If the contract is for personal services, construction, architect-engineer services, or dismantling, demolition, or removal of improvements, the contracting officer shall use the clause with its Alternate I. Additional definitions may be included, provided they are consistent with the clause and the FAR.

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tract. The contracting officer shall ask the offeror to provide its DUNS number by using the provision prescribed at 4.603(a). If the successful offeror does not provide its number, the contracting officer shall contact the offeror and obtain the DUNS number.

4.603 Solicitation provisions.

- (a) The contracting officer shall insert the provision at 52.204-6, Contractor Identification Number—Data Universal Numbering System (DUNS) Number, in solicitations that are expected to result in a requirement for the generation of an SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report (see 4.602(c)), or similar agency form.
- (b) The contracting officer shall insert the provision at 52.204-5, Women-Owned Business, in all solicitations that are not set aside for small business concerns and that exceed the simplified acquisition threshold, when the contract is to be performed inside the United States, its territories or possessions, Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia.

Subpart 4.7—Contractor Records Retention

4.700 Scope of subpart.

This subpart provides policies and procedures for retention of records by contractors to meet the records review requirements of the Government. In this subpart, the terms "contracts" and "contractors" include "subcontracts" and "subcontractors."

4.701 Purpose.

The purpose of this subpart is to generally describe records retention requirements and to allow reductions in the retention period for specific classes of records under prescribed circumstances.

4.702 Applicability.

- (a) This subpart applies to records generated under contracts that contain one of the following clauses:
 - (1) Audit and Records—Sealed Bidding (52.214-26).
 - (2) Audit and Records—Negotiation (52.215-2).
- (b) This subpart is not mandatory on Department of Energy contracts for which the Comptroller General allows alternative records retention periods. Apart from this exception, this subpart applies to record retention periods under contracts that are subject to Chapter 137, Title 10, U.S.C., and the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 471, *et seq.*

4.703 Policy.

(a) Except as stated in 4.703(b), contractors shall make available records, which includes books, documents,

- accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form, and other supporting evidence to satisfy contract negotiation, administration, and audit requirements of the contracting agencies and the Comptroller General for—
 - (1) 3 years after final payment or, for certain records;
- (2) The period specified in 4.705 through 4.705-3, whichever of these periods expires first.
- (b) Contractors shall make available the foregoing records and supporting evidence for a longer period of time than is required in 4.703(a) if—
- (1) A retention period longer than that cited in 4.703(a) is specified in any contract clause; or
- (2) The contractor, for its own purposes, retains the foregoing records and supporting evidence for a longer period. Under this circumstance, the retention period shall be the period of the contractor's retention or 3 years after final payment, whichever period expires first.
- (3) The contractor does not meet the original due date for submission of final indirect cost rate proposals specified in subparagraph (d)(2) of the clause at 52.216-7, Allowable Cost and Payment, and subparagraph (c)(2) of the clause at 52.216-13, Allowable Cost and Payment—Facilities. Under these circumstances, the retention periods in 4.705 shall be automatically extended one day for each day the proposal is not submitted after the original due date.
- (c) Nothing in this section shall be construed to preclude a contractor from duplicating or storing original records in electronic form unless they contain significant information not shown on the record copy. Original records need not be maintained or produced in an audit if the contractor or subcontractor provides photographic or electronic images of the original records and meets the following requirements:
- (1) The contractor or subcontractor has established procedures to ensure that the imaging process preserves accurate images of the original records, including signatures and other written or graphic images, and that the imaging process is reliable and secure so as to maintain the integrity of the records.
- (2) The contractor or subcontractor maintains an effective indexing system to permit timely and convenient access to the imaged records.
- (3) The contractor or subcontractor retains the original records for a minimum of one year after imaging to permit periodic validation of the imaging systems.
- (d) If the information described in paragraph (a) of this section is maintained on a computer, contractors shall retain the computer data on a reliable medium for the time periods prescribed. Contractors may transfer computer data in machine readable form from one reliable computer medium to another. Contractors' computer data retention and transfer procedures shall maintain the integrity, reliability, and secu-

rity of the original computer data. Contractors shall also retain an audit trail describing the data transfer. For the record retention time periods prescribed, contractors shall not destroy, discard, delete, or write over such computer data.

4.704 Calculation of retention periods.

- (a) The retention periods in 4.705 are calculated from the end of the contractor's fiscal year in which an entry is made charging or allocating a cost to a Government contract or subcontract. If a specific record contains a series of entries, the retention period is calculated from the end of the contractor's fiscal year in which the final entry is made. The contractor should cut off the records in annual blocks and retain them for block disposal under the prescribed retention periods.
- (b) When records generated during a prior contract are relied upon by a contractor for cost or pricing data in negotiating a succeeding contract, the prescribed periods shall run from the date of the succeeding contract.
- (c) If two or more of the record categories described in 4.705 are interfiled and screening for disposal is not practical, the contractor shall retain the entire record series for the longest period prescribed for any category of records.

4.705 Specific retention periods.

The contractor shall retain the records identified in 4.705-1 through 4.705-3 for the periods designated, provided retention is required under 4.702. Records are identified in this subpart in terms of their purpose or use and not by specific name or form number. Although the descriptive identifications may not conform to normal contractor usage or filing practices, these identifications apply to all contractor records that come within the description.

4.705-1 Financial and cost accounting records.

- (a) Accounts receivable invoices, adjustments to the accounts, invoice registers, carrier freight bills, shipping orders, and other documents which detail the material or services billed on the related invoices: Retain 4 years.
- (b) Material, work order, or service order files, consisting of purchase requisitions or purchase orders for material or services, or orders for transfer of material or supplies: Retain 4 years.
- (c) Cash advance recapitulations, prepared as posting entries to accounts receivable ledgers for amounts of expense vouchers prepared for employees' travel and related expenses: Retain 4 years.
- (d) Paid, canceled, and voided checks, other than those issued for the payment of salary and wages: Retain 4 years.
- (e) Accounts payable records to support disbursements of funds for materials, equipment, supplies, and services, containing originals or copies of the following and related

documents: remittance advices and statements, vendors' invoices, invoice audits and distribution slips, receiving and inspection reports or comparable certifications of receipt and inspection of material or services, and debit and credit memoranda: Retain 4 years.

- (f) Labor cost distribution cards or equivalent documents: Retain 2 years.
- (g) Petty cash records showing description of expenditures, to whom paid, name of person authorizing payment, and date, including copies of vouchers and other supporting documents: Retain 2 years.

4.705-2 Pay administration records.

- (a) Payroll sheets, registers, or their equivalent, of salaries and wages paid to individual employees for each payroll period; change slips; and tax withholding statements: Retain 4 years.
- (b) Clock cards or other time and attendance cards: Retain 2 years.
- (c) Paid checks, receipts for wages paid in cash, or other evidence of payments for services rendered by employees: Retain 2 years.

4.705-3 Acquisition and supply records.

- (a) Store requisitions for materials, supplies, equipment, and services: Retain 2 years.
- (b) Work orders for maintenance and other services: Retain 4 years.
- (c) Equipment records, consisting of equipment usage and status reports and equipment repair orders: Retain 4 years.
- (d) Expendable property records, reflecting accountability for the receipt and use of material in the performance of a contract: Retain 4 years.
- (e) Receiving and inspection report records, consisting of reports reflecting receipt and inspection of supplies, equipment, and materials: Retain 4 years.
- (f) Purchase order files for supplies, equipment, material, or services used in the performance of a contract; supporting documentation and backup files including, but not limited to, invoices, and memoranda; *e.g.*, memoranda of negotiations showing the principal elements of subcontract price negotiations (see 52.244-1 and 52.244-2): Retain 4 years.
- (g) Production records of quality control, reliability, and inspection: Retain 4 years.

Subpart 4.8—Government Contract Files

4.800 Scope of subpart.

This subpart prescribes requirements for establishing, maintaining, and disposing of contract files for all contractual actions. The application of this subpart to contracts awarded using the simplified acquisition procedures covered by Part 13 is optional. (See also documentation requirements in 13.106-3(b)).

4.801 General.

- (a) The head of each office performing contracting, contract administration, or paying functions shall establish files containing the records of all contractual actions.
- (b) The documentation in the files (see 4.803) shall be sufficient to constitute a complete history of the transaction for the purpose of—
- (1) Providing a complete background as a basis for informed decisions at each step in the acquisition process;
 - (2) Supporting actions taken;
- (3) Providing information for reviews and investigations; and
- (4) Furnishing essential facts in the event of litigation or congressional inquiries.
 - (c) The files to be established include—
 - (1) A file for cancelled solicitations;
 - (2) A file for each contract; and
- (3) A file such as a contractor general file, containing documents relating—for example—to—
 - (i) No specific contract;
 - (ii) More than one contract; or
- (iii) The contractor in a general way (e.g., contractor's management systems, past performance, or capabilities).

4.802 Contract files.

- (a) A contract file should generally consist of—
- (1) The contracting office contract file, which shall document the basis for the acquisition and the award, the assignment of contract administration (including payment responsibilities), and any subsequent actions taken by the contracting office;
- (2) The contract administration office contract file, which shall document actions reflecting the basis for and the performance of contract administration responsibilities; and
- (3) The paying office contract file, which shall document actions prerequisite to, substantiating, and reflecting contract payments.
- (b) Normally, each file should be kept separately; however, if appropriate, any or all of the files may be combined; *e.g.*, if all functions or any combination of the functions are performed by the same office.
- (c) Files shall be maintained at organizational levels that shall ensure—
 - (1) Effective documentation of contract actions;
 - (2) Ready accessibility to principal users;
- (3) Minimal establishment of duplicate and working files;

- (4) The safeguarding of classified documents; and
- (5) Conformance with agency regulations for file location and maintenance.
- (d) If the contract files or file segments are decentralized (e.g., by type or function) to various organizational elements or to other outside offices, responsibility for their maintenance shall be assigned. A central control and, if needed, a locator system should be established to ensure the ability to locate promptly any contract files.
- (e) Contents of contract files that are contractor bid or proposal information or source selection information as defined in 3.104-3 shall be protected from disclosure to unauthorized persons (see 3.104-5).
- (f) Agencies may retain contract files in any medium (paper, electronic, microfilm, etc.) or any combination of media, as long as the requirements of this subpart are satisfied.

4.803 Contents of contract files.

The following are examples of the records normally contained, if applicable, in contract files:

- (a) Contracting office contract file. (1) Purchase request, acquisition planning information, and other presolicitation documents.
- (2) Justifications and approvals, determinations and findings, and associated documents.
 - (3) Evidence of availability of funds.
- (4) Synopsis of proposed acquisition as published in the Commerce Business Daily or reference thereto.
- (5) The list of sources solicited, and a list of any firms or persons whose requests for copies of the solicitation were denied, together with the reasons for denial.
 - (6) Set-aside decision.
 - (7) Government estimate of contract price.
- (8) A copy of the solicitation and all amendments thereto.
- (9) Security requirements and evidence of required clearances.
- (10) A copy of each offer or quotation, the related abstract, and records of determinations concerning late offers or quotations. Unsuccessful offers or quotations may be maintained separately, if cross-referenced to the contract file. The only portions of the unsuccessful offer or quotation that need be retained are—
 - (i) Completed solicitation sections A, B, and K;
 - (ii) Technical and management proposals;
 - (iii) Cost/price proposals; and
- (iv) Any other pages of the solicitation that the offeror or quoter has altered or annotated.
 - (11) Contractor's certifications and representations.
- (12) Preaward survey reports or reference to previous preaward survey reports relied upon.
 - (13) Source selection documentation.

- (14) Contracting officer's determination of the contractor's responsibility.
- (15) Small Business Administration Certificate of Competency.
- (16) Records of contractor's compliance with labor policies including equal employment opportunity policies.
- (17) Cost or pricing data and Certificates of Current Cost or Pricing Data or a required justification for waiver, or information other than cost or pricing data.
 - (18) Packaging and transportation data.
 - (19) Cost or price analysis.
 - (20) Audit reports or reasons for waiver.
 - (21) Record of negotiation.
 - (22) Justification for type of contract.
- (23) Authority for deviations from this regulation, statutory requirements, or other restrictions.
- (24) Required approvals of award and evidence of legal review.
 - (25) Notice of award.
 - (26) The original of—
 - (i) The signed contract or award;
 - (ii) All contract modifications; and
- (iii) Documents supporting modifications executed by the contracting office.
 - (27) Synopsis of award or reference thereto.
- (28) Notice to unsuccessful quoters or offerors and record of any debriefing.
- (29) Acquisition management reports (see Subpart 4.6).
- (30) Bid, performance, payment, or other bond documents, or a reference thereto, and notices to sureties.
 - (31) Report of postaward conference.
- (32) Notice to proceed, stop orders, and any overtime premium approvals granted at the time of award.
- (33) Documents requesting and authorizing modification in the normal assignment of contract administration functions and responsibility.
- (34) Approvals or disapprovals of requests for waivers or deviations from contract requirements.
- (35) Rejected engineering change proposals. These proposals may be filed separately for early disposal (see 4.805(h)).
- (36) Royalty, invention, and copyright reports (including invention disclosures) or reference thereto.
 - (37) Contract completion documents.
- (38) Documentation regarding termination actions for which the contracting office is responsible.
- (39) Cross-references to pertinent documents that are filed elsewhere.
- (40) Any additional documents on which action was taken or that reflect actions by the contracting office pertinent to the contract.

- (41) A current chronological list identifying the awarding and successor contracting officers, with inclusive dates of responsibility.
- (42) For contracts and contract modifications in excess of \$100,000, a record of all persons or classes of persons authorized to have access to proprietary or source selection information and, to the maximum extent practicable, the names of all individuals within the class.
- (b) Contract administration office contract file. (1) Copy of the contract and all modifications, together with official record copies of supporting documents executed by the contract administration office.
- (2) Any document modifying the normal assignment of contract administration functions and responsibility.
 - (3) Security requirements.
- (4) Cost or pricing data, Certificates of Current Cost or Pricing Data, or information other than cost or pricing data; cost or price analysis; and other documentation supporting contractual actions executed by the contract administration office.
 - (5) Preaward survey information.
 - (6) Purchasing system information.
 - (7) Consent to subcontract or purchase.
- (8) Performance and payment bonds and surety information.
 - (9) Postaward conference records.
 - (10) Orders issued under the contract.
 - (11) Notice to proceed and stop orders.
- (12) Insurance policies or certificates of insurance or references to them.
- (13) Documents supporting advance or progress payments.
- (14) Progressing, expediting, and production surveillance records.
 - (15) Quality assurance records.
 - (16) Property administration records.
- (17) Documentation regarding termination actions for which the contract administration office is responsible.
- (18) Cross reference to other pertinent documents that are filed elsewhere.
- (19) Any additional documents on which action was taken or that reflect actions by the contract administration office pertinent to the contract.
 - (20) Contract completion documents.
- (c) Paying office contract file. (1) Copy of the contract and any modifications.
- (2) Bills, invoices, vouchers, and supporting documents.
 - (3) Record of payments or receipts.
 - (4) Other pertinent documents.

FAC 97-03 FEBRUARY 9, 1998

PART 6—COMPETITION REQUIREMENTS

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6.401 Sealed bidding and competitive proposals.

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6.502 Duties and responsibilities.

6.000 Scope of part.

This part prescribes policies and procedures to promote full and open competition in the acquisition process and to provide for full and open competition, full and open competition after exclusion of sources, other than full and open competition, and competition advocates. As used in this part, full and open competition is the process by which all responsible offerors are allowed to compete. This part does not deal with the results

of competition (e.g., adequate price competition), which are addressed in other parts (e.g., Part 15).

6.001 Applicability.

This part applies to all acquisitions except—

- (a) Contracts awarded using the simplified acquisition procedures of Part 13 (but see 13.501 for requirements pertaining to sole source acquisitions of commercial items under Subpart 13.5);
- (b) Contracts awarded using contracting procedures (other than those addressed in this part) that are expressly authorized by statute;
- (c) Contract modifications, including the exercise of priced options that were evaluated as part of the initial competition (see 17.207(f)), that are within the scope and under the terms of an existing contract;
- (d) Orders placed under requirements contracts or definite-quantity contracts;
- (e) Orders placed under indefinite-quantity contracts that were entered into pursuant to this part when—
- (1) The contract was awarded under Subpart 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements contained in the order; or
- (2) The contract was awarded under Subpart 6.3 and the required justification and approval adequately covers the requirements contained in the order; or
- (f) Orders placed against task order and delivery order contracts entered into pursuant to Subpart 16.5.

6.002 Limitations.

No agency shall contract for supplies or services from another agency for the purpose of avoiding the requirements of this part.

6.003 Definitions.

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

"Procuring activity," as used in this part, means a component of an executive agency having a significant acquisition function and designated as such by the head of the agency. Unless agency regulations specify otherwise, the term "procuring activity" shall be synonymous with "contracting activity" as defined in Subpart 2.1.

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

"Unique and innovative concept," when used relative to an unsolicited research proposal, means that, in the opinion and to the knowledge of the Government evaluator, the meritorious proposal is the product of original thinking submitted in confidence by one source; contains new novel or changed concepts, approaches, or methods; was not submitted previously by another; and, is not otherwise available within the Federal Government. In this context, the term does not mean that the source has the sole capability of performing the research.

Subpart 6.1—Full and Open Competition

6.100 Scope of subpart.

This subpart prescribes the policy and procedures that are to be used to promote and provide for full and open competition.

6.101 Policy.

- (a) 10 U.S.C. 2304 and 41 U.S.C. 253 require, with certain limited exceptions (see Subparts 6.2 and 6.3), that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding Government contracts.
- (b) Contracting officers shall provide for full and open competition through use of the competitive procedure(s) contained in this subpart that are best suited to the circumstances of the contract action and consistent with the need to fulfill the Government's requirements efficiently (10 U.S.C. 2304 and 41 U.S.C. 253).

6.102 Use of competitive procedures.

The competitive procedures available for use in fulfilling the requirement for full and open competition are as follows:

- (a) Sealed bids. (See 6.401(a).)
- (b) Competitive proposals. (See 6.401(b).) If sealed bids are not appropriate under paragraph (a) of this section, contracting officers shall request competitive proposals or use the other competitive procedures under paragraph (c) or (d) of this section.
- (c) Combination of competitive procedures. If sealed bids are not appropriate, contracting officers may use any combination of competitive procedures (e.g., two-step sealed bidding).
- (d) *Other competitive procedures*. (1) Selection of sources for architect-engineer contracts in accordance with the provisions of Pub. L. 92-582 (40 U.S.C. 541, *et seq.*) is a competitive procedure (see Subpart 36.6 for procedures).
- (2) Competitive selection of basic and applied research and that part of development not related to the development of a specific system or hardware procurement is a competitive procedure if award results from—
- (i) A broad agency announcement that is general in nature identifying areas of research interest, including criteria

for selecting proposals, and soliciting the participation of all offerors capable of satisfying the Government's needs; and

- (ii) A peer or scientific review.
- (3) Use of multiple award schedules issued under the procedures established by the Administrator of General Services consistent with the requirement of 41 U.S.C. 259(b)(3)(A) for the multiple award schedule program of the General Services Administration is a competitive procedure.

Subpart 6.2—Full and Open Competition After Exclusion of Sources

6.200 Scope of subpart.

This subpart prescribes policy and procedures for providing for full and open competition after excluding one or more sources.

6.201 Policy.

Acquisitions made under this subpart require use of the competitive procedures prescribed in 6.102 after agencies have excluded a source or sources from participation in a contract action under the circumstances described in 6.202 or 6.203 below.

6.202 Establishing or maintaining alternative sources.

- (a) Agencies may exclude a particular source from a contract action in order to establish or maintain an alternative source or sources for the supplies or services being acquired if the agency head determines that to do so would—
- (1) Increase or maintain competition and likely result in reduced overall costs for the acquisition, or for any anticipated acquisition;
- (2) Be in the interest of national defense in having a facility (or a producer, manufacturer, or other supplier) available for furnishing the supplies or services in case of a national emergency or industrial mobilization;
- (3) Be in the interest of national defense in establishing or maintaining an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center;
- (4) Ensure the continuous availability of a reliable source of supplies or services;
- (5) Satisfy projected needs based on a history of high demand; or
- (6) Satisfy a critical need for medical, safety, or emergency supplies.
- (b)(1) Every proposed contract action under the authority of paragraph (a) of this section shall be supported by a determination and findings (D&F) (see Subpart 1.7) signed by the head of the agency or designee. This D&F shall not be made on a class basis.

Indefinite delivery contracts (including requirements contracts) are established with commercial firms to provide supplies and services at stated prices for given periods of time. Similar systems of schedule-type contracting are used for military items managed by the Department of Defense. These systems are not included in the Federal Supply Schedule program covered by this subpart.

(b) The GSA schedule contracting office issues publications, entitled Federal Supply Schedules, containing the information necessary for placing delivery orders with schedule contractors. Ordering offices issue delivery orders directly to the schedule contractors for the required supplies and services. Ordering offices may request copies of schedules by completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the—

GSACentralized Mailing List Service (7CAFL) P.O. Box 6477 Fort Worth, TX 76115.

Copies of GSA Form 457 also may be obtained from this address.

(c) GSAoffers an on-line shopping service called "GSA Advantage!" that enables ordering offices to search product specific information (*i.e.*, national stock number, part number, common name), review delivery options, place orders directly with contractors (or ask GSAto place orders on the agency's behalf), and pay contractors for orders using the Governmentwide commercial purchase card (or pay GSA). Ordering offices may access the "GSA Advantage!" shopping service by connecting to the Internet and using a web browser to connect to the Acquisition Reform Network (http://www.arnet.gov) or the GSA, Federal Supply Service (FSS) Home Page (http://www.fss.gsa.gov). For more information or assistance, contact GSA at Internet e-mail address: gsa.advantage@gsa.gov.

8.402 Applicability.

Procedures in this subpart apply to Federal Supply Schedule contracts. Occasionally, special ordering procedures may be established. In such cases the procedures will be outlined in the "Federal Supply Schedules."

8.403 [Reserved]

8.404 Using schedules.

(a) General. When agency requirements are to be satisfied through the use of Federal Supply Schedules as set forth in this subpart, the simplified acquisition procedures of Part 13 and the small business set-aside provisions of Subpart 19.5 do not apply except for the provision at 13.202(c)(3). Orders placed pursuant to a Multiple Award Schedule (MAS), using the procedures in this subpart, are considered to be issued pursuant to full and open competi-

- tion (see 6.102(d)(3)). Therefore, when placing orders under Federal Supply Schedules, ordering offices need not seek further competition, synopsize the requirement, make a separate determination of fair and reasonable pricing, or consider small business set-asides in accordance with Subpart 19.5. GSA has already determined the prices of items under schedule contracts to be fair and reasonable. By placing an order against a schedule using the procedures in this section, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs.
- (b) Ordering procedures for optional use schedules—(1) Orders at or below the micro-purchase threshold. Ordering offices can place orders at or below the micro-purchase threshold with any Federal Supply Schedule contractor.
- (2) Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold. Orders should be placed with the schedule contractor that can provide the supply or service that represents the best value. Before placing an order, ordering offices should consider reasonably available information about the supply or service offered under MAS contracts by using the "GSA Advantage!" on-line shopping service, or by reviewing the catalogs/pricelists of at least three schedule contractors and select the delivery and other options available under the schedule that meet the agency's needs. In selecting the supply or service representing the best value, the ordering office may consider—
- (i) Special features of the supply or service that are required in effective program performance and that are not provided by a comparable supply or service;
 - (ii) Trade-in considerations;
- (iii) Probable life of the item selected as compared with that of a comparable item;
 - (iv) Warranty considerations;
 - (v) Maintenance availability;
 - (vi) Past performance; and
- (vii) Environmental and energy efficiency considerations.
- (3) Orders exceeding the maximum order threshold. Each schedule contract has an established maximum order threshold. This threshold represents the point where it is advantageous for the ordering office to seek a price reduction. In addition to following the procedures in paragraph (b)(2) of this section and before placing an order that exceeds the maximum order threshold, ordering offices shall—
- (i) Review additional schedule contractors' catalogs/pricelists or use the "GSA Advantage!" on-line shopping service;
- (ii) Based upon the initial evaluation, generally seek price reductions from the schedule contractor(s)

appearing to provide the best value (considering price and other factors); and

- (iii) After price reductions have been sought, place the order with the schedule contractor that provides the best value and results in the lowest overall cost alternative (see 8.404(a)). If further price reductions are not offered, an order may still be placed, if the ordering office determines that it is appropriate.
- (4) Blanket purchase agreements (BPAs). The establishment of Federal Supply Schedule BPAs is permitted (see 13.303-2(c)(3)) when following the ordering procedures in this subpart. All schedule contracts contain BPA provisions. Ordering offices may use BPAs to establish accounts with contractors to fill recurring requirements. BPAs should address the frequency of ordering and invoicing, discounts, and delivery locations and times.
- (5) Price reductions. In addition to the circumstances outlined in paragraph (b)(3) of this section, there may be instances when ordering offices will find it advantageous to request a price reduction. For example, when the ordering office finds a schedule supply or service elsewhere at a lower price or when a BPA is being established to fill recurring requirements, requesting a price reduction could be advantageous. The potential volume of orders under these agreements, regardless of the size of the individual order, may offer the ordering office the opportunity to secure greater discounts. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual agency for a specific order.
- (6) Small business. For orders exceeding the micropurchase threshold, ordering offices should give preference to the items of small business concerns when two or more items at the same delivered price will satisfy the requirement.
- (7) Documentation. Orders should be documented, at a minimum, by identifying the contractor the item was purchased from, the item purchased, and the amount paid. If an agency requirement in excess of the micro-purchase threshold is defined so as to require a particular brand name, product, or a feature of a product peculiar to one manufacturer, thereby precluding consideration of a product manufactured by another company, the ordering office shall include an explanation in the file as to why the particular brand name, product, or feature is essential to satisfy the agency's needs.
- (c) Ordering procedures for mandatory use schedules. (1) This paragraph (c) applies only to orders against schedule contracts with mandatory users. When ordering from multiple-award schedules, mandatory users shall also follow the procedures in paragraphs (a) and (b) of this section.
- (2) In the case of mandatory schedules, ordering offices shall not solicit bids, proposals, quotations, or other-

- wise test the market solely for the purpose of seeking alternative sources to Federal Supply Schedules.
- (3) Schedules identify executive agencies required to use them as mandatory sources of supply. The single-award schedule shall be used as a primary source and the multiple-award schedule as a secondary source. Mandatory use of schedules is not a requirement if—
- (i) The schedule contractor is unable to satisfy the ordering office's urgent delivery requirement;
- (ii) The order is below the minimum order thresholds;
- (iii) The order is above the maximum order limitation;
- (iv) The consignee is located outside the area of geographical coverage stated in the schedule; and
- (v) A lower price for an identical item (*i.e.*, same make and model) is available from another source.
- (4) Absence of follow-on award. Ordering offices, after any consultation required by the schedule, are not required to forego or postpone their legitimate needs pending the award or renewal of any schedule contract.

8.404-1—8.404-2 [Reserved]

8.404-3 Requests for waivers.

(a) When an ordering office that is a mandatory user under a schedule determines that items available from the schedule will not meet its specific needs, but similar items from another source will, it shall submit a request for waiver to the—

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except as provided in paragraph (b) of this subsection. Requests shall contain the following information:

- (1) A complete description of the required items, whenever possible; *e.g.*, descriptive literature such as cuts, illustrations, drawings, and brochures that explain the characteristics and/or construction.
- (2) A comparison of prices and the technical differences between the requested item and the schedule item, identifying as a minimum the—
- (i) Inadequacies of the schedule item to perform required functions; and
- (ii) Technical, economic, or other advantages of the item requested.
 - (3) Quantity required.
- (4) Estimated annual usage or a statement that the requirement is nonrecurrent or unpredictable.
- (b) Ordering offices shall not initiate action to acquire similar items from nonschedule sources until a request for

PART 12—ACQUISITION OF COMMERCIAL ITEMS

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

12.601	General.
12.602	Streamlined evaluation of offers.

12.603 Streamlined solicitation for commercial items.

12.000 Scope of part.

This part prescribes policies and procedures unique to the acquisition of commercial items. It implements the Federal Government's preference for the acquisition of commercial items contained in Title VIII of the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355) by establishing acquisition policies more closely resembling those of the commercial marketplace and encouraging the acquisition of commercial items and components.

12.001 Definition.

"Subcontract," as used in this part, includes, but is not limited to, a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

Subpart 12.1—Acquisition of Commercial Items—General

12.101 Policy.

Agencies shall—

- (a) Conduct market research to determine whether commercial items or nondevelopmental items are available that could meet the agency's requirements;
- (b) Acquire commercial items or nondevelopmental items when they are available to meet the needs of the agency; and
- (c) Require prime contractors and subcontractors at all tiers to incorporate, to the maximum extent practicable, commercial items or nondevelopmental items as components of items supplied to the agency.

12.102 Applicability.

- (a) This part shall be used for the acquisition of supplies or services that meet the definition of commercial items at 2.101.
- (b) Contracting officers shall use the policies in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in Part 13, Simplified Acquisition Procedures; Part 14, Sealed Bidding; or Part 15, Contracting by Negotiation, as appropriate for the particular acquisition.
- (c) Contracts for the acquisition of commercial items are subject to the policies in other parts of this chapter. When a policy in another part of this chapter is inconsistent with a

policy in this part, this Part 12 shall take precedence for the acquisition of commercial items.

- (d) This part shall not apply to the acquisition of commercial items—
 - (1) At or below the micro-purchase threshold;
 - (2) Using the Standard Form 44 (see 13.306);
 - (3) Using the imprest fund (see 13.305); or
- (4) Using the Governmentwide commercial purchase card.

Subpart 12.2—Special Requirements for the Acquisition of Commercial Items

12.201 General.

Public Law 103-355 establishes special requirements for the acquisition of commercial items intended to more closely resemble those customarily used in the commercial marketplace. This subpart identifies those special requirements as well as other considerations necessary for proper planning, solicitation, evaluation and award of contracts for commercial items.

12.202 Market research and description of agency need.

- (a) Market research (see 10.001) is an essential element of building an effective strategy for the acquisition of commercial items and establishes the foundation for the agency description of need (see Part 11), the solicitation, and resulting contract.
- (b) The description of agency need must contain sufficient detail for potential offerors of commercial items to know which commercial products or services may be suitable. Generally, for acquisitions in excess of the simplified acquisition threshold, an agency's statement of need for a commercial item will describe the type of product or service to be acquired and explain how the agency intends to use the product or service in terms of function to be performed, performance requirement or essential physical characteristics. Describing the agency's needs in these terms allows offerors to propose methods that will best meet the needs of the Government.
- (c) Follow the procedures in Subpart 11.2 regarding the identification and availability of specifications, standards and commercial item descriptions.

12.203 Procedures for solicitation, evaluation, and award.

Contracting officers shall use the policies unique to the acquisition of commercial items prescribed in this part in conjunction with the policies and procedures for solicitation, evaluation and award prescribed in Part 13, Simplified Acquisition Procedures; Part 14, Sealed Bidding; or Part 15, Contracting by Negotiation, as appropriate for the particular acquisition. The contracting officer may use the stream-

lined procedure for soliciting offers for commercial items prescribed in 12.603. For acquisitions of commercial items exceeding the simplified acquisition threshold but not exceeding \$5,000,000, including options, contracting activities shall employ the simplified procedures authorized by Subpart 13.5 to the maximum extent practicable.

12.204 Solicitation/contract form.

- (a) The contracting officer shall use the Standard Form 1449, Solicitation/Contract/Order for Commercial Items, if (1) the acquisition is expected to exceed the simplified acquisition threshold; (2) a paper solicitation or contract is being issued; and (3) procedures at 12.603 are not being used. Use of the SF 1449 is nonmandatory but encouraged for commercial acquisitions not exceeding the simplified acquisition threshold.
- (b) Consistent with the requirements at 5.203(a) and (h), the contracting officer may allow fewer than 15 days before issuance of the solicitation.

12.205 Offers.

- (a) Where technical information is necessary for evaluation of offers, agencies should, as part of market research, review existing product literature generally available in the industry to determine its adequacy for purposes of evaluation. If adequate, contracting officers shall request existing product literature from offerors of commercial items in lieu of unique technical proposals.
- (b) Contracting officers should allow offerors to propose more than one product that will meet a Government need in response to solicitations for commercial items. The contracting officer shall evaluate each product as a separate offer.
- (c) Consistent with the requirements at 5.203(b) and (h), the contracting officer may allow fewer than 30 days response time for receipt of offers for commercial items.

12.206 Use of past performance.

Past performance should be an important element of every evaluation and contract award for commercial items. Contracting officers should consider past performance data from a wide variety of sources both inside and outside the Federal Government in accordance with the policies and procedures contained in Subpart 9.1, 13.106, or Subpart 15.3, as applicable.

12.207 Contract type.

Agencies shall use firm-fixed-price contracts or fixed-price contracts with economic price adjustment for the acquisition of commercial items. Indefinite-delivery contracts (see Subpart 16.5) may be used where the prices are established based on a firm-fixed-price or fixed-price with

economic price adjustment. Use of any other contract type to acquire commercial items is prohibited.

12.208 Contract quality assurance.

Contracts for commercial items shall rely on contractors' existing quality assurance systems as a substitute for Government inspection and testing before tender for acceptance unless customary market practices for the commercial item being acquired include in-process inspection. Any inprocess inspection by the Government shall be conducted in a manner consistent with commercial practice.

12.209 Determination of price reasonableness when contracting by negotiation.

When contracting by negotiation for commercial items, the policies and procedures in Subpart 15.4 shall be used to establish the reasonableness of prices.

12.210 Contract financing.

Customary market practice for some commercial items may include buyer contract financing. The contracting officer may offer Government financing in accordance with the policies and procedures in Part 32.

12.211 Technical data.

Except as provided by agency-specific statutes, the Government shall acquire only the technical data and the rights in that data customarily provided to the public with a commercial item or process. The contracting officer shall presume that data delivered under a contract for commercial items was developed exclusively at private expense. When a contract for commercial items requires the delivery of technical data, the contracting officer shall include appropriate provisions and clauses delineating the rights in the technical data in addenda to the solicitation and contract (see Part 27 or agency FAR supplements).

12.212 Computer software.

- (a) Commercial computer software or commercial computer software documentation shall be acquired under licenses customarily provided to the public to the extent such licenses are consistent with Federal law and otherwise satisfy the Government's needs. Generally, offerors and contractors shall not be required to—
- (1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public; or
- (2) Relinquish to, or otherwise provide, the Government rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation except as mutually agreed to by the parties.

(b) With regard to commercial computer software and commercial computer software documentation, the Government shall have only those rights specified in the license contained in any addendum to the contract.

12.213 Other commercial practices.

It is a common practice in the commercial marketplace for both the buyer and seller to propose terms and conditions written from their particular perspectives. The terms and conditions prescribed in this part seek to balance the interests of both the buyer and seller. These terms and conditions are generally appropriate for use in a wide range of acquisitions. However, market research may indicate other commercial practices that are appropriate for the acquisition of the particular item. These practices should be considered for incorporation into the solicitation and contract if the contracting officer determines them appropriate in concluding a business arrangement satisfactory to both parties and not otherwise precluded by law or Executive order.

12.214 Cost Accounting Standards.

Cost Accounting Standards (CAS) generally will not apply to commercial items. If CAS does apply pursuant to 48 CFR 9903.201 (FAR Appendix), the contracting officer shall insert the appropriate provisions and clauses as prescribed in that section.

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

12.300 Scope of subpart.

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

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

- (a) In accordance with Section 8002 of Public Law 103-355 (41 U.S.C 264, note), contracts for the acquisition of commercial items shall, to the maximum extent practicable, include only those clauses—
- (1) Required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or
- (2) Determined to be consistent with customary commercial practice.
- (b) To implement this Act, the contracting officer shall insert the following provisions in solicitations for the acquisition of commercial items, and clauses in solicitations and contracts for the acquisition of commercial items:
- (1) The provision at 52.212-1, Instructions to Offerors—Commercial Items. This provision provides a single, streamlined set of instructions to be used when solic-

iting offers for commercial items and is incorporated in the solicitation by reference (see Block 27a, SF 1449). The contracting officer may tailor these instructions or provide additional instructions tailored to the specific acquisition in accordance with 12.302;

- (2) The provision at 52.212-3, Offeror Representations and Certifications—Commercial Items. This provision provides a single, consolidated list of certifications and representations for the acquisition of commercial items and is attached to the solicitation for offerors to complete and return with their offer. This provision may not be tailored except in accordance with Subpart 1.4;
- (3) The clause at 52.212-4, Contract Terms and Conditions—Commercial Items. This clause includes terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practices and is incorporated in the solicitation and contract by reference (see Block 27a, SF 1449). The contracting officer may tailor this clause in accordance with 12.302; and
- (4) The clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items. This clause incorporates by reference only those clauses required to implement provisions of law or executive orders applicable to the acquisition of commercial items. The contracting officer shall attach this clause to the solicitation and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in 52.212-5(b) or (c) are applicable to the specific acquisition. When cost information is obtained pursuant to Part 15 to establish the reasonableness of prices for commercial items, the contracting officer shall insert the clauses prescribed for this purpose in an addendum to the solicitation and contract. This clause may not be tailored.
- (c) When the use of evaluation factors is appropriate, the contracting officer may—
- (1) Insert the provision at 52.212-2, Evaluation—Commercial Items, in solicitations for commercial items (see 12.602); or
- (2) Include a similar provision containing all evaluation factors required by 13.106, Subpart 14.2 or Subpart 15.3, as an addendum (see 12.302(d)).
- (d) *Use of required provisions and clauses*. Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the acquisition of commercial items.
- (e) Discretionary use of FAR provisions and clauses. The contracting officer may include in solicitations and con-

- tracts by addendum other FAR provisions and clauses when their use is consistent with the limitations contained in 12.302. For example:
- (1) The contracting officer may include appropriate clauses when an indefinite-delivery type of contract will be used. The clauses prescribed at 16.505 may be used for this purpose.
- (2) The contracting officer may include appropriate provisions and clauses when the use of options is in the Government's interest. The provisions and clauses prescribed in 17.208 may be used for this purpose. If the provision at 52.212-2 is used, paragraph (b) provides for the evaluation of options.
- (3) The contracting officer may use the provisions and clauses contained in Part 23 regarding the use of recovered material when appropriate for the item being acquired.
- (f) Agencies may supplement the provisions and clauses prescribed in this part (to require use of additional provisions and clauses) only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items or as may be approved by the agency senior procurement executive, or the individual responsible for representing the agency on the FAR Council, without power of delegation.

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

- (a) General. The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, commercial market practices for a wide range of potential Government acquisitions of commercial items. However, because of the broad range of commercial items acquired by the Government, variations in commercial practices, and the relative volume of the Government's acquisitions in the specific market, contracting officers may, within the limitations of this subpart, and after conducting appropriate market research, tailor the provision at 52.212-1, Instructions to Offerors—Commercial Items, and the clause at 52.212-4, Contract Terms and Conditions—Commercial Items, to adapt to the market conditions for each acquisition.
- (b) Tailoring 52.212-4, Contract Terms and Conditions—Commercial Items. The following paragraphs of the clause at 52.212-4, Contract Terms and Conditions—Commercial Items, implement statutory requirements and shall not be tailored—
 - (1) Assignments;
 - (2) Disputes;
 - (3) Payment (except as provided in Subpart 32.11);
 - (4) Invoice;
 - (5) Other compliances; and

- (i) The warranty is adequate to protect the needs of the Government, *e.g.*, items covered by the warranty and length of warranty;
- (ii) The terms allow the Government effective postaward administration of the warranty to include the identification of warranted items, procedures for the return of warranted items to the contractor for repair or replacement, and collection of product performance information; and
 - (iii) The warranty is cost-effective.
- (2) In some markets, it may be customary commercial practice for contractors to exclude or limit the implied warranties contained in 52.212-4 in the provisions of an express warranty. In such cases, the contracting officer shall ensure that the express warranty provides for the repair or replacement of defective items discovered within a reasonable period of time after acceptance.
- (3) Express warranties shall be included in the contract by addendum (see 12.302).

Subpart 12.5—Applicability of Certain Laws to the Acquisition of Commercial Items

12.500 Scope of subpart.

As required by Section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430), this subpart lists provisions of laws that are not applicable to contracts for the acquisition of commercial items, or are not applicable to subcontracts, at any tier, for the acquisition of a commercial item. This subpart also lists provisions of law that have been amended to eliminate or modify their applicability to either contracts or subcontracts for the acquisition of commercial items.

12.501 Applicability.

- (a) This subpart applies to any contract or subcontract at any tier for the acquisition of commercial items.
- (b) Nothing in this subpart shall be construed to authorize the waiver of any provision of law with respect to any subcontract if the prime contractor is reselling or distributing commercial items of another contractor without adding value. This limitation is intended to preclude establishment of unusual contractual arrangements solely for the purpose of Government sales.
- (c) For purposes of this subpart, contractors awarded subcontracts under Subpart 19.8, Contracting with the Small Business Administration (the 8(a) Program), shall be considered prime contractors.

12.502 Procedures.

(a) The FAR prescription for the provision or clause for each of the laws listed in 12.503 has been revised in the

- appropriate part to reflect its proper application to prime contracts for the acquisition of commercial items.
- (b) For subcontracts for the acquisition of commercial items or commercial components, the clauses at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and 52.244-6, Subcontracts for Commercial Items and Commercial Components, reflect the applicability of the laws listed in 12.504 by identifying the only provisions and clauses that are required to be included in a subcontract at any tier for the acquisition of commercial items or commercial components.

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

- (a) The following laws are not applicable to executive agency contracts for the acquisition of commercial items:
- (1) 41 U.S.C. 43, Walsh-Healey Act (see Subpart 22.6).
- (2) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (see 3.404).
- (3) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see 5.203).
- (4) 41 U.S.C. 701, *et seq.*, Drug-Free Workplace Act of 1988 (see 23.501).
- (b) Certain requirements of the following laws have been eliminated for executive agency contracts for the acquisition of commercial items:
- (1) 33 U.S.C. 1368, Requirement for a clause under the Federal Water Pollution Control Act (see 23.105).
- (2) 40 U.S.C. 327 *et seq.*, Requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (see 22.305).
- (3) 41 U.S.C. 57(a) and (b), and 58, Requirement for a clause and certain other requirements related to the Anti-Kickback Act of 1986 (see 3.502).
- (4) 42 U.S.C. 7606, Requirement for a clause under the Clean Air Act (see 23.105).
- (5) 49 U.S.C. 40118, Requirement for a certificate and clause under the Fly American provisions (see 47.405).
- (c) The applicability of the following laws have been modified in regards to Executive agency contracts for the acquisition of commercial items:
- (1) 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see 3.503).
- (2) 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (see 15.403).
- (3) 41 U.S.C. 422, Cost Accounting Standards (48 CFR chapter 99) (see 12.214).

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

- (a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components at any tier:
- (1) 15 U.S.C. 644(d), Requirements relative to labor surplus areas under the Small Business Act (see Subpart 19.2).
- (2) 19 U.S.C. 1202, Tariff Act of 1930 (see Subpart 25.6).
- (3) 19 U.S.C. 1309, Supplies for Certain Vessels and Aircraft (see Subpart 25.6).
- (4) 19 U.S.C. 2701, *et seq*., Authority to Grant Duty Free Treatment (see Subpart 25.6).
- (5) 31 U.S.C. 1352, Limitation on Payments to Influence Certain Federal Transactions (see Subpart 3.8).
- (6) 41 U.S.C. 43, Walsh-Healey Act (see Subpart 22.6).
- (7) 41 U.S.C. 253d, Validation of Proprietary Data Restrictions (see Subpart 27.4).
- (8) 41 U.S.C. 254(a) and 10 U.S.C. 2306(b), Contingent Fees (see Subpart 3.4).
- (9) 41 U.S.C. 254d(c) and 10 U.S.C. 2313(c), Examination of Records of Contractor, when a subcontractor is not required to provide cost or pricing data (see 15.209(b)).
- (10) 41 U.S.C. 351, Service Contract Act of 1965, as amended (see Subpart 22.10).
- (11) 41 U.S.C. 416(a)(6), Minimum Response Time for Offers under Office of Federal Procurement Policy Act (see Subpart 5.2).
- (12) 41 U.S.C. 418a, Rights in Technical Data (see Subpart 27.4).
- (13) 41 U.S.C. 701, *et seq.*, Drug-Free Workplace Act of 1988 (see Subpart 23.5).
- (14) 46 U.S.C. 1241(b), Transportation in American Vessels of Government Personnel and Certain Cargo (see Subpart 47.5)(inapplicability effective May 1, 1996).
- (15) 49 U.S.C. 40118, Fly American provisions (see Subpart 47.4).
- (b) Certain requirements of the following laws have been eliminated for subcontracts at any tier for the acquisition of commercial items or commercial components:
- (1) 33 U.S.C. 1368, Requirement for a certificate and clause under the Federal Water Pollution Control Act (see Subpart 23.1).
- (2) 40 U.S.C. 327, *et seq.*, Requirement for a certificate and clause under the Contract Work Hours and Safety Standards Act (see Subpart 22.3).
- (3) 42 U.S.C. 7606, Requirements for a certificate and clause under the Clean Air Act (see Subpart 23.1).

- (c) The applicability of the following laws has been modified in regards to subcontracts at any tier for the acquisition of commercial items or commercial components:
- (1) 41 U.S.C. 253g and 10 U.S.C. 2402, Prohibition on Limiting Subcontractor Direct Sales to the United States (see Subpart 3.5).
- (2) 41 U.S.C. 254(d) and 10 U.S.C. 2306a, Truth in Negotiations Act (see Subpart 15.4).
- (3) 41 U.S.C. 422, Cost Accounting Standards (48 CFR chapter 99) (see 12.214).

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

12.601 General.

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

12.602 Streamlined evaluation of offers.

- (a) When evaluation factors are used, the contracting officer may insert a provision substantially the same as the provision at 52.212-2, Evaluation—Commercial Items, in solicitations for commercial items or comply with the procedures in 13.106 if the acquisition is being made using simplified acquisition procedures. When the provision at 52.212-2 is used, paragraph (a) of the provision shall be tailored to the specific acquisition to describe the evaluation factors and relative importance of those factors. However, when using the simplified acquisition procedures in Part 13, contracting officers are not required to describe the relative importance of evaluation factors.
- (b) Offers shall be evaluated in accordance with the criteria contained in the solicitation. For many commercial items, the criteria need not be more detailed than technical (capability of the item offered to meet the agency need), price and past performance. Technical capability may be evaluated by how well the proposed products meet the Government requirement instead of predetermined subfactors. Solicitations for commercial items do not have to contain subfactors for technical capability when the solicitation adequately describes the item's intended use. A technical evaluation would normally include examination of such things as product literature, product samples (if requested), technical features and warranty provisions. Past performance shall be evaluated in accordance with the procedures in 13.106 or Subpart 15.3, as applicable. The contracting officer shall ensure the instructions provided in

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PART 13—SIMPLIFIED ACQUISITION PROCEDURES

13.401

13.402

13.403

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13.303-6 13.303-7 13.303-8 13.304 13.305 13.305-1 13.305-2	Purchases under BPAs. Review procedures. Completion of BPAs. Optional clause. [Reserved] Imprest funds and third party drafts. General. Agency responsibilities.
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Subpart 13.4—Fast Payment Procedure

13.500 General.

13.501 Special documentation requirements.

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, 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 architectengineer 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.

"Purchase order" means an offer by the Government to buy supplies or services, including construction and research and development, upon specified terms and conditions, using simplified acquisition procedures.

"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 and not exceeding \$100,000 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) 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) The contracting office shall use simplified acquisition procedures for contract actions exceeding \$50,000 after December 31, 1999, only if the office's cognizant agency has certified full FACNET capability in accordance with 4.505-2. This limitation does not apply to acquisitions of commercial items conducted using Subpart 13.5.
- (d) The contracting officer shall not use simplified acquisition procedures to acquire supplies and services if the anticipated award will exceed the simplified acquisition threshold (or \$5,000,000, including options, for acquisitions of commercial items using Subpart 13.5). 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—
- Permit use of simplified acquisition procedures;

- (2) Avoid any requirement that applies to purchases exceeding the micro-purchase threshold.
- (e) An agency that has specific statutory authority to acquire personal services (see 37.104) may use simplified acquisition procedures to acquire those services.
- (f) Agencies shall use the Governmentwide commercial purchase card and electronic purchasing techniques to the maximum extent practicable in conducting simplified acquisitions.
- (g) For contract actions exceeding the micro-purchase threshold but not exceeding the simplified acquisition threshold, agencies shall maximize the use of FACNET, when practicable and cost-effective (see 4.506), to acquire supplies and services (including construction, research and development, and architect-engineer). FACNET also may be used for contract actions exceeding the simplified acquisition threshold. Drawings and lengthy specifications can be provided off-line in hard copy or through other appropriate means.
- (h) 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(b)); or
- (2) \$5 million for commercial items, use any appropriate combination of the procedures in Parts 12, 13, 14, and 15 (see paragraph (d) of this section).
- (i) 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 conducted through FACNET, 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). (Only the requirement for providing the estimate of recovered material utilized in the performance of the contract is inapplicable.)
- (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).
- (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 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, Certification and Estimate of Percentage of Recovered Material Content for EPA Designated Items.

Subpart 13.1—Procedures

13.101 General.

- (a) In making purchases, contracting officers shall—
- (1) Comply with the policy in 7.202 relating to economic purchase quantities, when practicable;
- (2) Satisfy the procedures described in Subpart 19.6 with respect to Certificates of Competency before rejecting a quotation, oral or written, from a small business concern determined to be nonresponsible (see Subpart 9.1);
- (3) Use United States-owned excess or near-excess foreign currency, if appropriate, in making payments under simplified acquisition procedures (see Subpart 25.3); and
- (4) 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) Each contracting office should maintain a source list (or lists, if more convenient). New supply sources for the list may be obtained from a variety of sources, including the Procurement Automated Source System (PASS) of the Small Business Administration and the Central Contractor Registration (CCR) Data Base (see 4.503). The list 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.
- (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 shall 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 shall 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 FACNET, 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 shall comply with the public display and synopsis requirements of 5.101 and 5.203 unless—
- (1) FACNET is used for an acquisition at or below the simplified acquisition threshold; or
 - (2) An exception in 5.202 applies.
- (b) When acquiring commercial items, the contracting officer may use a combined synopsis/solicitation. In such 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) Information obtained in making recent purchases of the same or similar item.
 - (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) FACNET is not available or the contracting office has a written determination that it is not practicable or cost-effective to purchase via FACNET (see 4.506); 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 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.
- (3) For acquisitions conducted using FACNET, 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 shall 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 statement may be based on—
 - (i) Market research;
- (ii) Comparison of the proposed price with prices found reasonable on previous purchases;
- (iii) Current price lists, catalogs, or advertisements;
- (iv) A comparison with similar items in a related industry;

- (v) Value analysis;
- (vi) The contracting officer's personal knowledge of the item being purchased;
- (vii) Comparison to an independent Government estimate; or
 - (viii) 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, 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)).

Subpart 13.2—Actions At or Below the Micro-Purchase Threshold

13.201 General.

- (a) Agency heads are encouraged to delegate micro-purchase authority (see 1.603-3).
- (b) The Governmentwide commercial purchase card shall be the preferred method to purchase and to pay for micro-purchases (see 2.101).
- (c) Purchases at or below the micro-purchase threshold may be conducted using any of the methods described in Subpart 13.3, provided the purchaser is authorized and trained, pursuant to agency procedures, to use those methods
- (d) Micro-purchases do not require provisions or clauses, except as provided at 32.1103. This paragraph takes precedence over any other FAR requirement to the contrary, but does not prohibit the use of any clause.
- (e) The requirements in Part 8 apply to purchases at or below the micro-purchase threshold.

13.202 Purchase guidelines.

- (a) Solicitation, evaluation of quotations, and award. (1) To the extent practicable, micro-purchases shall be distributed equitably among qualified suppliers.
- (2) Micro-purchases may be awarded without soliciting competitive quotations if the contracting officer or individual appointed in accordance with 1.603-3(b) considers the price to be reasonable.
- (3) The administrative cost of verifying the reasonableness of the price for purchases may more than offset potential savings from detecting instances of overpricing. Therefore, action to verify price reasonableness need only be taken if—
- (i) The contracting officer or individual appointed in accordance with 1.603-3(b) suspects or has information to indicate that the price may not be reasonable (*e.g.*, comparison to the previous price paid or personal knowledge of the supply or service); or
- (ii) Purchasing a supply or service for which no comparable pricing information is readily available (*e.g.*, a supply or service that is not the same as, or is not similar to, other supplies or services that have recently been purchased on a competitive basis).
- (b) *Documentation*. If competitive quotations were solicited and award was made to other than the low quoter, documentation to support the purchase may be limited to

identification of the solicited concerns and an explanation for the award decision.

Subpart 13.3—Simplified Acquisition Methods

13.301 Governmentwide commercial purchase card.

- (a) The Governmentwide commercial purchase card is authorized for use in making and/or paying for purchases of supplies, services, or construction. The Governmentwide commercial purchase card may be used by contracting officers and other individuals designated in accordance with 1.603-3. The card may be used only for purchases that are otherwise authorized by law or regulation.
- (b) Agencies using the Governmentwide commercial purchase card shall establish procedures for use and control of the card that comply with the Treasury Financial Manual for Guidance of Departments and Agencies (TFM 4-4500) and that are consistent with the terms and conditions of the GSA Federal Supply Service Contract Guide for Governmentwide Commercial Purchase Card Service. Agency procedures should not limit the use of the Governmentwide commercial purchase card to micro-purchases. Agency procedures should encourage use of the card in greater dollar amounts by contracting officers to place orders and to pay for purchases against contracts established under Part 8 procedures, when authorized; and to place orders and/or make payment under other contractual instruments, when agreed to by the contractor.
- (c) The Governmentwide commercial purchase card may be used to—
 - (1) Make micro-purchases;
- (2) Place a task or delivery order (if authorized in the basic contract, basic ordering agreement, or blanket purchase agreement); or
- (3) Make payments, when the contractor agrees to accept payment by the card.

13.302 Purchase orders.

13.302-1 General.

- (a) Except as provided under the unpriced purchase order method (see 13.302-2), purchase orders generally are issued on a fixed-price basis. See 12.207 for acquisition of commercial items.
 - (b) Purchase orders shall—
- (1) Specify the quantity of supplies or scope of services ordered;
- (2) Contain a determinable date by which delivery of the supplies or performance of the services is required;
- (3) Provide for inspection as prescribed in Part 46. Generally, inspection and acceptance should be at destination. Source inspection should be specified only if required

- by Part 46. When inspection and acceptance will be performed at destination, advance copies of the purchase order or equivalent notice shall be furnished to the consignee(s) for material receipt purposes. Receiving reports shall be accomplished immediately upon receipt and acceptance of supplies;
- (4) Specify f.o.b. destination for supplies to be delivered within the United States, except Alaska or Hawaii, unless there are valid reasons to the contrary; and
- (5) Include any trade and prompt payment discounts that are offered, consistent with the applicable principles at 14.408-3.
- (c) The contracting officer's signature on purchase orders shall be in accordance with 4.101 and the definitions at 2.101. Facsimile and electronic signature may be used in the production of purchase orders by automated methods.
- (d) Limit the distribution of copies of purchase orders and related forms to the minimum deemed essential for administration and transmission of contractual information.
- (e) In accordance with 31 U.S.C. 3332, electronic funds transfer (EFT) may be required for payments. See 32.1103 for instructions for use of the appropriate clause in purchase orders. When obtaining verbal quotes, the contracting officer shall inform the quoter of the EFT clause that will be in any resulting purchase order. Contracting officers shall not accept EFT payment data. The contractor shall provide all such data directly to the payment office.

13.302-2 Unpriced purchase orders.

- (a) An unpriced purchase order is an order for supplies or services, the price of which is not established at the time of issuance of the order.
- (b) An unpriced purchase order may be used only when—
- (1) It is impractical to obtain pricing in advance of issuance of the purchase order; and
 - (2) The purchase is for—
- (i) Repairs to equipment requiring disassembly to determine the nature and extent of repairs;
- (ii) Material available from only one source and for which cost cannot readily be established; or
- (iii) Supplies or services for which prices are known to be competitive, but exact prices are not known (e.g., miscellaneous repair parts, maintenance agreements).
- (c) Unpriced purchase orders may be issued on paper or electronically. A realistic monetary limitation, either for each line item or for the total order, shall be placed on each unpriced purchase order. The monetary limitation shall be an obligation subject to adjustment when the firm price is established. The contracting office shall follow up on each order to ensure timely pricing. The contracting officer or the contracting officer's designated representative shall

review the invoice price and, if reasonable (see 13.106-3(a)), process the invoice for payment.

13.302-3 Obtaining contractor acceptance and modifying purchase orders.

- (a) When it is desired to consummate a binding contract between the parties before the contractor undertakes performance, the contracting officer shall require written (see 2.101) acceptance of the purchase order by the contractor.
- (b) Each purchase order modification shall identify the order it modifies and shall contain an appropriate modification number.
- (c) A contractor's written acceptance of a purchase order modification may be required only if—
- Determined by the contracting officer to be necessary to ensure the contractor's compliance with the purchase order as revised; or
 - (2) Required by agency regulations.

13.302-4 Termination or cancellation of purchase orders.

- (a) If a purchase order that has been accepted in writing by the contractor is to be terminated, the contracting officer shall process the termination in accordance with—
- (1) 12.403(d) and 52.212-4(l) for commercial items; or
- (2) Part 49 or 52.213-4 for other than commercial items.
- (b) If a purchase order that has not been accepted in writing by the contractor is to be canceled, the contracting officer shall notify the contractor in writing that the purchase order has been canceled, request the contractor's written acceptance of the cancellation, and proceed as follows:
- (1) If the contractor accepts the cancellation and does not claim that costs were incurred as a result of beginning performance under the purchase order, no further action is required (*i.e.*, the purchase order shall be considered canceled).
- (2) If the contractor does not accept the cancellation or claims that costs were incurred as a result of beginning performance under the purchase order, the contracting officer shall process the termination action as prescribed in paragraph (a) of this subsection.

13.302-5 Clauses.

- (a) Each purchase order (and each purchase order modification (see 13.302-3)) shall incorporate all clauses prescribed for the particular acquisition.
- (b) The contracting officer shall insert the clause at 52.213-2, Invoices, in purchase orders that authorize advance payments (see 31 U.S.C. 3324(d)(2)) for subscriptions or other charges for newspapers, magazines,

- periodicals, or other publications (*i.e.*, any publication printed, microfilmed, photocopied, or magnetically or otherwise recorded for auditory or visual usage).
- (c) The contracting officer shall insert the clause at 52.213-3, Notice to Supplier, in unpriced purchase orders.
- (d) The contracting officer may use the clause at 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), in simplified acquisitions exceeding the micro-purchase threshold that are for other than commercial items (see 12.301). The clause—
- (1) Is a compilation of the most commonly used clauses that apply to simplified acquisitions; and
- (2) May be modified to fit the individual acquisition to add other needed clauses, or those clauses may be added separately. Modifications (*i.e.*, additions, deletions, or substitutions) must not create a void or internal contradiction in the clause. For example, do not add an inspection and acceptance or termination for convenience requirement unless the existing requirement is deleted. Also, do not delete a paragraph without providing for an appropriate substitute.

13.303 Blanket purchase agreements (BPAs).

13.303-1 General.

- (a) A blanket purchase agreement (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services by establishing "charge accounts" with qualified sources of supply (see Subpart 16.7 for additional coverage of agreements).
- (b) BPAs should be established for use by an organization responsible for providing supplies for its own operations or for other offices, installations, projects, or functions. Such organizations, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.
- (c) The use of BPAs does not exempt an agency from the responsibility for keeping obligations and expenditures within available funds.

13.303-2 Establishment of BPAs.

- (a) The following are circumstances under which contracting officers may establish BPAs:
- (1) There is a wide variety of items in a broad class of supplies or services that are generally purchased, but the exact items, quantities, and delivery requirements are not known in advance and may vary considerably.
- (2) There is a need to provide commercial sources of supply for one or more offices or projects in a given area that do not have or need authority to purchase otherwise.
- (3) The use of this procedure would avoid the writing of numerous purchase orders.

- (4) There is no existing requirements contract for the same supply or service that the contracting activity is required to use.
- (b) After determining a BPA would be advantageous, contracting officers shall—
- (1) Establish the parameters to limit purchases to individual items or commodity groups or classes, or permit the supplier to furnish unlimited supplies or services; and
- (2) Consider suppliers whose past performance has shown them to be dependable, who offer quality supplies or services at consistently lower prices, and who have provided numerous purchases at or below the simplified acquisition threshold.
 - (c) BPAs may be established with—
- (1) More than one supplier for supplies or services of the same type to provide maximum practicable competition;
- (2) A single firm from which numerous individual purchases at or below the simplified acquisition threshold will likely be made in a given period; or
- (3) Federal Supply Schedule contractors, if not inconsistent with the terms of the applicable schedule contract
- (d) BPAs should be prepared without a purchase requisition and only after contacting suppliers to make the necessary arrangements for—
 - (1) Securing maximum discounts;
 - (2) Documenting individual purchase transactions;
 - (3) Periodic billings; and
 - (4) Incorporating other necessary details.

13.303-3 Preparation of BPAs.

Prepare BPAs on the forms specified in 13.307. Do not cite accounting and appropriation data (see 13.303-5(e)(4)).

- (a) The following terms and conditions are mandatory:
- (1) Description of agreement. A statement that the supplier shall furnish supplies or services, described in general terms, if and when requested by the contracting officer (or the authorized representative of the contracting officer) during a specified period and within a stipulated aggregate amount, if any.
- (2) Extent of obligation. A statement that the Government is obligated only to the extent of authorized purchases actually made under the BPA.
- (3) *Purchase limitation*. A statement that specifies the dollar limitation for each individual purchase under the BPA (see 13.303-5(b)).
- (4) Individuals authorized to purchase under the BPA. A statement that a list of individuals authorized to purchase under the BPA, identified either by title of position or by name of individual, organizational component, and the dollar limitation per purchase for each position title or individual shall be furnished to the supplier by the contracting officer.

- (5) *Delivery tickets*. A requirement that all shipments under the agreement, except those for newspapers, magazines, or other periodicals, shall be accompanied by delivery tickets or sales slips that shall contain the following minimum information:
 - (i) Name of supplier.
 - (ii) BPA number.
 - (iii) Date of purchase.
 - (iv) Purchase number.
 - (v) Itemized list of supplies or services furnished.
- (vi) Quantity, unit price, and extension of each item, less applicable discounts (unit prices and extensions need not be shown when incompatible with the use of automated systems, provided that the invoice is itemized to show this information).
 - (vii) Date of delivery or shipment.
- (6) *Invoices*. One of the following statements shall be included (except that the statement in paragraph (a)(6)(iii) of this subsection should not be used if the accumulation of the individual invoices by the Government materially increases the administrative costs of this purchase method):
- (i) A summary invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period, identifying the delivery tickets covered therein, stating their total dollar value, and supported by receipt copies of the delivery tickets.
- (ii) An itemized invoice shall be submitted at least monthly or upon expiration of this BPA, whichever occurs first, for all deliveries made during a billing period and for which payment has not been received. These invoices need not be supported by copies of delivery tickets.
- (iii) When billing procedures provide for an individual invoice for each delivery, these invoices shall be accumulated, provided that—
- (A) A consolidated payment will be made for each specified period; and
- (B) The period of any discounts will commence on the final date of the billing period or on the date of receipt of invoices for all deliveries accepted during the billing period, whichever is later.
- (iv) An invoice for subscriptions or other charges for newspapers, magazines, or other periodicals shall show the starting and ending dates and shall state either that ordered subscriptions have been placed in effect or will be placed in effect upon receipt of payment.
- (b) If the fast payment procedure is used, include the requirements stated in 13.403.

13.303-4 Clauses.

(a) The contracting officer shall insert in each BPA the clauses prescribed elsewhere in this part that are required for or applicable to the particular BPA.

(b) Unless a clause prescription specifies otherwise (e.g., see 22.305(a), 22.605(a)(5), or 22.1006), if the prescription includes a dollar threshold, the amount to be compared to that threshold is that of any particular order under the BPA.

13.303-5 Purchases under BPAs.

- (a) Use a BPA only for purchases that are otherwise authorized by law or regulation.
- (b) Individual purchases shall not exceed the simplified acquisition threshold. However, agency regulations may establish a higher threshold consistent with the following:
- (1) The simplified acquisition threshold and the \$5,000,000 limitation for individual purchases do not apply to BPAs established in accordance with 13.303-2(c)(3).
- (2) The limitation for individual purchases for commercial item acquisitions conducted under Subpart 13.5 is \$5,000,000.
- (c) The existence of a BPA does not justify purchasing from only one source or avoiding small business set-asides. The requirements of 13.003(b) and Subpart 19.5 also apply to each order.
- (d) If, for a particular purchase greater than the micropurchase threshold, there is an insufficient number of BPAs to ensure maximum practicable competition, the contracting officer shall—
- (1) Solicit quotations from other sources (see 13.105) and make the purchase as appropriate; and
- (2) Establish additional BPAs to facilitate future purchases if—
- (i) Recurring requirements for the same or similar supplies or services seem likely;
- (ii) Qualified sources are willing to accept BPAs; and
 - (iii) It is otherwise practical to do so.
- (e) Limit documentation of purchases to essential information and forms as follows:
- Purchases generally should be made electronically, or orally when it is not considered economical or practical to use electronic methods.
- (2) A paper purchase document may be issued if necessary to ensure that the supplier and the purchaser agree concerning the transaction.
- (3) Unless a paper document is issued, record essential elements (*e.g.*, date, supplier, supplies or services, price, delivery date) on the purchase requisition, in an informal memorandum, or on a form developed locally for the purpose.
- (4) Cite the pertinent purchase requisitions and the accounting and appropriation data.
- (5) When delivery is made or the services are performed, the supplier's sales document, delivery document, or invoice may (if it reflects the essential elements) be used

for the purpose of recording receipt and acceptance of the supplies or services. However, if the purchase is assigned to another activity for administration, the authorized Government representative shall document receipt and acceptance of supplies or services by signing and dating the agency specified form after verification and after notation of any exceptions.

13.303-6 Review procedures.

- (a) The contracting officer placing orders under a BPA, or the designated representative of the contracting officer, shall review a sufficient random sample of the BPA files at least annually to ensure that authorized procedures are being followed.
- (b) The contracting officer that entered into the BPA shall—
- (1) Ensure that each BPA is reviewed at least annually and, if necessary, updated at that time; and
- (2) Maintain awareness of changes in market conditions, sources of supply, and other pertinent factors that may warrant making new arrangements with different suppliers or modifying existing arrangements.
- (c) If an office other than the purchasing office that established a BPA is authorized to make purchases under that BPA, the agency that has jurisdiction over the office authorized to make the purchases shall ensure that the procedures in paragraph (a) of this subsection are being followed.

13.303-7 Completion of BPAs.

An individual BPA is considered complete when the purchases under it equal its total dollar limitation, if any, or when its stated time period expires.

13.303-8 Optional clause.

The clause at 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items), may be used in BPAs established under this section.

13.304 [Reserved]

13.305 Imprest funds and third party drafts.

13.305-1 General.

Imprest funds and third party drafts may be used to acquire and to pay for supplies or services. Policies and regulations concerning the establishment of and accounting for imprest funds and third party drafts, including the responsibilities of designated cashiers and alternates, are contained in Part IV of the Treasury Financial Manual for Guidance of Departments and Agencies, Title 7 of the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, and the agency imple-

menting regulations. Agencies also shall be guided by the Manual of Procedures and Instructions for Cashiers, issued by the Financial Management Service, Department of the Treasury.

13.305-2 Agency responsibilities.

Each agency using imprest funds and third party drafts shall—

- (a) Periodically review and determine whether there is a continuing need for each fund or third party draft account established, and that amounts of those funds or accounts are not in excess of actual needs;
- (b) Take prompt action to have imprest funds or third party draft accounts adjusted to a level commensurate with demonstrated needs whenever circumstances warrant such action; and
- (c) Develop and issue appropriate implementing regulations. These regulations shall include (but are not limited to) procedures covering—
- (1) Designation of personnel authorized to make purchases using imprest funds or third party drafts; and
- (2) Documentation of purchases using imprest funds or third party drafts, including documentation of—
- (i) Receipt and acceptance of supplies and services by the Government;
- (ii) Receipt of cash or third party draft payments by the suppliers; and
 - (iii) Cash advances and reimbursements.

13.305-3 Conditions for use.

Imprest funds or third party drafts may be used for purchases when—

- (a) The imprest fund transaction does not exceed \$500 or such other limits as have been approved by the agency head;
- (b) The third party draft transaction does not exceed \$2,500, unless authorized at a higher level in accordance with Treasury restrictions;
- (c) The use of imprest funds or third party drafts is considered to be advantageous to the Government; and
- (d) The use of imprest funds or third party drafts for the transaction otherwise complies with any additional conditions established by agencies and with the policies and regulations referenced in 13.305-1.

13.305-4 Procedures.

(a) Each purchase using imprest funds or third party drafts shall be based upon an authorized purchase requisition, contracting officer verification statement, or other agency approved method of ensuring that adequate funds are available for the purchase.

- (b) Normally, purchases should be placed orally and without soliciting competition if prices are considered reasonable.
- (c) Since there is, for all practical purposes, simultaneous placement of the order and delivery of the items, clauses are not required for purchases using imprest funds or third party drafts.
- (d) Forms prescribed at 13.307(e) may be used if a written order is considered necessary (*e.g.*, if required by the supplier for discount, tax exemption, or other reasons). If a purchase order is used, endorse it "Payment to be made from Imprest Fund" (or "Payment to be made from Third Party Draft," as appropriate).
- (e) The individual authorized to make purchases using imprest funds or third party drafts shall—
- (1) Furnish to the imprest fund or third party draft cashier a copy of the document required under paragraph (a) of this subsection annotated to reflect—
- (i) That an imprest fund or third party draft purchase has been made;
 - (ii) The unit prices and extensions; and
 - (iii) The supplier's name and address; and
- (2) Require the supplier to include with delivery of the supplies an invoice, packing slip, or other sales instrument giving—
 - (i) The supplier's name and address;
 - (ii) List and quantity of items supplied;
 - (iii) Unit prices and extensions; and
 - (iv) Cash discount, if any.

13.306 SF 44, Purchase Order—Invoice—Voucher.

The SF 44, Purchase Order—Invoice—Voucher, is a multipurpose pocket-size purchase order form designed primarily for on-the-spot, over-the-counter purchases of supplies and nonpersonal services while away from the purchasing office or at isolated activities. It also can be used as a receiving report, invoice, and public voucher.

- (a) This form may be used if all of the following conditions are satisfied:
- (1) The amount of the purchase is at or below the micro-purchase threshold, except for purchases made under unusual and compelling urgency or in support of contingency operations. Agencies may establish higher dollar limitations for specific activities or items.
- (2) The supplies or services are immediately available.
 - (3) One delivery and one payment will be made.
- (4) Its use is determined to be more economical and efficient than use of other simplified acquisition procedures.
- (b) General procedural instructions governing the form's use are printed on the form and on the inside front cover of each book of forms.

- (c) Since there is, for all practical purposes, simultaneous placement of the order and delivery of the items, clauses are not required for purchases using this form.
- (d) Agencies shall provide adequate safeguards regarding the control of forms and accounting for purchases.

13.307 Forms.

- (a) *Commercial items*. For use of the SF 1449, Solicitation/Contract/Order for Commercial Items, see 12.204.
- (b) Other than commercial items. (1) Except when quotations are solicited via FACNET, other electronic means, or orally, the SF 1449; SF 18, Request for Quotations; or an agency form/automated format may be used. Each agency request for quotations form/automated format should conform with the SF 18 or SF 1449 to the maximum extent practicable.
- (2) Both SF 1449 and OF 347, Order for Supplies or Services, are multipurpose forms used for negotiated purchases of supplies or services, delivery or task orders, inspection and receiving reports, and invoices. An agency form/automated format also may be used.
- (c) Forms used for both commercial and other than commercial items. (1) OF 336, Continuation Sheet, or an agency form/automated format may be used when additional space is needed.
- (2) OF 348, Order for Supplies or Services Schedule—Continuation, or an agency form/automated format may be used for negotiated purchases when additional space is needed. Agencies may print on these forms the clauses considered to be generally suitable for purchases.
- (3) SF 30, Amendment of Solicitation/Modification of Contract, or a purchase order form may be used to modify a purchase order, unless an agency form/automated format is prescribed in agency regulations.
- (d) SF 44, Purchase Order—Invoice—Voucher, is a multipurpose pocket-size purchase order form that may be used as outlined in 13.306.
- (e) SF 1165, Receipt for Cash—Subvoucher, or an agency purchase order form may be used for purchases using imprest funds or third party drafts.

Subpart 13.4—Fast Payment Procedure

13.401 General.

- (a) The fast payment procedure allows payment under limited conditions to a contractor prior to the Government's verification that supplies have been received and accepted. The procedure provides for payment for supplies based on the contractor's submission of an invoice that constitutes a certification that the contractor—
- (1) Has delivered the supplies to a post office, common carrier, or point of first receipt by the Government; and

- (2) Shall replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase agreements.
- (b) The contracting officer shall be primarily responsible for collecting debts resulting from failure of contractors to properly replace, repair, or correct supplies lost, damaged, or not conforming to purchase requirements (see 32.605(b) and 32.606).

13.402 Conditions for use.

If the conditions in paragraphs (a) through (f) of this section are present, the fast payment procedure may be used, provided that use of the procedure is consistent with the other conditions of the purchase. The conditions for use of the fast payment procedure are as follows:

- (a) Individual purchasing instruments do not exceed \$25,000, except that executive agencies may permit higher dollar limitations for specified activities or items on a case-by-case basis.
- (b) Deliveries of supplies are to occur at locations where there is both a geographical separation and a lack of adequate communications facilities between Government receiving and disbursing activities that will make it impractical to make timely payment based on evidence of Government acceptance.
 - (c) Title to the supplies passes to the Government—
- (1) Upon delivery to a post office or common carrier for mailing or shipment to destination; or
- (2) Upon receipt by the Government if the shipment is by means other than Postal Service or common carrier.
- (d) The supplier agrees to replace, repair, or correct supplies not received at destination, damaged in transit, or not conforming to purchase requirements.
- (e) The purchasing instrument is a firm-fixed-price contract, a purchase order, or a delivery order for supplies.
 - (f) A system is in place to ensure—
- (1) Documentation of evidence of contractor performance under fast payment purchases;
- (2) Timely feedback to the contracting officer in case of contractor deficiencies; and
- (3) Identification of suppliers that have a current history of abusing the fast payment procedure (also see Subpart 9.1).

13.403 Preparation and execution of orders.

Priced or unpriced contracts, purchase orders, or BPAs using the fast payment procedure shall include the following:

- (a) A requirement that the supplies be shipped transportation or postage prepaid.
- (b) A requirement that invoices be submitted directly to the finance or other office designated in the order, or in the

case of unpriced purchase orders, to the contracting officer (see 13.302-2(c)).

(c) The following statement on the consignee's copy: Consignee's Notification to Purchasing Activity of Nonreceipt, Damage, or Nonconformance

The consignee shall notify the purchasing office promptly after the specified date of delivery of supplies not received, damaged in transit, or not conforming to specifications of the purchase order. Unless extenuating circumstances exist, the notification should be made not later than 60 days after the specified date of delivery.

13.404 Contract clause.

The contracting officer shall insert the clause at 52.213-1, Fast Payment Procedure, in solicitations and contracts when the conditions in 13.402 are applicable and it is intended that the fast payment procedure be used in the contract (in the case of BPAs, the contracting officer may elect to insert the clause either in the BPAor in orders under the BPA).

Subpart 13.5—Test Program for Certain Commercial Items

13.500 General.

- (a) This subpart authorizes, as a test program, use of simplified procedures for the acquisition of supplies and services in amounts greater than the simplified acquisition threshold but not exceeding \$5,000,000, including options, if the contracting officer reasonably expects, based on the nature of the supplies or services sought, and on market research, that offers will include only commercial items. Under this test program, contracting officers may use any simplified acquisition procedure in this part, subject to any specific dollar limitation applicable to the particular procedure. The purpose of this test program is to vest contracting officers with additional procedural discretion and flexibility, so that commercial item acquisitions in this dollar range may be solicited, offered, evaluated, and awarded in a simplified manner that maximizes efficiency and economy and minimizes burden and administrative costs for both the Government and industry (10 U.S.C. 2304(g) and 2305 and 41 U.S.C. 253(g) and 253a and 253b).
- (b) For the period of this test, contracting activities shall employ the simplified procedures authorized by the test to the maximum extent practicable.

- (c) When acquiring commercial items using the procedures in this part, the requirements of Part 12 apply subject to the order of precedence provided at 12.102(c). This includes use of the provisions and clauses in Subpart 12.3.
- (d) The authority to issue solicitations under this subpart shall expire on January 1, 2000. Contracts may be awarded after the expiration of this authority for solicitations issued before the expiration of the authority.

13.501 Special documentation requirements.

- (a) *Sole source acquisitions*. (1) Acquisitions conducted under simplified acquisition procedures are exempt from the requirements in Part 6. However, contracting officers shall—
- (i) Conduct sole source acquisitions, as defined in 6.003, under this subpart only if the need to do so is justified in writing and approved at the levels specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this section; and
- (ii) Prepare sole source justifications using the format at 6.303-2, modified to reflect an acquisition under the authority of the test program for commercial items (section 4202 of the Clinger-Cohen Act of 1996).
- (2) Justifications and approvals are required under this subpart only for sole source acquisitions.
- (i) For a proposed contract exceeding \$100,000, but not exceeding \$500,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.
- (ii) For a proposed contract exceeding \$500,000, the approval shall be by the competition advocate for the procuring activity, designated pursuant to 6.501; or an official described in 6.304(a)(3) or (a)(4). This authority is not delegable.
- (b) Contract file documentation. The contract file shall include—
- (1) A brief written description of the procedures used in awarding the contract, including the fact that the test procedures in FAR Subpart 13.5 were used;
 - (2) The number of offers received;
- (3) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision; and
- (4) Any justification approved under paragraph (a) of this section.

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\$10,000,000 (including all options). Contracting officers may modify the provision to specify the number of awards the Government reasonably estimates that it may make.

(g) In accordance with 16.504(a)(4)(vi), the contracting officer shall insert the provision at 52.216-28, Multiple Awards for Advisory and Assistance Services, in solicitations for task order contracts for advisory and assistance services that exceed three years and \$10,000,000 (including all options) unless a determination has been made under 16.504(c)(2)(i)(A). Contracting officers may modify the provision to specify the number of awards the Government reasonably estimates that it may make.

Subpart 16.6—Time-and-Materials, Labor-Hour, and Letter Contracts

16.601 Time-and-materials contracts.

- (a) *Description*. A time-and-materials contract provides for acquiring supplies or services on the basis of—
- (1) Direct labor hours at specified fixed hourly rates that include wages, overhead, general and administrative expenses, and profit; and
- (2) Materials at cost, including, if appropriate, material handling costs as part of material costs.
- (b) Application. A time-and-materials contract may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.
- (1) Government surveillance. A time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, appropriate Government surveillance of contractor performance is required to give reasonable assurance that efficient methods and effective cost controls are being used.
- (2) Material handling costs. When included as part of material costs, material handling costs shall include only costs clearly excluded from the labor-hour rate. Material handling costs may include all appropriate indirect costs allocated to direct materials in accordance with the contractor's usual accounting procedures consistent with Part 31.
- (3) Optional method of pricing material. When the nature of the work to be performed requires the contractor to furnish material that it regularly sells to the general public in the normal course of its business, the contract may provide for charging material on a basis other than at cost if—
- (i) The total estimated contract price does not exceed \$25,000 or the estimated price of material so charged does not exceed 20 percent of the estimated contract price;
- (ii) The material to be so charged is identified in the contract;

- (iii) No element of profit on material so charged is included as profit in the fixed hourly labor rates; and
 - (iv) The contract provides—
- (A) That the price to be paid for such material shall be based on an established catalog or list price in effect when material is furnished, less all applicable discounts to the Government; and
- (B) That in no event shall the price exceed the contractor's sales price to its most-favored customer for the same item in like quantity, or the current market price, whichever is lower.
- (c) *Limitations*. A time-and-materials contract may be used (1) only after the contracting officer executes a determination and findings that no other contract type is suitable; and (2) only if the contract includes a ceiling price that the contractor exceeds at its own risk. The contracting officer shall document the contract file to justify the reasons for and amount of any subsequent change in the ceiling price.

16.602 Labor-hour contracts.

Description. A labor-hour contract is a variation of the time-and-materials contract, differing only in that materials are not supplied by the contractor. See 16.601(b) and 16.601(c) for application and limitations, respectively.

16.603 Letter contracts.

16.603-1 Description.

A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services.

16.603-2 Application.

- (a) A letter contract may be used when (1) the Government's interests demand that the contractor be given a binding commitment so that work can start immediately and (2) negotiating a definitive contract is not possible in sufficient time to meet the requirement. However, a letter contract should be as complete and definite as feasible under the circumstances.
- (b) When a letter contract award is based on price competition, the contracting officer shall include an overall price ceiling in the letter contract.
- (c) Each letter contract shall, as required by the clause at 52.216-25, Contract Definitization, contain a negotiated definitization schedule including (1) dates for submission of the contractor's price proposal, required cost or pricing data, and, if required, make-or-buy and subcontracting plans, (2) a date for the start of negotiations, and (3) a target date for definitization, which shall be the earliest practicable date for definitization. The schedule will provide for definitization of the contract within 180 days after the date of the letter contract or before completion of 40 percent of the work to

be performed, whichever occurs first. However, the contracting officer may, in extreme cases and according to agency procedures, authorize an additional period. If, after exhausting all reasonable efforts, the contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement as to price or fee, the clause at 52.216-25 requires the contractor to proceed with the work and provides that the contracting officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with Subpart 15.4 and Part 31, subject to appeal as provided in the Disputes clause.

- (d) The maximum liability of the Government inserted in the clause at 52.216-24, Limitation of Government Liability, shall be the estimated amount necessary to cover the contractor's requirements for funds before definitization. However, it shall not exceed 50 percent of the estimated cost of the definitive contract unless approved in advance by the official that authorized the letter contract.
- (e) The contracting officer shall assign a priority rating to the letter contract if it is appropriate under 11.604.

16.603-3 Limitations.

A letter contract may be used only after the head of the contracting activity or a designee determines in writing that no other contract is suitable. Letter contracts shall not—

- (a) Commit the Government to a definitive contract in excess of the funds available at the time the letter contract is executed:
- (b) Be entered into without competition when competition is required by Part 6; or
- (c) Be amended to satisfy a new requirement unless that requirement is inseparable from the existing letter contract. Any such amendment is subject to the same requirements and limitations as a new letter contract.

16.603-4 Contract clauses.

- (a) The contracting officer shall include in each letter contract the clauses required by this regulation for the type of definitive contract contemplated and any additional clauses known to be appropriate for it.
- (b) In addition, the contracting officer shall insert the following clauses in solicitations and contracts when a letter contract is contemplated:
- (1) The clause at 52.216-23, Execution and Commencement of Work, except that this clause may be omitted from letter contracts awarded on SF 26;
- (2) The clause at 52.216-24, Limitation of Government Liability, with dollar amounts completed in a manner consistent with 16.603-2(d); and
- (3) The clause at 52.216-25, Contract Definitization, with its paragraph (b) completed in a manner consistent with 16.603-2(c). If, at the time of entering into the letter contract, the contracting officer knows that the definitive

contract will be based on adequate price competition or will otherwise meet the criteria of 15.403-1 for not requiring submission of cost or pricing data, the words "and cost or pricing data supporting its proposal" may be deleted from paragraph (a) of the clause. If the letter contract is being awarded on the basis of price competition, the contracting officer shall use the clause with its Alternate I.

(c) The contracting officer shall also insert the clause at 52.216-26, Payments of Allowable Costs Before Definitization, in solicitations and contracts if a cost-reimbursement definitive contract is contemplated, unless the acquisition involves conversion, alteration, or repair of ships.

Subpart 16.7—Agreements

16.701 Scope.

This subpart prescribes policies and procedures for establishing and using basic agreements and basic ordering agreements. (See 13.303 for blanket purchase agreements (BPA's) and see 35.015(b) for additional coverage of basic agreements with educational institutions and nonprofit organizations.)

16.702 Basic agreements.

- (a) Description. A basic agreement is a written instrument of understanding, negotiated between an agency or contracting activity and a contractor, that (1) contains contract clauses applying to future contracts between the parties during its term and (2) contemplates separate future contracts that will incorporate by reference or attachment the required and applicable clauses agreed upon in the basic agreement. A basic agreement is not a contract.
- (b) Application. A basic agreement should be used when a substantial number of separate contracts may be awarded to a contractor during a particular period and significant recurring negotiating problems have been experienced with the contractor. Basic agreements may be used with negotiated fixed-price or cost-reimbursement contracts.
 - (1) Basic agreements shall contain—
- (i) Clauses required for negotiated contracts by statute, executive order, and this regulation; and
- (ii) Other clauses prescribed in this regulation or agency acquisition regulations that the parties agree to include in each contract as applicable.
- (2) Each basic agreement shall provide for discontinuing its future applicability upon 30 days'written notice by either party.
- (3) Each basic agreement shall be reviewed annually before the anniversary of its effective date and revised as necessary to conform to the requirements of this regulation. Basic agreements may need to be revised before the annual

review due to mandatory statutory requirements. A basic agreement may be changed only by modifying the agreement itself and not by a contract incorporating the agreement.

- (4) Discontinuing or modifying a basic agreement shall not affect any prior contract incorporating the basic agreement.
- (5) Contracting officers of one agency should obtain and use existing basic agreements of another agency to the maximum practical extent.
 - (c) Limitations. A basic agreement shall not—
 - (1) Cite appropriations or obligate funds;
- (2) State or imply any agreement by the Government to place future contracts or orders with the contractor; or
 - (3) Be used in any manner to restrict competition.
- (d) Contracts incorporating basic agreements. (1) Each contract incorporating a basic agreement shall include a scope of work and price, delivery, and other appropriate terms that apply to the particular contract. The basic agreement shall be incorporated into the contract by specific reference (including reference to each amendment) or by attachment.
- (2) The contracting officer shall include clauses pertaining to subjects not covered by the basic agreement, but applicable to the contract being negotiated, in the same manner as if there were no basic agreement.
- (3) If an existing contract is modified to effect new acquisition, the modification shall incorporate the most recent basic agreement, which shall apply only to work added by the modification, except that this action is not mandatory if the contract or modification includes all clauses required by statute, executive order, and this regulation as of the date of the modification. However, if it is in the Government's interest and the contractor agrees, the modification may incorporate the most recent basic agreement for application to the entire contract as of the date of the modification.

16.703 Basic ordering agreements.

- (a) Description. A basic ordering agreement is a written instrument of understanding, negotiated between an agency, contracting activity, or contracting office and a contractor, that contains (1) terms and clauses applying to future contracts (orders) between the parties during its term, (2) a description, as specific as practicable, of supplies or services to be provided, and (3) methods for pricing, issuing, and delivering future orders under the basic ordering agreement. A basic ordering agreement is not a contract.
- (b) Application. A basic ordering agreement may be used to expedite contracting for uncertain requirements for supplies or services when specific items, quantities, and prices are not known at the time the agreement is executed, but a substantial number of requirements for the type of sup-

- plies or services covered by the agreement are anticipated to be purchased from the contractor. Under proper circumstances, the use of these procedures can result in economies in ordering parts for equipment support by reducing administrative lead-time, inventory investment, and inventory obsolescence due to design changes.
- (c) *Limitations*. A basic ordering agreement shall not state or imply any agreement by the Government to place future contracts or orders with the contractor or be used in any manner to restrict competition.
 - (1) Each basic ordering agreement shall—
- (i) Describe the method for determining prices to be paid to the contractor for the supplies or services;
- (ii) Include delivery terms and conditions or specify how they will be determined;
- (iii) List one or more Government activities authorized to issue orders under the agreement;
- (iv) Specify the point at which each order becomes a binding contract (*e.g.*, issuance of the order, acceptance of the order in a specified manner, or failure to reject the order within a specified number of days);
- (v) Provide that failure to reach agreement on price for any order issued before its price is established (see paragraph (d)(3) of this section) is a dispute under the Disputes clause included in the basic ordering agreement; and
- (vi) If fast payment procedures will apply to orders, include the special data required by 13.403.
- (2) Each basic ordering agreement shall be reviewed annually before the anniversary of its effective date and revised as necessary to conform to the requirements of this regulation. Basic ordering agreements may need to be revised before the annual review due to mandatory statutory requirements. A basic ordering agreement shall be changed only by modifying the agreement itself and not by individual orders issued under it. Modifying a basic ordering agreement shall not retroactively affect orders previously issued under it.
- (d) *Orders*. A contracting officer representing any Government activity listed in a basic ordering agreement may issue orders for required supplies or services covered by that agreement.
- (1) Before issuing an order under a basic ordering agreement, the contracting officer shall—
 - (i) Obtain competition in accordance with Part 6;
- (ii) If the order is being placed after competition, ensure that use of the basic ordering agreement is not prejudicial to other offerors; and
- (iii) Sign or obtain any applicable justifications and approvals, and any determination and findings, and comply with other requirements in accordance with 1.602-1(b), as if the order were a contract awarded independently of a basic ordering agreement.

- (2) Contracting officers shall—
- (i) Issue orders under basic ordering agreements on Optional Form (OF) 347, Order for Supplies or Services, or on any other appropriate contractual instrument;
- (ii) Incorporate by reference the provisions of the basic ordering agreement;
- (iii) If applicable, cite the authority under 6.302 in each order; and
- (iv) Comply with 5.203 when synopsis is required by 5.201.
- (3) The contracting officer shall neither make any final commitment nor authorize the contractor to begin work on an order under a basic ordering agreement until prices have been established, unless the order establishes a

- ceiling price limiting the Government's obligation and either—
- (i) The basic ordering agreement provides adequate procedures for timely pricing of the order early in its performance period; or
- (ii) The need for the supplies or services is compelling and unusually urgent (*i.e.*, when the Government would be seriously injured, financially or otherwise, if the requirement is not met sooner than would be possible if prices were established before the work began). The contracting officer shall proceed with pricing as soon as practical. In no event shall an entire order be priced retroactively.

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for a competitive 8(a) award below the competitive thresholds. Such recommendations will be approved only on a limited basis and will be primarily granted where technical competitions are appropriate or where a large number of responsible 8(a) firms are available for competition. In determining whether a recommendation to compete below the threshold will be approved, AA/MSB&COD will, in part, consider the extent to which the requesting agency is supporting the 8(a) Program on a noncompetitive basis. Agency recommendations for competition below the threshold may be included in the offering letter or may be submitted by separate correspondence to the SBA Headquarters.

19.805-2 **Procedures.**

- (a) Competitive 8(a) acquisitions shall be conducted by contracting agencies by using sealed bids (see Part 14) or competitive proposals (see Part 15).
- (b) Offers shall be solicited from those sources identified in accordance with the SBA instructions provided under 19.804-3.
- (c) The SBA will determine the eligibility of the firms for award of the contract. Eligibility will be determined by the SBAas of the time of submission of initial offers which include price. Eligibility is based on Section 8(a) Program criteria.
- (1) In sealed bid acquisitions, upon receipt of offers, the contracting officer will provide the SBA a copy of the solicitation, the estimated fair market price, and a list of offerors ranked in the order of their standing for award (i.e., first low, second low, etc.) with the total evaluated price for each offer, differentiating between basic requirements and any options. The SBA will consider the eligibility of the first low offeror. If the first low offeror is not determined to be eligible, the SBA will consider the eligibility of the next low offeror until an eligible offeror is identified. The SBA will determine the eligibility of the firms and advise the contracting officer within 5 working days after its receipt of the list of bidders. Once eligibility has been established by the SBA, the successful offeror will be determined by the contracting activity in accordance with normal contracting procedures.
- (2) In negotiated acquisition, the SBAwill determine eligibility when the successful offeror has been established by the agency and the contract transmitted for signature unless a referral has been made under 19.809, in which case the SBAwill determine eligibility at that point.
- (d) In any case in which a firm is determined to be ineligible, the SBA will notify the firm of that determination.
- (e) The eligibility of an 8(a) firm for a competitive 8(a) award may not be challenged or protested by another 8(a) firm or any other party as part of a solicitation or proposed contract award. Any party with information concerning the

eligibility of an 8(a) firm to continue participation in the 8(a) Program may submit such information to the SBA in accordance with 13 CFR 124.111(c).

19.806 Pricing the 8(a) contract.

- (a) The contracting officer shall price the 8(a) contract in accordance with Subpart 15.4. If required by Subpart 15.4, the SBAshall obtain certified cost or pricing data from the 8(a) contractor. If the SBA requests audit assistance to determine the reasonableness of the proposed price in a sole source acquisition, the contracting activity shall furnish it to the extent it is available.
- (b) An 8(a) contract, sole source or competitive, may not be awarded if the price of the contract results in a cost to the contracting agency which exceeds a fair market price.
- (c) If requested by the SBA, the contracting officer shall make available the data used to estimate the fair market price.
- (d) The negotiated contract price and the estimated fair market price are subject to the concurrence of the SBA. In the event of a disagreement between the contracting officer and the SBA, the SBA may appeal in accordance with 19.810.

19.807 Estimating fair market price.

- (a) The contracting officer shall estimate the fair market price of the work to be performed by the 8(a) contractor.
- (b) In estimating the fair market price for an acquisition other than those covered in paragraph (c) of this section, the contracting officer shall use cost or price analysis and consider commercial prices for similar products and services, available in-house cost estimates, data (including cost or pricing data) submitted by the SBA or the 8(a) contractor, and data obtained from any other Government agency.
- (c) In estimating a fair market price for a repeat purchase, the contracting officer shall consider recent award prices for the same items or work if there is comparability in quantities, conditions, terms, and performance times. The estimated price should be adjusted to reflect differences in specifications, plans, transportation costs, packaging and packing 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.

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 should refer the matter to the SBAfor its consideration in deciding whether SBAshould certify that it is competent and responsible to perform. This is not a referral for Certificate of Competency consideration under Subpart 19.6. Within 15 working days of the receipt of the referral or a longer period agreed to by the SBA and the contracting activity, the SBA local district office that services the 8(a) firm will advise the contracting officer as to the SBA's willingness to certify its competency to perform the contract using the 8(a) concern in question as its subcontractor. The contracting officer shall proceed with the acquisition and award the contract to another appropriately selected 8(a) offeror if the SBA has not certified its competency within 15 working days (or a longer mutually agreeable period).

19.810 SBA appeals.

- (a) The following matters may be submitted by the SBA Administrator 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) The terms and conditions of a particular sole source acquisition to be awarded under the 8(a) Program.
 - (3) The estimated fair market price.
- (b) Notification of a proposed referral to the agency head by the SBA must be received by the contracting officer within 5 working days after the SBAis formally notified of the contracting officer's decision. The SBAshall provide the agency Director for Small and Disadvantaged Business Utilization a copy of this notification. The SBA must provide the request for determination to the agency head within 20 working days of the SBA's receipt of the adverse decision. Pending issuance of a decision by the agency head, the contracting officer shall suspend action on the acquisition. Action on the acquisition need not be suspended if the

contracting officer makes a written determination that urgent and compelling circumstances which 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(b).
- (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 SBAwill 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

Subpart 19.5 (however, see subparagraphs (b)(2) and (c)(1) of this section). Acquisitions in the designated industry groups shall continue to be considered for placement under the 8(a) program (see Subpart 19.8).

- (2) Agencies may reinstate the use of small business set-asides as necessary to meet their assigned goals, but only within organizational unit(s) that failed to meet the small business participation goal.
- (c) Emerging small business set-aside. (1) All acquisitions in the four designated industry groups with an estimated value equal to or less than the emerging small business reserve amount established by the Office of Federal Procurement Policy shall be set aside for ESB's; provided that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible ESB's that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists, the contracting officer shall—
- (i) For acquisitions \$25,000 or less, proceed in accordance with Subpart 19.5; or
- (ii) For acquisitions over \$25,000, proceed in accordance with paragraph (b) of this section.
- (2) If the contracting officer proceeds with the ESB set-aside and receives a quotation from only one ESB at a reasonable price, the contracting officer shall make the award. If there is no quote from an ESB, or the quote is not at a reasonable price, then the contracting officer shall cancel the ESB set-aside and proceed in accordance with paragraph (c)(1) (i) or (ii) of this section.
- (3) When using other than simplified acquisition procedures for ESB set-asides, the clause at 52.219-14,

Limitations on Subcontracting, shall be placed in all solicitations and resulting contracts.

(d) To expand small business participation in the targeted industry categories, each participating agency will develop and implement a time-phased strategy with incremental goals, including reporting on goal attainment. To the extent practicable, provisions that encourage and promote teaming and joint ventures shall be considered. These provisions should permit small business firms to effectively compete for contracts that individual small businesses would be ineligible to compete for because of lack of production capacity or capability.

19.1007 Solicitation provisions.

- (a) The contracting officer shall insert in full text the provision at 52.219-19, Small Business Concern Representation for the Small Business Competitiveness Demonstration Program, in all solicitations in the four designated industry groups.
- (b) The contracting officer shall insert in full text the provision at 52.219-20, Notice of Emerging Small Business Set-Aside, in all solicitations for emerging small businesses in accordance with 19.1006(c).
- (c) The contracting officer shall insert in full text the provision at 52.219-21, Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program, in all solicitations issued in each of the targeted industry categories under the Small Business Competitiveness Demonstration Program that are expected to result in a contract award in excess of \$25,000.

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purpose stated in the Tariff Schedule (see 19 CFR 10.102-104, 10.110, 10.114-119, 10.121, and 15 CFR 301 for requirements and formats).

(b) Supplies (as opposed to equipment) for Government-operated vessels or aircraft may be withdrawn from any customs-bonded warehouse, from continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone free of duty and internal revenue tax as provided in 19 U.S.C. 1309(a). The contracting activity shall cite this authority on the appropriate customs form when making such purchases (see 19 CFR 10.59(a)).

25.605 Contract clause.

- (a) The contracting officer shall insert the clause at 52.225-10, Duty-Free Entry, in solicitations and contracts over \$100,000 that provide for, or anticipate furnishing to the Government, supplies to be imported into the customs territory of the United States.
- (b) The clause may be used in solicitations and contracts of \$100,000 or less, if such action is consistent with the policy in 25.602.
- (c) If the contracting officer knows before award that the contract includes specific supplies that will be accorded duty-free entry, a list of these supplies shall be inserted in the contract Schedule. The list shall include item numbers from Schedule 8, Tariff Schedules of the United States, and a description of the supplies.

Subpart 25.7—Restrictions on Certain Foreign Purchases

25.701 Restrictions.

- (a) The Government does not acquire supplies or services from foreign governments or their organizations when these supplies or services cannot be imported lawfully into the United States. Therefore, agencies and their contractors and subcontractors shall not acquire any supplies or services originating from sources within, or that were located in or transported from or through—
 - (1) Cuba (31 CFR Part 515);
 - (2) Iran (31 CFR Part 560);
 - (3) Iraq (31 CFR Part 575);
 - (4) Libya (31 CFR Part 550); or
 - (5) North Korea (31 CFR Part 500).
- (b) Agencies and their contractors and subcontractors shall not acquire any supplies or services from entities controlled by the Government of Iraq (Executive orders 12722 and 12724).
- (c) Questions concerning these restrictions should be referred to the—

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25.702 Contract clause.

The contracting officer shall insert the clause at 52.225-11, Restrictions on Certain Foreign Purchases, in solicitations and contracts over \$2,500.

Subpart 25.8—International Agreements and Coordination

25.801 International agreements.

Treaties and agreements between the United States and foreign governments may affect contracting within foreign countries. Contracting officers should give particular attention to the provisions in those agreements that pertain to purchase procedures, contract forms and clauses, taxes, patents, technical information, facilities, and other matters related to contracting.

25.802 Procedures.

- (a) When placing contracts with contractors outside the United States, for performance outside the United States, contracting officers shall—
- (1) Determine the existence and applicability of any international agreements to contracts being planned or processed, and ensure compliance with these agreements; and
- (2) Conduct the necessary advance acquisition planning and coordination between the appropriate United States executive agencies and foreign interests as required by these agreements.
- (b) Many international agreements are compiled in the "United States Treaties and Other International Agreements" series published by the Department of State. Copies of this publication are normally available in overseas legal offices and United States diplomatic missions.

Subpart 25.9—Additional Foreign Acquisition Clauses

25.901 Omission of audit clause.

- (a) *Definition*. "Foreign contractor," as used in this subpart, means a contractor or subcontractor organized or existing under the laws of a country other than the United States, its territories, or possessions.
- (b) *Policy*. As required by 10 U.S.C. 2313, 41 U.S.C. 254d, and 15.209(b), the contracting officer shall consider for use in negotiated contracts with foreign contractors, whenever possible, the basic clause at 52.215-2, Audit and Records—Negotiation, which authorizes examination of records by the Comptroller General. Use of the clause with

Alternate III should be approved only after the contracting agency, having considered such factors as alternate sources of supply, additional cost, and time of delivery, has made all reasonable efforts to include the basic clause.

- (c) Conditions for use of Alternate III. The contracting officer may use the clause at 52.215-2, Audit and Records—Negotiation, with its Alternate III in contracts with foreign contractors—
- (1) If the agency head, or designee, determines, with the concurrence of the Comptroller General, that waiver of the right to examination of records by the Comptroller General will serve the public interest; or
- (2) If the contractor is a foreign government or agency thereof or is precluded by the laws of the country involved from making its records, as defined at 4.703(a), available for examination, and the agency head, or designee, determines, after taking into account the price and availability of the property or services from United States sources, that waiver of the right to examination of records by the Comptroller General best serves the public interest.
- (d) *Determination and findings*. The determination and findings shall—
- (1) Identify the contract and its purpose, and whether it is a contract with a foreign contractor or with a foreign government or agency thereof;
 - (2) Describe the efforts to include the basic clause;
- (3) State the reasons for the contractor's refusal to include the basic clause;
- (4) Describe the price and availability of the property or services from the United States and other sources; and
- (5) Determine that it will serve the interest of the United States to use the clause with its Alternate III.

25.902 Inconsistency between English version and translation of contract.

The contracting officer shall insert the clause at 52.225-14, Inconsistency Between English Version and Translation of Contract, in solicitations and contracts whenever translation into another language is anticipated.

Subpart 25.10—Implementation of Sanctions Against Countries that Discriminate Against United States Products or Services in Government Procurement

25.1000 Scope of subpart.

This subpart implements sanctions imposed by the President (58 FR 31136, May 28, 1993) pursuant to section 305(g)(1) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(g)(1)). These sanctions apply to countries that discriminate against U.S. products or services in Government procurement. This subpart does not apply to the Department of Defense. For thresholds that are unique

to individual agencies (e.g., Power Marketing Administration of the Department of Energy), see agency regulations.

25.1001 Definitions.

As used in this subpart—

"Sanctioned European Union (EU) construction" means construction to be performed in a sanctioned member state of the EU and the contract is awarded by a contracting activity located in the United States or its territories.

"Sanctioned EU end product" means an article that (a) is wholly the growth product or manufacture of a sanctioned member state of the EU or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that from which it was so transformed in a sanctioned member state of the EU. 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 its supply; provided, that the value of these incidental services does not exceed that of the product itself.

"Sanctioned EU services" means services to be performed in a sanctioned member state of the EU when the contract is awarded by a contracting activity located in the United States or its territories.

"Sanctioned member state of the EU" means Austria, Belgium, Denmark, Finland, France, Ireland, Italy, Luxembourg, the Netherlands, Sweden, and the United Kingdom.

25.1002 Trade sanctions.

- (a) Subject to the exceptions in paragraph (b) of this section, executive agencies shall not award contracts for—
- (1) Sanctioned EU end products with an estimated acquisition value less than \$190,000.
- (2) Sanctioned EU construction with an estimated acquisition value less than \$7,311,000.
 - (3) Sanctioned EU services as follows:
- (i) Service contracts with an estimated acquisition value less than \$190,000.
 - (ii) Regardless of dollar value, contracts for-
- (A) All transportation services, including Launching Services (all V codes, J019, J998, J999, K019);
 - (B) Dredging (Y216, Z216);
- (C) Management and operation contracts of certain government or privately-owned facilities used for government purposes, including federally-funded research and development centers (all M codes);
- (D) Development, production or co-production of program material for broadcasting, such as motion pictures (T006, T016);

- (E) Research and development (all A codes);
- (F) Airport concessions (S203);
- (G) Legal services (R418);
- (H) Hotel and restaurant services (S203);
- (I) Placement and supply of personnel services (V241, V251);
- (J) Investigation and security services (S206, S211, R423);
- (K) Education and training services (all U codes, R419);
- (L) Health and social services (all O codes, all G codes);
- $\mbox{(M)}$ Recreational, cultural, and sporting services (G003); and
- (N) Telecommunications services (encompassing only voice telephony, telex, radio telephony, paging, and satellite services) (S1, D304, D305, D316, D317, D399).
- (b) The sanctions in paragraph (a) of this section do not apply to the following:
- (1) Purchases awarded by simplified procedures in accordance with Part 13.
 - (2) Total small business set asides under 19.502-2.
- (3) Contracts in support of the U.S. national security interests.
- (4) Contracts for goods or services awarded outside the United States and its territories where the goods or services are to be used outside the United States.
- (5) Contracts for essential spare, repair, or replacement parts not otherwise available from non-sanctioned countries.
- (c) Authority to exempt certain procurements. (1) The head of an agency, without power of redelegation, may authorize the award of a contract or class of contracts for

- sanctioned EU end products, services, and construction, the purchase of which is otherwise prohibited under paragraph (a) of this section if the agency head determines that such action is necessary—
 - (i) In the public interest;
- (ii) To avoid the restriction of competition in a manner which would limit the procurement in question to, or would establish a preference for, the services, articles, materials, or supplies of a single manufacturer or supplier; or
- (iii) Because there would be or are an insufficient number of potential or actual bidders to assure the procurement of services, articles, materials or supplies of requisite quality at competitive prices.
- (2) When a determination is made according to this paragraph (c), the agency shall notify the United States Trade Representative within 30 days after contract award.
- (3) A copy of the notification required in paragraph (c)(2) of this section shall be sent to the United States Trade Representative.

25.1003 Contract clauses.

Except as provided in 25.1002(b) and (c)—

- (a) Insert the clause at 52.225-18, European Union Sanctions for End Products, in solicitations and contracts for supplies with an estimated acquisition value less than \$190,000.
- (b) Insert the clause at 52.225-19, European Union Sanction for Services, in solicitations and contracts for—
- (1) Services with an estimated acquisition value less than \$190,000; and
 - (2) All services listed in FAR 25.1002(a)(3)(ii).

* * * * * *

from the agency-designated counsel on the appropriate course of action.

29.304 Matters requiring special consideration.

The imposition of State and local taxes may result in special contract considerations including the following:

- (a) With coordination of the agency-designated counsel, a contract may (1) state that the contract price includes or excludes a specified tax or (2) require that the contractor take certain actions with regard to payment, nonpayment, refund, protest, or other treatment of a specified tax. Such special treatment may be appropriate when there is doubt as to the applicability or allocability of the tax, or when the applicability of the tax is being litigated.
- (b) The applicability of State and local taxes to purchases by the Federal Government may depend on the place and terms of delivery. When the contract price will be substantial, alternative places and terms of delivery should be considered in light of possible tax consequences.
- (c) Indefinite-delivery contracts for equipment rental may require the contractor to furnish equipment in any of the States. Since leased equipment remains the contractor's property, States and local governments impose a wide variety of property, use, or other taxes on equipment leased to the Government. The amount of these taxes can vary considerably from jurisdiction to jurisdiction. See 29.401-1 for the prescription of the contract clause to be included in contracts when delivery points are not known at time of contracting.
- (d) The North Carolina State and local sales and use tax. (1) The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure erected, altered, or repaired for such counties and incorporated cities and towns in North Carolina. In United States v. Clayton, 250 F. Supp. 827 (1965), it was held that the United States is entitled to the benefit of the refund, but must follow the refund procedure of the Act and the regulations to recover what it is due.
- (2) The Act provides that, to receive the refund, claimants must file, within 6 months after the claimant's fiscal year closes, a written request substantiated by such records, receipts, and information as the Commissioner of Revenue may require. No refund will be made on an application not filed within the time allowed and in such manner as the Commissioner may require. The requirements of the Commissioner are set forth in regulations that provide that, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the

contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. In the event the contractor makes several purchases from the same vendor, the certified statement must indicate the invoice numbers, the inclusive dates of the invoices, the total amount of the invoices, and the sales and use taxes paid. The statement must also include the cost of any tangible personal property withdrawn from the contractor's warehouse stock and the amount of sales or use tax paid by the contractor. Similar certified statements by subcontractors must be obtained by the general contractor and furnished to the claimant. Any local sales or use taxes included in the contractor's statement must be shown separately from the State sales or use taxes.

(3) The clause prescribed at 29.401-2 requires contractors to submit to contracting officers by November 30 of each year a certified statement disclosing North Carolina State and local sales and use taxes paid during the 12-month period that ended the preceding September 30. The contracting officer shall ensure that contractors comply with this requirement and shall obtain the annual refund to which the Government may be entitled. The application for refund must be filed each year before March 31 and in the manner and form required by the Commissioner of Revenue. Copies of the form may be obtained from the—

State of North Carolina Department of Revenue PO Box 25000 Raleigh North Carolina 27640.

29.305 State and local tax exemptions.

- (a) Evidence of exemption. Evidence needed to establish exemption from State or local taxes depends on the grounds for the exemption claimed, the parties to the transaction, and the requirements of the taxing jurisdiction. Such evidence may include the following:
 - (1) A copy of the contract or relevant portion.
- (2) Copies of purchase orders, shipping documents, credit-card-imprinted sales slips, paid or acknowledged invoices, or similar documents that identify an agency or instrumentality of the United States as the buyer.
 - (3) A U.S. Tax Exemption Form (SF 1094).
- (4) A State or local form indicating that the supplies or services are for the exclusive use of the United States.
- (5) Any other State or locally required document for establishing general or specific exemption.
- (6) Shipping documents indicating that shipments are in interstate or foreign commerce.
- (b) Furnishing proof of exemption. If a reasonable basis to sustain a claimed exemption exists, the seller will be furnished evidence of exemption, as follows:
- (1) Under a contract containing the clause at 52.229–3, Federal, State, and Local Taxes, or at 52.229-4,

Federal, State, and Local Taxes (Noncompetitive Contract), in accordance with the terms of those clauses.

- (2) Under a cost-reimbursement contract, if requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer.
- (3) Under a contract or purchase order that contains no tax provision, if—
- (i) Requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer; and
- (ii) Either the contract price does not include the tax or, if the transaction or property is tax exempt, the contractor consents to a reduction in the contract price.

Subpart 29.4—Contract Clauses

29.401 Domestic contracts.

29.401-1 Indefinite-delivery contracts for leased equipment.

The contracting officer shall insert the clause at 52.229–1, State and Local Taxes, in solicitations and contracts for leased equipment when a fixed-price indefinite-delivery contract is contemplated; the contract will be performed wholly or partly within the United States, its possessions, or Puerto Rico; and the place or places of delivery are not known at the time of contracting.

29.401-2 Construction contracts performed in North

The contracting officer shall insert the clause at 52.229–2, North Carolina State and Local Sales and Use Tax, in solicitations and contracts for construction to be performed in North Carolina. If the requirement is for vessel repair to be performed in North Carolina, the clause shall be used with its Alternate I.

29.401-3 Competitive contracts.

The contracting officer shall insert the clause at 52.229–3, Federal, State, and Local Taxes, in solicitations and contracts if the contract is to be performed wholly or partly within the United States, its possessions, or Puerto Rico, when a fixed-price contract is contemplated and the contract is expected to exceed the simplified acquisition threshold, unless the clause at 52.229-4, Federal State, and Local Taxes (Noncompetitive Contract), is included in the contract.

29.401-4 Noncompetitive contracts.

The contracting officer shall insert the clause at 52.229–4, Federal, State, and Local Taxes (Noncompetitive Contract), in fixed-price noncompetitive contracts when the contract exceeds the simplified acquisition threshold, to be

performed wholly or partly within the United States, its possessions, or Puerto Rico when satisfied that the contract price does not include contingencies for State and local taxes, and that, unless the clause is used, the contract price will include such contingencies.

29.401-5 Contracts performed in U.S. possessions or Puerto Rico.

The contracting officer shall insert the clause at 52.229–5, Taxes—Contracts Performed in U.S. Possessions or Puerto Rico, in solicitations and contracts that include the clause at 52.229-3, Federal, State, and Local Taxes, or 52.229-4, Federal, State, and Local Taxes (Noncompetitive Contract).

29.401-6 New Mexico gross receipts and compensating tax.

(a) Definition.

"Services," as used in this subsection, is as defined in the Gross Receipts and Compensating Tax Act of the State of New Mexico, Sec 7-9-3(k) NM SA 1978, and means all activities engaged in for other persons for a consideration, which activities involve predominately the performance of a service as distinguished from selling or leasing property. "Services" includes activities performed by a person for its members or shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. "Services" also includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. Such tangible personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. However, sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property.

- (b) Contract clause. The contracting officer shall insert the clause at 52.229-10, State of New Mexico Gross Receipts and Compensating Tax, in solicitations and contracts issued by the agencies identified in paragraph (c) of this subsection when all three of the following conditions exist:
- (1) The contractor will be performing a cost-reimbursement contract.
- (2) The contract directs or authorizes the contractor to acquire tangible personal property as a direct cost under a contract and title to such property passes directly to and vests in the United States upon delivery of the property by the vendor
- (3) The contract will be for services to be performed in whole or in part within the State of New Mexico.

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(c) Participating agencies. (1) The agencies listed below have entered into an agreement with the State of New Mexico to eliminate the double taxation of Government cost-reimbursement contracts when contractors and their subcontractors purchase tangible personal property to be used in performing services in whole or in part in the State of New Mexico and for which title to such property will pass to the United States upon delivery of the property to the contractor and its subcontractors by the vendor. Therefore, the clause applies only to solicitations and contracts issued by the—

United States Defense Special Weapons Agency;

United States Department of Agriculture;

United States Department of the Air Force;

United States Department of the Army;

United States Department of Energy;

United States Department of Health and Human Services;

United States Department of the Interior;

United States Department of Labor;

United States Department of the Navy;

United States Department of Transportation;

United States General Services Administration; and United States National Aeronautics and Space

Administration.

(2) Any other Federal agency which expects to award cost-reimbursement contracts to be performed in New Mexico should contact the New Mexico Taxation and Revenue Department to execute a similar agreement.

29.402 Foreign contracts.

29.402-1 Foreign fixed-price contracts.

- (a) The contracting officer shall insert the clause at 52.229-6, Taxes—Foreign Fixed-Price Contracts, in solicitations and contracts expected to exceed the simplified acquisition threshold when a fixed-price contract is contemplated and the contract is to be performed wholly or partly in a foreign country, unless it is contemplated that the contract will be with a foreign government.
- (b) The contracting officer shall insert the clause at 52.229-7, Taxes—Fixed-Price Contracts with Foreign Governments, in solicitations and contracts that exceed the simplified acquisition threshold when a fixed-price contract with a foreign government is contemplated.

29.402-2 Foreign cost-reimbursement contracts.

- (a) The contracting officer shall insert the clause at 52.229-8, Taxes—Foreign Cost-Reimbursement Contracts, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract is to be performed wholly or partly in a foreign country, unless it is contemplated that the contract will be with a foreign government.
- (b) The contracting officer shall insert the clause at 52.229-9, Taxes—Cost-Reimbursement Contracts with Foreign Governments, in solicitations and contracts when a cost-reimbursement contract with a foreign government is contemplated.

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- (D) When a plan or agreement exists wherein the liability for the contribution cannot be compelled, the amount contributed for any year is assignable to that year provided the amount is funded by the time set for filing of the Federal income tax return for that year.
- (E) When the contribution is in the form of stock, the value of the stock contribution shall be limited to the fair market value of the stock on the date that title is effectively transferred to the trust.

Cash contributions shall be allowable only when the contractor furnishes evidence satisfactory to the contracting officer demonstrating that stock purchases by the ESOT are or will be at a fair market price; e.g., makes arrangements with the trust permitting the contracting officer to examine purchases of stock by the trust to determine that prices paid are at fair market value. When excessive prices are paid, the amount of the excess will be credited to the same indirect cost pools that were charged for the ESOP contributions in the year in which the stock purchase occurs. However, when the trust purchases the stock with borrowed funds which will be repaid over a period of years by cash contributions from the contractor to the trust, the excess price over fair market value shall be credited to the indirect cost pools pro rata over the period of years during which the contractor contributes the cash used by the trust to repay the loan. When the fair market value of unissued stock or stock of a closely held corporation is not readily determinable, the valuation will be made on a case-by-case basis taking into consideration the guidelines for valuation used by the IRS.

- (ii) Amounts contributed to an ESOP arising from either—
- (A) An additional investment tax credit (see 1975 Tax Reduction Act—TRASOP's); or
- (B) A payroll-based tax credit (see Economic Recovery Tax Act of 1981) are unallowable.
- (iii) The requirements of subdivision (j)(3)(ii) of this subsection are applicable to Employee Stock Ownership Plans.
- (k) Deferred compensation. (1) Deferred compensation is an award given by an employer to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods before the date of receipt of compensation by the employee. Deferred compensation does not include the amount of year-end accruals for salaries, wages, or bonuses that are paid within a reasonable period of time after the end of a cost accounting period. Subject to 31.205-6(a), deferred awards are allowable when they are based on current or future services. Awards made in periods subsequent to the period when the work being remunerated was performed are not allowable.
- (2) The costs of deferred awards shall be measured, allocated, and accounted for in compliance with the provi-

- sions of 48 CFR 9904.415, Accounting for the Cost of Deferred Compensation.
- (3) Deferred compensation payments to employees under awards made before the effective date of 48 CFR 9904.415 are allowable to the extent they would have been allowable under prior acquisition regulations.
- (l) Compensation incidental to business acquisitions. The following costs are unallowable:
- (1) Payments to employees under agreements in which they receive special compensation, in excess of the contractor's normal severance pay practice, if their employment terminates following a change in the management control over, or ownership of, the contractor or a substantial portion of its assets.
- (2) Payments to employees under plans introduced in connection with a change (whether actual or prospective) in the management control over, or ownership of, the contractor or a substantial portion of its assets in which those employees receive special compensation, which is contingent upon the employee remaining with the contractor for a specified period of time.
- (m) Fringe benefits. (1) Fringe benefits are allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. Fringe benefits include, but are not limited to, the cost of vacations, sick leave, holidays, military leave, employee insurance, and supplemental unemployment benefit plans. Except as provided otherwise in Subpart 31.2, the costs of fringe benefits are allowable to the extent that they are reasonable and are required by law, employer-employee agreement, or an established policy of the contractor.
- (2) That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees (see 31.205-46(f)).
- (n) Employee rebate and purchase discount plans. Rebates and purchase discounts, in whatever form, granted to employees on products or services produced by the contractor or affiliates are unallowable.
- (0) Postretirement benefits other than pensions (PRB). (1) PRB covers all benefits, other than cash benefits and life insurance benefits paid by pension plans, provided to employees, their beneficiaries, and covered dependents during the period following the employees' retirement. Benefits encompassed include, but are not limited to, postretirement health care; life insurance provided outside a pension plan; and other welfare benefits such as tuition assistance, day care, legal services, and housing subsidies provided after retirement.
- (2) To be allowable, PRB costs must be reasonable and incurred pursuant to law, employer-employee agreement, or an established policy of the contractor. In addition,

to be allowable, PRB costs must also be calculated in accordance with paragraphs (o)(2)(i), (ii), or (iii) of this section.

- (i) Cash basis. Cost recognized as benefits when they are actually provided, must be paid to an insurer, provider, or other recipient for current year benefits or premiums.
- (ii) *Terminal funding*. If a contractor elects a terminal-funded plan, it does not accrue PRB costs during the working lives of employees. Instead, it accrues and pays the entire PRB liability to an insurer or trustee in a lump sum upon the termination of employees (or upon conversion to such a terminal-funded plan) to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The lump sum is allowable if amortized over a period of 15 years.
- (iii) Accrual basis. Accrual costing other than terminal funding must be measured and assigned according to Generally Accepted Accounting Principles and be paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The accrual must also be calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board.
- (3) To be allowable, costs must be funded by the time set for filing the Federal income tax return or any extension thereof. PRB costs assigned to the current year, but not funded or otherwise liquidated by the tax return time, shall not be allowable in any subsequent year.
- (4) Increased PRB costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable.
- (5) Costs of postretirement benefits in subdivision (o)(2)(iii) of this subsection attributable to past service ("transition obligation") as defined in Financial Accounting Standards Board Statement 106, paragraph 110, are allowable subject to the following limitation: The allowable amount of such costs assignable to a contractor fiscal year cannot exceed the amount of such costs which would be assigned to that contractor fiscal year under the delayed recognition methodology described in paragraphs 112 and 113 of Statement 106.
- (6) The Government shall receive an equitable share of any amount of previously funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which certified cost or pricing data were required or which were subject to Subpart 31.2.
- (p) Limitation on allowability of compensation for certain contractor personnel. (1) For contracts awarded during fiscal year 1997, costs incurred from October 1, 1996, through September 30, 1997, for compensation of an officer in a senior management position that exceed

\$250,000 per year are unallowable (Section 809 of Public Law 104-201).

- (2) As used in this paragraph:
 - (i) "Compensation" means—
- (A) The total amount of taxable wages paid to the employee for the year concerned; plus
- (B) The total amount of elective deferred compensation earned by the employee in the year concerned.
- (ii) "Officer in a senior management position" means—
- (A) The contractor's Chief Executive Officer (CEO) or any individual acting in a similar capacity;
- (B) The contractor's four most highly compensated officers in senior management positions, other than the CEO; and
- (C) If the contractor is organizationally subdivided into intermediate home offices and/or segments, the five most highly compensated individuals in senior management positions at each such intermediate home office and/or segment.

31.205-7 Contingencies.

- (a) "Contingency," as used in this subpart, means a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at the present time.
- (b) Costs for contingencies are generally unallowable for historical costing purposes because such costing deals with costs incurred and recorded on the contractor's books. However, in some cases, as for example, terminations, a contingency factor may be recognized when it is applicable to a past period to give recognition to minor unsettled factors in the interest of expediting settlement.
- (c) In connection with estimates of future costs, contingencies fall into two categories:
- (1) Those that may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy; *e.g.*, anticipated costs of rejects and defective work. Contingencies of this category are to be included in the estimates of future costs so as to provide the best estimate of performance cost.
- (2) Those that may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the contractor and to the Government; *e.g.*, results of pending litigation. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately (including the basis upon which the contingency is computed) to facilitate the negotiation of appropriate contractual coverage. (See, for example, 31.205-6(g), 31.205-19, and 31.205-24.)

- (1) Gains and losses are processed through the depreciation reserve account and reflected in the depreciation allowable under 31.205-11; or
- (2) The property is exchanged as part of the purchase price of a similar item, and the gain or loss is taken into consideration in the depreciation cost basis of the new item.
- (e) Gains and losses arising from mass or extraordinary sales, retirements, or other disposition other than through business combinations shall be considered on a case-by-case basis.
- (f) Gains and losses of any nature arising from the sale or exchange of capital assets other than depreciable property shall be excluded in computing contract costs.
- (g) With respect to long-lived tangible and identifiable intangible assets held for use, no loss shall be allowed for a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances (e.g., environmental damage, idle facilities arising from a declining business base, etc.). If depreciable property or other capital assets have been written down from carrying value to fair value due to impairments, gains or losses upon disposition shall be the amounts that would have been allowed had the assets not been written down.

31.205-17 Idle facilities and idle capacity costs.

(a) "Costs of idle facilities or idle capacity," as used in this subsection, means costs such as maintenance, repair, housing, rent, and other related costs; *e.g.*, property taxes, insurance, and depreciation.

"Facilities," as used in this subsection, means plant or any portion thereof (including land integral to the operation), equipment, individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the contractor.

"Idle capacity," as used in this subsection, means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one-shift basis, less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multiple-shift basis may be used in the calculation instead of a one-shift basis if it can be shown that this amount of usage could normally be expected for the type of facility involved.

"Idle facilities," as used in this subsection, means completely unused facilities that are excess to the contractor's current needs.

- (b) The costs of idle facilities are unallowable unless the facilities—
 - (1) Are necessary to meet fluctuations in workload; or
- (2) Were necessary when acquired and are now idle because of changes in requirements, production economies,

- reorganization, termination, or other causes which could not have been reasonably foreseen. (Costs of idle facilities are allowable for a reasonable period, ordinarily not to exceed 1 year, depending upon the initiative taken to use, lease, or dispose of the idle facilities (but see 31.205-42)).
- (c) Costs of idle capacity are costs of doing business and are a factor in the normal fluctuations of usage or overhead rates from period to period. Such costs are allowable provided the capacity is necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire plant or among a group of assets having substantially the same function may be idle facilities.
- (d) Any costs to be paid directly by the Government for idle facilities or idle capacity reserved for defense mobilization production shall be the subject of a separate agreement.

31.205-18 Independent research and development and bid and proposal costs.

(a) Definitions.

"Applied research," as used in this subsection, means that effort which (1) normally follows basic research, but may not be severable from the related basic research, (2) attempts to determine and exploit the potential of scientific discoveries or improvements in technology, materials, processes, methods, devices, or techniques, and (3) attempts to advance the state of the art. Applied research does not include efforts whose principal aim is design, development, or test of specific items or services to be considered for sale; these efforts are within the definition of the term "development," defined in this subsection.

"Basic research," as used in this subsection, means that research which is directed toward increase of knowledge in science. The primary aim of basic research is a fuller knowledge or understanding of the subject under study, rather than any practical application thereof.

"Bid and proposal (B&P) costs," as used in this subsection, means the costs incurred in preparing, submitting, and supporting bids and proposals (whether or not solicited) on potential Government or non-Government contracts. The term does not include the costs of effort sponsored by a grant or cooperative agreement, or required in the performance of a contract.

"Company," as used in this subsection, means all divisions, subsidiaries, and affiliates of the contractor under common control.

"Development," as used in this subsection, means the systematic use, under whatever name, of scientific and technical knowledge in the design, development, test, or evaluation of a potential new product or service (or of an improvement in an existing product or service) for the pur-

pose of meeting specific performance requirements or objectives. Development includes the functions of design engineering, prototyping, and engineering testing. Development excludes—

- (1) Subcontracted technical effort which is for the sole purpose of developing an additional source for an existing product, or
- (2) Development effort for manufacturing or production materials, systems, processes, methods, equipment, tools, and techniques not intended for sale.

"Independent research and development (IR&D)," as used in this subsection, means a contractor's IR&D cost that consists of projects falling within the four following areas: (1) basic research, (2) applied research, (3) development, and (4) systems and other concept formulation studies. The term does not include the costs of effort sponsored by a grant or required in the performance of a contract. IR&D effort shall not include technical effort expended in developing and preparing technical data specifically to support submitting a bid or proposal.

"Systems and other concept formulation studies," as used in this subsection, means analyses and study efforts either related to specific IR&D efforts or directed toward identifying desirable new systems, equipment or components, or modifications and improvements to existing systems, equipment, or components.

- (b) Composition and allocation of costs. The requirements of 48 CFR 9904.420, Accounting for independent research and development costs and bid and proposal costs, are incorporated in their entirety and shall apply as follows—
- (1) *Fully-CAS-covered contracts*. Contracts that are fully-CAS-covered shall be subject to all requirements of 48 CFR 9904.420.
- (2) Modified CAS-covered and non-CAS-covered contracts. Contracts that are not CAS-covered or that contain terms or conditions requiring modified CAS coverage shall be subject to all requirements of 48 CFR 9904.420 except 48 CFR 9904.420-50(e)(2) and 48 CFR 9904.420-50(f)(2), which are not then applicable. However, non-CAS-covered or modified CAS-covered contracts awarded at a time the contractor has CAS-covered contracts requiring compliance with 48 CFR 9904.420, shall be subject to all the requirements of 48 CFR 9904.420. When the requirements of 48 CFR 9904.420-50(e)(2) and 48 CFR 9904.420-50(f)(2) are not applicable, the following apply:
- (i) IR&D and B&Pcosts shall be allocated to final cost objectives on the same basis of allocation used for the G&A expense grouping of the profit center (see 31.001) in which the costs are incurred. However, when IR&D and B&P costs clearly benefit other profit centers or benefit the entire company, those costs shall be allocated through the

- G&A of the other profit centers or through the corporate G&A, as appropriate.
- (ii) If allocations of IR&D or B&P through the G&Abase do not provide equitable cost allocation, the contracting officer may approve use of a different base.
- (c) Allowability. Except as provided in paragraphs (d) and (e) of this subsection, or as provided in agency regulations, costs for IR&D and B&P are allowable as indirect expenses on contracts to the extent that those costs are allocable and reasonable.
- (d) *Deferred IR&D costs.* (1) IR&D costs that were incurred in previous accounting periods are unallowable, except when a contractor has developed a specific product at its own risk in anticipation of recovering the development costs in the sale price of the product provided that—
- (i) The total amount of IR&D costs applicable to the product can be identified;
- (ii) The proration of such costs to sales of the product is reasonable;
- (iii) The contractor had no Government business during the time that the costs were incurred or did not allocate IR&D costs to Government contracts except to prorate the cost of developing a specific product to the sales of that product; and
- (iv) No costs of current IR&D programs are allocated to Government work except to prorate the costs of developing a specific product to the sales of that product.
- (2) When deferred costs are recognized, the contract (except firm-fixed-price and fixed-price with economic price adjustment) will include a specific provision setting forth the amount of deferred IR&D costs that are allocable to the contract. The negotiation memorandum will state the circumstances pertaining to the case and the reason for accepting the deferred costs.
- (e) Cooperative arrangements. (1) IR&D costs may be incurred by contractors working jointly with one or more non-Federal entities pursuant to a cooperative arrangement (for example, joint ventures, limited partnerships, teaming arrangements, and collaboration and consortium arrangements). IR&D costs also may include costs contributed by contractors in performing cooperative research and development agreements, or similar arrangements, entered into under—
 - (i) Section 12 of the Stevenson-Wydler Technology Transfer Act of 1980 (15 U.S.C. 3710(a));
 - (ii) Sections 203(c)(5) and (6) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c)(5) and (6));
 - (iii) 10 U.S.C. 2371 for the Defense Advanced Research Projects Agency; or
 - (iv) Other equivalent authority.
- (2) IR&D costs incurred by a contractor pursuant to these types of cooperative arrangements should be consid-

ered as allowable IR&D costs if the work performed would have been allowed as contractor IR&D had there been no cooperative arrangement.

(3) Costs incurred in preparing, submitting, and supporting offers on potential cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

31.205-19 Insurance and indemnification.

- (a) Insurance by purchase or by self-insuring includes coverage the contractor is required to carry, or to have approved, under the terms of the contract and any other coverage the contractor maintains in connection with the general conduct of its business. Any contractor desiring to establish a program of self-insurance applicable to contracts that are not subject to 48 CFR 9904.416, Accounting for Insurance Costs, shall comply with the self-insurance requirements of that standard as well as with Part 28 of this Regulation. However, approval of a contractor's insurance program in accordance with Part 28 does not constitute a determination as to the allowability of the program's cost. The amount of insurance costs which may be allowed is subject to the cost limitations and exclusions in the following subparagraphs.
- (1) Costs of insurance required or approved, and maintained by the contractor pursuant to the contract, are allowable.
- (2) Costs of insurance maintained by the contractor in connection with the general conduct of its business are allowable, subject to the following limitations:
- (i) Types and extent of coverage shall follow sound business practice, and the rates and premiums must be reasonable.

- (ii) Costs allowed for business interruption or other similar insurance must be limited to exclude coverage of profit.
- (iii) The cost of property insurance premiums for insurance coverage in excess of the acquisition cost of the insured assets is allowable only when the contractor has a formal written policy assuring that in the event the insured property is involuntarily converted, the new asset shall be valued at the book value of the replaced asset plus or minus adjustments for differences between insurance proceeds and actual replacement cost. If the contractor does not have such a formal written policy, the cost of premiums for insurance coverage in excess of the acquisition cost of the insured asset is unallowable.
- (iv) Costs of insurance for the risk of loss of or damage to Government property are allowable only to the extent that the contractor is liable for such loss or damage and such insurance does not cover loss or damage that results from willful misconduct or lack of good faith on the part of any of the contractor's directors or officers or other equivalent representatives.
- (v) Contractors operating under a program of self-insurance must obtain approval of the program when required by 28.308(a).
- (vi) Costs of insurance on the lives of officers, partners, or proprietors are allowable only to the extent that the insurance represents additional compensation (see 31.205-6).
- (3) Actual losses are unallowable unless expressly provided for in the contract, except—(i) Losses incurred under the nominal deductible provisions of purchased insurance, in keeping with sound business practice, are allowable for contracts not subject to 48 CFR 9904.416 and when the

[The next page is 31-29.]

(ii) The individuals attendance is essential to achieve the purpose of the conference, meeting, convention, symposium, etc.

31.205-44 Training and education costs.

- (a) *Allowable costs*. Training and education costs are allowable to the extent indicated below.
- (b) *Vocational training*. Costs of preparing and maintaining a noncollege level program of instruction, including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, are allowable. These costs include—
- (1) Salaries or wages of trainees (excluding overtime compensation),
- (2) Salaries of the director of training and staff when the training program is conducted by the contractor,
- (3) Tuition and fees when the training is in an institution not operated by the contractor, and/or
 - (4) Training materials and textbooks.
- (c) Part-time college level education. Allowable costs of part-time college education at an undergraduate or post-graduate level, including that provided at the contractor's own facilities, are limited to—
- (1) Fees and tuition charged by the educational institution, or, instead of tuition, instructors' salaries and the related share of indirect cost of the educational institution, to the extent that the sum thereof is not in excess of the tuition that would have been paid to the participating educational institution;
- (2) Salaries and related costs of instructors who are employees of the contractor;
 - (3) Training materials and textbooks; and
- (4) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours. In unusual cases, the period may be extended (see paragraph (h) of this subsection).
- (d) Full-time education. Costs of tuition, fees, training materials and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the contractor's own facilities, at a postgraduate but not undergraduate college level, are allowable only when the course or degree pursued is related to the field in which the employee is working or may reasonably be expected to work and are limited to a total period not to exceed 2 school years or the length of the degree program, whichever is less, for each employee so trained.
- (e) Specialized programs. Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of managers or to prepare employees for such positions are allowable. Such costs include enrollment fees and related

- charges and employees'salaries, subsistence, training materials, textbooks, and travel. Costs allowable under this paragraph do not include costs for courses that are part of a degree-oriented curriculum, which are only allowable pursuant to paragraphs (c) and (d) of this subsection.
- (f) *Other expenses*. Maintenance expense and normal depreciation or fair rental on facilities owned or leased by the contractor for training purposes are allowable in accordance with 31.205-11, 31.205-17, 31.205-24, and 31.205-36.
- (g) *Grants*. Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, and fellowships are considered contributions and are unallowable.
- (h) Advance agreements. (1) Training and education costs in excess of those otherwise allowable under paragraphs (c) and (d) of this subsection, including subsistence, salaries or any other emoluments, may be allowed to the extent set forth in an advance agreement negotiated under 31.109. To be considered for an advance agreement, the contractor must demonstrate that the costs are consistently incurred under an established managerial, engineering, or scientific training and education program, and that the course or degree pursued is related to the field in which the employees are now working or may reasonably be expected to work. Before entering into the advance agreement, the contracting officer shall give consideration to such factors
- (i) The length of employees's ervice with the contractor;
 - (ii) Employees' past performance and potential;
- (iii) Whether employees are in formal development programs; and
 - (iv) The total number of participating employees.
- (2) Any advance agreement must include a provision requiring the contractor to refund to the Government training and education costs for employees who resign within 12 months of completion of such training or education for reasons within an employee's control.
- (i) Training or education costs for other than bona fide employees. Costs of tuition, fees, textbooks, and similar or related benefits provided for other than bona fide employees are unallowable, except that the costs incurred for educating employee dependents (primary and secondary level studies) when the employee is working in a foreign country where public education is not available and where suitable private education is inordinately expensive may be included in overseas differential.
- (j) *Employee dependent education plans*. Costs of college plans for employee dependents are unallowable.

31.205-45 Transportation costs.

Allowable transportation costs include freight, express, cartage, and postage charges relating to goods purchased, in

process, or delivered. When these costs can be identified with the items involved, they may be directly costed as transportation costs or added to the cost of such items. When identification with the materials received cannot be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the contractor follows a consistent and equitable procedure. Outbound freight, if reimbursable under the terms of the contract, shall be treated as a direct cost.

31.205-46 Travel costs.

- (a) Costs for transportation, lodging, meals, and incidental expenses. (1) Costs incurred by contractor personnel on official company business are allowable, subject to the limitations contained in this subsection. Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, provided the method used results in a reasonable charge. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, provided the method used results in a reasonable charge.
- (2) Except as provided in subparagraph (a)(3) of this subsection, costs incurred for lodging, meals, and incidental expenses (as defined in the regulations cited in (a)(2)(i) through (iii) of this subparagraph) shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the—
- (i) Federal Travel Regulations, prescribed by the General Services Administration, for travel in the conterminous 48 United States, available on a subscription basis from the:

Superintendent of Documents U.S. Government Printing Office Washington DC 20402

Stock No. 922-002-00000-2

(ii) Joint Travel Regulation, Volume 2, DoD Civilian Personnel, Appendix A, prescribed by the Department of Defense, for travel in Alaska, Hawaii, The Commonwealth of Puerto Rico, and territories and possessions of the United States, available on a subscription basis from the—

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Stock No. 908-010-00000-1; or

(iii) Standardized Regulations (Government Civilians, Foreign Areas), Section 925, "Maximum Travel Per Diem Allowances for Foreign Areas," prescribed by the Department of State, for travel in areas not covered in (a)(2)(i) and (ii) of this subparagraph, available on a subscription basis from the—

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Stock No. 744-008-00000-0

- (3) In special or unusual situations, actual costs in excess of the above-referenced maximum per diem rates are allowable provided that such amounts do not exceed the higher amounts authorized for Federal civilian employees as permitted in the regulations referenced in (a)(2)(i), (ii), or (iii) of this subsection. For such higher amounts to be allowable, all of the following conditions must be met:
- (i) One of the conditions warranting approval of the actual expense method, as set forth in the regulations referenced in paragraphs (a)(2)(i), (ii), or (iii) of this subsection, must exist.
- (ii) A written justification for use of the higher amounts must be approved by an officer of the contractor's organization or designee to ensure that the authority is properly administered and controlled to prevent abuse.
- (iii) If it becomes necessary to exercise the authority to use the higher actual expense method repetitively or on a continuing basis in a particular area, the contractor must obtain advance approval from the contracting officer.
- (iv) Documentation to support actual costs incurred shall be in accordance with the contractor's established practices, subject to paragraph (a)(7) of this subsection, and provided that a receipt is required for each expenditure of \$75.00 or more. The approved justification required by paragraph (a)(3)(ii) and, if applicable, paragraph (a)(3)(iii) of this subsection must be retained.
- (4) Subparagraphs (a)(2) and (a)(3) of this subsection do not incorporate the regulations cited in subdivisions (a)(2)(i), (ii), and (iii) of this subsection in their entirety. Only the maximum per diem rates, the definitions of lodging, meals, and incidental expenses, and the regulatory coverage dealing with special or unusual situations are incorporated herein.
- (5) An advance agreement (see 31.109) with respect to compliance with subparagraphs (a)(2) and (a)(3) of this subsection may be useful and desirable.
- (6) The maximum per diem rates referenced in subparagraph (a)(2) of this subsection generally would not constitute a reasonable daily charge—
 - (i) When no lodging costs are incurred; and/or
- (ii) On partial travel days (e.g., day of departure and return).

Appropriate downward adjustments from the maximum per diem rates would normally be required under these circumstances. While these adjustments need not be calculated in

- (b) Approval of financing requests. Unless otherwise provided in agency regulations, or by agreement with the appropriate payment official—
- (1) The contracting officer shall be responsible for receiving, approving, and transmitting all performance-based payment requests to the appropriate payment office; and
- (2) Each approval shall specify the amount to be paid, necessary contractual information, and the appropriation account(s) (see 32.1004(c)) to be charged for the payment.
- (c) Reviews. The contracting officer is responsible for determining what reviews are required for protection of the Government's interests. The contracting officer should consider the contractor's experience, performance record, reliability, financial strength, and the adequacy of controls established by the contractor for the administration of performance-based payments. Based upon the risk to the Government, post-payment reviews and verifications should normally be arranged as considered appropriate by the contracting officer. If considered necessary by the contracting officer, pre-payment reviews may be required.
- (d) *Incomplete performance*. The contracting officer shall not approve a performance-based payment until the specified event or performance criterion has been successfully accomplished in accordance with the contract. If an event is cumulative, the contracting officer shall not approve the performance-based payment unless all identified preceding events or criteria are accomplished.
- (e) Government-caused delay. Entitlement to a performance-based payment is solely on the basis of successful performance of the specified events or performance criteria. However, if there is a Government-caused delay, the contracting officer may renegotiate the performance-based payment schedule, to facilitate contractor billings for any successfully accomplished portions of the delayed event or criterion.

32.1008 Suspension or reduction of performance-based payments.

The contracting officer shall apply the policy and procedures in paragraphs (a), (b), (c), and (e) of 32.503-6, Suspension or reduction of payments, whenever exercising the Government's rights to suspend or reduce performance-based payments in accordance with paragraph (e) of the clause at 52.232-32, Performance-Based Payments.

32.1009 Title.

(a) Since the clause at 52.232-32, Performance-Based Payments, gives the Government title to the property described in paragraph (f) of the clause, the contracting officer must ensure that the Government title is not compromised by other encumbrances. Ordinarily, the contracting officer, in the absence of reason to believe

- otherwise, may rely upon the contractor's certification contained in the payment request.
- (b) If the contracting officer becomes aware of any arrangement or condition that would impair the Government's title to the property affected by the Performance-Based Payments clause, the contracting officer shall require additional protective provisions.
- (c) The existence of any such encumbrance is a violation of the contractor's obligations under the contract, and the contracting officer may, if necessary, suspend or reduce payments under the terms of the Performance-Based Payments clause covering failure to comply with a material requirement of the contract. In addition, if the contractor fails to disclose an existing encumbrance in the certification, the contracting officer should consult with legal counsel concerning possible violation of 31 U.S.C. 3729, the False Claims Act.

32.1010 Risk of loss.

- (a) Under the clause at 52.232-32, Performance-Based Payments, and except for normal spoilage, the contractor bears the risk for loss, theft, destruction, or damage to property affected by the clause, even though title is vested in the Government, unless the Government has expressly assumed this risk. The clauses prescribed in this regulation related to performance-based payments, default, and terminations do not constitute a Government assumption of risk.
- (b) If a loss occurs in connection with property for which the contractor bears the risk, and the property is needed for performance, the contractor is obligated to repay the Government the performance-based payments related to the property.
- (c) The contractor is not obligated to pay for the loss of property for which the Government has assumed the risk of loss. However, a serious loss may impede the satisfactory progress of contract performance, so that the contracting officer may need to act under paragraph (e)(2) of the Performance-Based Payments clause. In addition, while the contractor is not required to repay previous performance-based payments in the event of a loss for which the Government has assumed the risk, such a loss may prevent the contractor from making the certification required by the Performance-Based Payments clause.

Subpart 32.11—Electronic Funds Transfer

32.1100 Scope of subpart.

This subpart provides policy and procedures for Government payment by electronic funds transfer (EFT).

32.1101 Policy.

(a) 31 U.S.C. 3332(e) requires payment by EFT in certain situations. The payment office, not the contracting

officer, determines if payment is to be made by EFT. The payment office may determine not to require submission of EFT information in accordance with paragraph (j) of the contract clauses at 52.232-33 and 52.232-34.

- (b) The Government will protect against improper disclosure of a contractor's EFT information. The clauses at 52.232-33 and 52.232-34 require the contractor to submit such information directly to the payment office.
- (c) Contractors that do not have an account at a domestic United States financial institution or an authorized payment agent are exempted by 31 U.S.C. 3332 until January 1, 1999, from the requirement to be paid by EFT. The clause at 52.232-33 provides for the contractor to submit a certification to that effect directly to the payment office in lieu of the EFT information otherwise required by the clause.
- (d) Payment by EFT is the preferred method of contract payment in normal contracting situations. However, in accordance with 31 CFR 208.3(c), certain classes of contracts have been authorized specific limited exceptions as listed in paragraphs (d)(1) through (4) of this section. In these situations, the method of payment shall be specified by the payment office, either through agency regulations or by specific agreement.
- (1) Contracts awarded by contracting officers outside the United States and Puerto Rico shall provide for payment by other than EFT. However, payment by EFTis acceptable for this type of contract if the contractor agrees and the payment office concurs.
- (2) Contracts denominated or paid in other than United States dollars shall provide for payment by other than EFT.
- (3) Classified contracts (see 4.401) shall provide for payment by other than EFT where payment by EFT could compromise the safeguarding of classified information or national security, or where arrangements for appropriate EFT payments would be impractical due to security considerations.
- (4) Contracts executed by deployed contracting officers in the course of military operations, including, but not limited to, contingency operations as defined in 10 U.S.C. 101(a)(13), or contracts executed by any contracting officer in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies, shall provide for payment by other than EFT where (i) EFT payment is not known to be possible, or (ii) EFT payment would not support the objectives of the operation. Contracting officers predesignated to perform contracting duties in the event of these operations shall include coordinated plans for payment arrangements as part of the pre-contingency contract operations planning.

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32.1102 Assignment of claims.

The use of EFT payment methods is not a substitute for a properly executed assignment of claims in accordance with Subpart 32.8. EFT information which shows the ultimate recipient of the transfer to be other than the contractor, in the absence of a proper assignment of claims, is considered to be incorrect EFT information within the meaning of the "Suspension of Payment" paragraphs of the EFT clauses at 52.232-33 and 52.232-34.

32.1103 Contract clauses.

- (a) Unless instructed otherwise by the cognizant payment office or agency guidance, the contracting officer shall insert the clause at 52.232-33, Mandatory Information for Electronic Funds Transfer Payment, in all solicitations and resulting contracts which (1) will not be paid through use of the Governmentwide commercial purchase card (see 13.003(f)); and (2) are not otherwise excepted in accordance with 32.1101(d). The clause may be inserted in other contracts if the contractor requests payment by EFT and the payment office concurs.
- (b) Unless instructed otherwise by agency guidance, the contracting officer shall insert the clause at 52.232-34, Optional Information for Electronic Funds Transfer Payment, in all solicitations and resulting contracts which—
 - (1) Do not contain the clause at 52.232-33;
- (2) Will not be paid through use of the Governmentwide commercial purchase card (see 13.301); and
- (3) Are not otherwise excepted in accordance with 32.1101(d).
- (c) For contracts containing the clause at 52.212-4, Contract Terms and Conditions—Commercial Items, if the clause at 52.232-33, Mandatory Information for Electronic Funds Transfer Payment, will not be included in the contract in accordance with paragraph (a) of this section, the contracting officer shall attach an addendum to the contract that deletes the clause at 52.232-33 and—
- (1) If required by paragraph (b) of this section, incorporates the clause at 52.232-34, Optional Information for Electronic Funds Transfer Payment, in the contract; or
- (2) If the clause at 52.232-34 is not required, specifies that the Government will make payment under the contract by check.
- (d) If more than one disbursing office will make payment under a contract, the contracting officer shall include the EFT clause appropriate for each office and shall identify the applicability by disbursing office and contract line item.

FAC 97-03 FEBRUARY 9, 1998

PART 33—PROTESTS, DISPUTES, AND APPEALS

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33.000 Scope of part.

This part prescribes policies and procedures for filing protests and for processing contract disputes and appeals.

Subpart 33.1—Protests

33.101 Definitions.

"Day," as used in this subpart, means a calendar day, unless otherwise specified. In the computation of any period—

- (a) The day of the act, event, or default from which the designated period of time begins to run is not included; and
- (b) The last day after the act, event, or default is included unless—
- (1) The last day is a Saturday, Sunday, or Federal holiday; or
- (2) In the case of a filing of a paper at any appropriate administrative forum, the last day is a day on which weather or other conditions cause the closing of the forum for all or part of the day, in which event the next day on which the appropriate administrative forum is open is included.

"Filed," as used in this subpart, means the complete receipt of any document by an agency before its close of business. Documents received after close of business are considered filed as of the next day. Unless otherwise stated, the agency close of business is presumed to be 4:30 p.m., local time.

"Interested party for the purpose of filing a protest," as used in this subpart, means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

"Protest," as used in this subpart, means a written objection by an interested party to any of the following:

- (a) A solicitation or other request by an agency for offers for a contract for the procurement of property or services.
 - (b) The cancellation of the solicitation or other request.
 - (c) An award or proposed award of the contract.
- (d) A termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

33.102 General.

- (a) Contracting officers shall consider all protests and seek legal advice, whether protests are submitted before or after award and whether filed directly with the agency or the General Accounting Office (GAO). (See 19.302 for protests of small business status.)
- (b) If, in connection with a protest, the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, the head of the agency may—
- (1) Take any action that could have been recommended by the Comptroller General had the protest been filed with the General Accounting Office; and
 - (2) Pay appropriate costs as stated in 33.104(h).
- (3) Require the awardee to reimburse the Government's costs, as provided in this paragraph, where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.
- (i) When a protest is sustained by GAO under circumstances that may allow the Government to seek reimbursement for protest costs, the contracting officer will determine whether the protest was sustained based on the awardee's negligent or intentional misrepresentation. If the protest was sustained on several issues, protest costs shall be apportioned according to the costs attributable to the awardee's actions.
- (ii) The contracting officer shall review the amount of the debt, degree of the awardee's fault, and costs of collection, to determine whether a demand for reimbursement

ought to be made. If it is in the best interests of the Government to seek reimbursement, the contracting officer shall notify the contractor in writing of the nature and amount of the debt, and the intention to collect by offset if necessary. Prior to issuing a final decision, the contracting officer shall afford the contractor an opportunity to inspect and copy agency records pertaining to the debt to the extent permitted by statute and regulation, and to request review of the matter by the head of the contracting activity.

- (iii) When appropriate, the contracting officer shall also refer the matter to the agency debarment official for consideration under Subpart 9.4.
- (c) In accordance with 31 U.S.C. 1558, with respect to any protest filed with the GAO, if the funds available to the agency for a contract at the time a protest is filed in connection with a solicitation for, proposed award of, or award of such a contract would otherwise expire, such funds shall remain available for obligation for 100 days after the date on which the final ruling is made on the protest. A ruling is considered final on the date on which the time allowed for filing an appeal or request for reconsideration has expired, or the date on which a decision is rendered on such appeal or request, whichever is later.
- (d) Protest likely after award. The contracting officer may stay performance of a contract within the time period contained in subparagraph 33.104(c)(1) if the contracting officer makes a written determination that—
 - (1) A protest is likely to be filed; and
- (2) Delay of performance is, under the circumstances, in the best interests of the United States.
- (e) An interested party wishing to protest is encouraged to seek resolution within the agency (see 33.103) before filing a protest with the GAO, but may protest to the GAO in accordance with GAO regulations (4 CFR Part 21).
- (f) No person may file a protest at GAO for a procurement integrity violation unless that person reported to the contracting officer the information constituting evidence of the violation within 14 days after the person first discovered the possible violation (41 U.S.C. 423(g)).

33.103 Protests to the agency.

- (a) *Reference*. Executive Order 12979, Agency Procurement Protests, establishes policy on agency procurement protests.
- (b) Prior to submission of an agency protest, all parties shall use their best efforts to resolve concerns raised by an interested party at the contracting officer level through open and frank discussions.
- (c) The agency should provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests. Where appropriate, the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel are acceptable protest resolution methods.

- (d) The following procedures are established to resolve agency protests effectively, to build confidence in the Government's acquisition system, and to reduce protests outside of the agency:
- (1) Protests shall be concise and logically presented to facilitate review by the agency. Failure to substantially comply with any of the requirements of subparagraph (d)(2) of this section may be grounds for dismissal of the protest.
 - (2) Protests shall include the following information:
- (i) Name, address, and fax and telephone numbers of the protester.
 - (ii) Solicitation or contract number.
- (iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.
 - (iv) Copies of relevant documents.
 - (v) Request for a ruling by the agency.
 - (vi) Statement as to the form of relief requested.
- (vii) All information establishing that the protester is an interested party for the purpose of filing a protest.
- (viii) All information establishing the timeliness of the protest.
- (3) All protests filed directly with the agency will be addressed to the contracting officer or other official designated to receive protests.
- (4) In accordance with agency procedures, interested parties may request an independent review of their protest at a level above the contracting officer; solicitations should advise potential bidders and offerors that this review is available. Agency procedures and/or solicitations shall notify potential bidders and offerors whether this independent review is available as an alternative to consideration by the contracting officer of a protest or is available as an appeal of a contracting officer decision on a protest. Agencies shall designate the official(s) who are to conduct this independent review, but the official(s) need not be within the contracting officer's supervisory chain. When practicable, officials designated to conduct the independent review should not have had previous personal involvement in the procurement. If there is an agency appellate review of the contracting officer's decision on the protest, it will not extend GAO's timeliness requirements. Therefore, any subsequent protest to the GAO must be filed within 10 days of knowledge of initial adverse agency action (4 CFR 21.2(a)(3)).
- (e) Protests based on alleged apparent improprieties in a solicitation shall be filed before bid opening or the closing date for receipt of proposals. In all other cases, protests shall be filed no later than 10 days after the basis of protest is known or should have been known, whichever is earlier. The agency, for good cause shown, or where it determines that a protest raises issues significant to the agency's acqui-

sition system, may consider the merits of any protest which is not timely filed.

- (f) Action upon receipt of protest. (1) Upon receipt of a protest before award, a contract may not be awarded, pending agency resolution of the protest, unless contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.
- (2) If award is withheld pending agency resolution of the protest, the contracting officer will inform the offerors whose offers might become eligible for award of the contract. If appropriate, the offerors should be requested, before expiration of the time for acceptance of their offers, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extension of offers, consideration should be given to proceeding with award pursuant to subparagraph (f)(1) of this section.
- (3) Upon receipt of a protest within 10 days after contract award or within 5 days after a debriefing date offered to the protester under a timely debriefing request in accordance with 15.505 or 15.506, whichever is later, the contracting officer shall immediately suspend performance, pending resolution of the protest within the agency, including any review by an independent higher level official, unless continued performance is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government. Such justification or determination shall be approved at a level above the contracting officer, or by another official pursuant to agency procedures.
- (4) Pursuing an agency protest does not extend the time for obtaining a stay at GAO. Agencies may include, as part of the agency protest process, a voluntary suspension period when agency protests are denied and the protester subsequently files at GAO.
- (g) Agencies shall make their best efforts to resolve agency protests within 35 days after the protest is filed. To the extent permitted by law and regulation, the parties may exchange relevant information.
- (h) Agency protest decisions shall be well-reasoned, and explain the agency position. The protest decision shall be provided to the protester using a method that provides evidence of receipt.

33.104 Protests to GAO.

Procedures for protests to GAO are found at 4 CFR Part 21 (GAO Bid Protest Regulations). In the event guidance concerning GAO procedure in this section conflicts with 4 CFR Part 21, 4 CFR Part 21 governs.

- (a) General procedures. (1) A protester is required to furnish a copy of its complete protest to the official and location designated in the solicitation or, in the absence of such a designation, to the contracting officer, so it is received no later than 1 day after the protest is filed with the GAO. The GAO may dismiss the protest if the protester fails to furnish a complete copy of the protest within 1 day.
- (2) Immediately after receipt of the GAO's written notice that a protest has been filed, the agency shall give notice of the protest to the contractor if the award has been made, or, if no award has been made, to all parties who appear to have a reasonable prospect of receiving award if the protest is denied. The agency shall furnish copies of the protest submissions to such parties with instructions to (i) communicate directly with the GAO, and (ii) provide copies of any such communication to the agency and to other participating parties when they become known. However, if the protester has identified sensitive information and requests a protective order, then the contracting officer shall obtain a redacted version from the protester to furnish to other interested parties, if one has not already been provided.
- (3)(i) Upon notice that a protest has been filed with the GAO, the contracting officer shall immediately begin compiling the information necessary for a report to the GAO. The agency shall submit a complete report to the GAO within 30 days after the GAO notifies the agency by telephone that a protest has been filed, or within 20 days after receipt from the GAO of a determination to use the express option, unless the GAO—
- (A) Advises the agency that the protest has been dismissed; or
- (B) Authorizes a longer period in response to an agency's request for an extension. Any new date is documented in the agency's file.
- (ii) When a protest is filed with the GAO, and an actual or prospective offeror so requests, the procuring agency shall, in accordance with any applicable protective orders, provide actual or prospective offerors reasonable access to the protest file. However, if the GAO dismisses the protest before the documents are submitted to the GAO, then no protest file need be made available. Information exempt from disclosure under 5 U.S.C. 552 may be redacted from the protest file. The protest file shall be made available to non-intervening actual or prospective offerors within a reasonable time after submittal of an agency report to the GAO. The protest file shall include an index and as appropriate—
 - (A) The protest;
 - (B) The offer submitted by the protester;
- (C) The offer being considered for award or being protested;
 - (D) All relevant evaluation documents;
- (E) The solicitation, including the specifications or portions relevant to the protest;

and

- (F) The abstract of offers or relevant portions;
- (G) Any other documents that the agency determines are relevant to the protest, including documents specifically requested by the protester.
- (iii) At least 5 days prior to the filing of the report, in cases in which the protester has filed a request for specific documents, the agency shall provide to all parties and the GAO a list of those documents, or portions of documents, that the agency has released to the protester or intends to produce in its report, and those documents that the agency intends to withhold from the protester and the reasons for the proposed withholding. Any objection to the scope of the agency's proposed disclosure or nondisclosure of the documents must be filed with the GAO and the other parties within 2 days after receipt of this list.
 - (iv) The agency report to the GAO shall include—
- (A) A copy of the documents described in 33.104(a)(3)(ii);
- (B) The contracting officer's signed statement of relevant facts, including a best estimate of the contract value, and a memorandum of law. The contracting officer's statement shall set forth findings, actions, and recommendations, and any additional evidence or information not provided in the protest file that may be necessary to determine the merits of the protest; and
- (C) A list of parties being provided the documents.
- (4)(i) At the same time the agency submits its report to the GAO, the agency shall furnish copies of its report to the protester and any intervenors. A party shall receive all relevant documents, except—
- (A) Those that the agency has decided to withhold from that party for any reason, including those covered by a protective order issued by the GAO. Documents covered by a protective order shall be released only in accordance with the terms of the order. Examples of documents the agency may decide to exclude from a copy of the report include documents previously furnished to or prepared by a party; classified information; and information that would give the party a competitive advantage; and
- (B) Protester's documents which the agency determines, pursuant to law or regulation, to withhold from any interested party.
- (ii)(A) If the protester requests additional documents within 2 days after the protester knew the existence or relevance of additional documents, or should have known, the agency shall provide the requested documents to the GAO within 2 days of receipt of the request.
- (B) The additional documents shall also be provided to the protester and other interested parties within this 2-day period unless the agency has decided to withhold them for any reason (see subdivision (a)(4)(i) of this sec-

- tion). This includes any documents covered by a protective order issued by the GAO. Documents covered by a protective order shall be provided only in accordance with the terms of the order.
- (C) The agency shall notify the GAO of any documents withheld from the protester and other interested parties and shall state the reasons for withholding them.
- (5) The GAO may issue protective orders which establish terms, conditions, and restrictions for the provision of any document to an interested party. Protective orders prohibit or restrict the disclosure by the party of procurement sensitive information, trade secrets or other proprietary or confidential research, development or commercial information that is contained in such document. Protective orders do not authorize withholding any documents or information from the United States Congress or an executive agency.
- (i) Requests for protective orders. Any party seeking issuance of a protective order shall file its request with the GAO as soon as practicable after the protest is filed, with copies furnished simultaneously to all parties.
- (ii) Exclusions and rebuttals. Within 2 days after receipt of a copy of the protective order request, any party may file with the GAO a request that particular documents be excluded from the coverage of the protective order, or that particular parties or individuals be included in or excluded from the protective order. Copies of the request shall be furnished simultaneously to all parties.
- (iii) Additional documents. If the existence or relevance of additional documents first becomes evident after a protective order has been issued, any party may request that these additional documents be covered by the protective order. Any party to the protective order also may request that individuals not already covered by the protective order be included in the order. Requests shall be filed with the GAO, with copies furnished simultaneously to all parties.
- (iv) Sanctions and remedies. The GAO may impose appropriate sanctions for any violation of the terms of the protective order. Improper disclosure of protected information will entitle the aggrieved party to all appropriate remedies under law or equity. The GAO may also take appropriate action against an agency which fails to provide documents designated in a protective order.
- (6) The protester and other interested parties are required to furnish a copy of any comments on the agency report directly to the GAO within 10 days, or 5 days if express option is used, after receipt of the report, with copies provided to the contracting officer and to other participating interested parties. If a hearing is held, these comments are due within 5 days after the hearing.
- (7) Agencies shall furnish the GAO with the name, title, and telephone number of one or more officials (in both

field and headquarters offices, if desired) whom the GAO may contact who are knowledgeable about the subject matter of the protest. Each agency shall be responsible for promptly advising the GAO of any change in the designated officials.

- (b) *Protests before award.* (1) When the agency has received notice from the GAO of a protest filed directly with the GAO, a contract may not be awarded unless authorized, in accordance with agency procedures, by the head of the contracting activity, on a nondelegable basis, upon a written finding that—
- (i) Urgent and compelling circumstances which significantly affect the interest of the United States will not permit awaiting the decision of the GAO; and
- (ii) Award is likely to occur within 30 days of the written finding.
- (2) A contract award shall not be authorized until the agency has notified the GAO of the finding in paragraph (b)(1) of this section.
- (3) When a protest against the making of an award is received and award will be withheld pending disposition of the protest, the contracting officer should inform the offerors whose offers might become eligible for award of the protest. If appropriate, those offerors should be requested, before expiration of the time for acceptance of their offer, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extensions of offers, consideration should be given to proceeding under subparagraph (b)(1) of this section.
- (c) *Protests after award.* (1) When the agency receives notice of a protest from the GAO within 10 days after contract award or within 5 days after a debriefing date offered to the protester for any debriefing that is required by 15.505 or 15.506, whichever is later, the contracting officer shall immediately suspend performance or terminate the awarded contract, except as provided in subparagraphs (c)(2) and (3) of this section.
- (2) In accordance with agency procedures, the head of the contracting activity may, on a nondelegable basis, authorize contract performance, notwithstanding the protest, upon a written finding that—
- (i) Contract performance will be in the best interests of the United States; or
- (ii) Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for the GAO's decision.
- (3) Contract performance shall not be authorized until the agency has notified the GAO of the finding in paragraph (c)(2) of this section.
- (4) When it is decided to suspend performance or terminate the awarded contract, the contracting officer should attempt to negotiate a mutual agreement on a no-cost basis.

- (5) When the agency receives notice of a protest filed with the GAO after the dates contained in subparagraph (c)(1), the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest.
- (d) Findings and notice. If the decision is to proceed with contract award, or continue contract performance under paragraphs (b) or (c) of this section, the contracting officer shall include the written findings or other required documentation in the file. The contracting officer also shall give written notice of the decision to the protester and other interested parties.
- (e) *Hearings*. The GAO may hold a hearing at the request of the agency, a protester, or other interested party who has responded to the notice in paragraph (a)(2) of this section. A recording or transcription of the hearing will normally be made, and copies may be obtained from the GAO. All parties may file comments on the hearing and the agency report within 7 days of the hearing.
- (f) GAO decision time. GAO issues its recommendation on a protest within 100 days from the date of filing of the protest with the GAO, or within 65 days under the express option. The GAO attempts to issue its recommendation on an amended protest that adds a new ground of protest within the time limit of the initial protest. If an amended protest cannot be resolved within the initial time limit, the GAO may resolve the amended protest through an express option.
- (g) *Notice to GAO*. If the agency has not fully implemented the GAO recommendations with respect to a solicitation for a contract or an award or a proposed award of a contract within 60 days of receiving the GAO recommendations, the head of the contracting activity responsible for that contract shall report the failure to the GAO not later than 5 days after the expiration of the 60-day period. The report shall explain the reasons why the GAO's recommendation, exclusive of costs, has not been followed by the agency.
- (h) Award of costs. (1) If the GAO determines that a solicitation for a contract, a proposed award, or an award of a contract does not comply with a statute or regulation, the GAO may recommend that the agency pay to an appropriate protester the cost, exclusive of profit, of filing and pursuing the protest, including reasonable attorney, consultant, and expert witness fees, and bid and proposal preparation costs. The agency shall use funds available for the procurement to pay the costs awarded.
- (2) The protester shall file its claim for costs with the contracting agency within 60 days after receipt of the GAO's recommendation that the agency pay the protester its costs. Failure to file the claim within that time may result in forfeiture of the protester's right to recover its costs.

- (3) The agency shall attempt to reach an agreement on the amount of costs to be paid. If the agency and the protester are unable to agree on the amount to be paid, the GAO may, upon request of the protester, recommend to the agency the amount of costs that the agency should pay.
- (4) Within 60 days after the GAO recommends the amount of costs the agency should pay the protester, the agency shall notify the GAO of the action taken by the agency in response to the recommendation.
- (5) No agency shall pay a party, other than a small business concern within the meaning of section 3(a) of the Small Business Act (see 19.001, "Small business concern"), costs under paragraph (h)(2) of this section—
- (i) For consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Government pursuant to 5 U.S.C. 3109 and 5 CFR 304.105; or
- (ii) For attorneys' fees that exceed \$150 per hour, unless the agency determines, based on the recommendation of the Comptroller General on a case-by-case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys' fees for businesses, other than small businesses, constitutes a benchmark as to a "reasonable" level for attorneys' fees for small businesses.
- (6) Before paying a recommended award of costs, agency personnel should consult legal counsel. Section 33.104(h) applies to all recommended awards of costs that have not yet been paid.
- (7) Any costs the contractor receives under this section shall not be the subject of subsequent proposals, billings, or claims against the Government, and those exclusions should be reflected in the cost agreement.
- (8) If the Government pays costs, as provided in paragraph (h)(1) of this section, where a postaward protest is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification, the Government may require the awardee 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 awardee under any contract between the awardee and the Government.

33.105 [Reserved]

33.106 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 52.233-2, Service of Protest, in solicitations for contracts expected to exceed the simplified acquisition threshold.

(b) The contracting officer shall insert the clause at 52.233-3, Protest After Award, in all solicitations and contracts. If a cost reimbursement contract is contemplated, the contracting officer shall use the clause with its Alternate I.

Subpart 33.2—Disputes and Appeals

33.201 Definitions.

"Accrual of a claim" occurs on the date when all events, which fix the alleged liability of either the Government or the contractor and permit assertion of the claim, were known or should have been known. For liability to be fixed, some injury must have occurred. However, monetary damages need not have been incurred.

"Alternative dispute resolution (ADR)" means any procedure or combination of procedures voluntarily used to resolve issues in controversy without the need to resort to litigation. These procedures may include, but are not limited to, assisted settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration.

"Claim," as used in this part, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$100,000 is not a claim under the Contract Disputes Act of 1978 until certified as required by the Act and 33.207. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in 33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

"Defective certification," as used in this subpart, means a certificate which alters or otherwise deviates from the language in 33.207(c) or which is not executed by a person duly authorized to bind the contractor with respect to the claim. Failure to certify shall not be deemed to be a defective certification.

"Issue in controversy" means a material disagreement between the Government and the contractor which—

- (1) May result in a claim or
- (2) Is all or part of an existing claim.

"Misrepresentation of fact," as used in this part, means a false statement of substantive fact, or any conduct which leads to the belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

- (i) The head of a Federal agency from entering into a contract pursuant to 42 U.S.C. 8287 (which pertains to the subject of shared energy savings including cogeneration);
- (ii) The Secretary of a military department from entering into a contract pursuant to 10 U.S.C. 2394 (which pertains to contracts for energy or fuel for military installations including the provision and operation of energy production facilities); or
- (iii) The Secretary of a military department from purchasing electricity from any provider when the utility or utilities having applicable state-approved franchise or other service authorizations are found by the Secretary to be unwilling or unable to meet unusual standards for service reliability that are necessary for purposes of national defense.
 - (3) Additionally, the head of a Federal agency may—
- (i) Consistent with applicable state law, enter into contracts for the purchase or transfer of electricity to the agency by a non-utility, including a qualifying facility under the Public Utility Regulatory Policies Act of 1978;
- (ii) Enter into an interagency agreement, pursuant to 41.206 and 17.5, with a Federal power marketing agency or the Tennessee Valley Authority for the transfer of electric power to the agency; and
- (iii) Enter into a contract with an electric utility under the authority or tariffs of the Federal Energy Regulatory Commission.
- (e) Prior to acquiring electric utility services on a competitive basis, the contracting officer shall determine, with the advice of legal counsel, by a market survey or any other appropriate means, *e.g.*, consultation with the state agency responsible for regulating public utilities, that such competition would not be inconsistent with state law governing the provision of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements. Proposals from alternative electric suppliers must provide a representation that service can be provided in a manner not inconsistent with section 8093 of Public Law 100-202 (see 41.201(d)). The representation must be supported with appropriate legal and factual rationale.

41.202 Procedures.

(a) Prior to executing a utility service contract, the contracting officer shall comply with Parts 6 and 7 and subsections 41.201(d) and (e) of this part. In accordance with Parts 6 and 7, agencies shall conduct market surveys and perform acquisition planning in order to promote and provide for full and open competition provided that the contracting officer determines that any resultant contract would not be inconsistent with applicable state law gov-

- erning the provision of electric utility services. If competition for an entire utility service is not available, the market survey may be used to determine the availability of competitive sources for certain portions of the requirement. The scope of the term "entire utility service" includes the provision of the utility service capacity, energy, water, sewage, transportation, standby or back-up service, transmission and/or distribution service, quality assurance, system reliability, system operation and maintenance, metering, and billing.
- (b) In performing a market survey (see 7.101), the contracting officer shall consider, in addition to alternative competitive sources, use of the following:
 - (1) GSA areawide contracts (see 41.204).
 - (2) Separate contracts (see 41.205).
 - (3) Interagency agreements (see 41.206).
- (c) When a utility supplier refuses to execute a tendered contract as outlined in 41.201(b), the agency shall obtain a written definite and final refusal signed by a corporate officer or other responsible official of the supplier (or if unobtainable, document any unwritten refusal) and transmit this document, along with statements of the reasons for the refusal and the record of negotiations, to GSAat the address specified at 41.301(a). Unless urgent and compelling circumstances exist, the contracting officer shall notify GSA prior to acquiring utility services without executing a tendered contract. After such notification, the agency may proceed with the acquisition and pay for the utility service under the provisions of 31 U.S.C. 1501(a)(8)—
- (1) By issuing a purchase order in accordance with 13.302; or
- (2) By ordering the necessary utility service and paying for it upon the presentation of an invoice, provided that a determination is approved by the head of the contracting activity that a written contract cannot be obtained and that the issuance of a purchase order is not feasible.
- (d) When obtaining service without a bilateral written contract, the contracting officer shall establish a utility history file on each acquisition of utility service provided by a contractor. This utility history file shall contain, in addition to applicable documents in 4.803, the following information:
- (1) The unsigned, tendered contract and any related letter of transmittal.
- (2) The reasons stated by the utility supplier for not executing the tendered contract, the record of negotiations, and a written definite and final refusal by a corporate officer or other responsible official of the supplier (or if unobtainable, documentation of unwritten refusal).
- (3) Services to be furnished and the estimated annual cost.
- (4) Historical record of any applicable connection charges.

- (5) Historical record of any applicable ongoing capital credits.
 - (6) A copy of the applicable rate schedule.
- (e) If the Government obtains utility service pursuant to paragraph (c) of this section, the contracting officer shall, on an annual basis beginning from the date of final refusal, take action to execute a bilateral written contract. The contracting officer shall document the utility history file with the efforts made and the agency shall notify GSA, in writing, if the utility continues to refuse to execute a bilateral contract.

41.203 GSA assistance.

- (a) GSAwill, upon request, provide technical and acquisition assistance, or will delegate its contracting authority for the furnishing of the services described in this part for any Federal agency, mixed-ownership Government corporation, the District of Columbia, the Senate, the House of Representatives, or the Architect of the Capitol and any activity under the Architect's direction.
- (b) Agencies, seeking assistance shall provide upon request by GSA the information listed in 41.301.

41.204 GSA areawide contracts.

- (a) *Purpose*. GSA enters into areawide contracts (see 41.101) for use by Federal agencies. Areawide contracts provide a pre-established contractual vehicle for ordering utility services under the conditions in paragraph (c)(1) of this section.
- (b) *Features*. (1) Areawide contracts generally provide for ordering utility service at rates approved and/or established by a regulatory body and published in a tariff or rate schedule. However, agencies are permitted to negotiate other rates and terms and conditions of service with the supplier (see paragraph (c) of this section). Rates other than those published may require the approval of the regulatory body.
- (2) Areawide contracts are negotiated with utility service suppliers for the provision of service within the supplier's franchise territory or service area.
- (3) Due to the regulated nature of the utility industry, as well as statutory restrictions associated with the procurement of electricity (see 41.201(d)), competition is typically not available within the entire geographical area covered by an areawide contract, although it may be available at specific locations within the utility's service area. When competing suppliers are available, the provisions of subparagraph (c)(1) of this section apply.
- (c) *Procedures for obtaining service.* (1) Any Federal agency having a requirement for utility services within an area covered by an areawide contract shall acquire services under that areawide contract unless—
- (i) Service is available from more than one supplier, or

- (ii) The head of the contracting activity or designee otherwise determines that use of the areawide contract is not advantageous to the Government.
- If service is available from more than one supplier, service shall be acquired using competitive acquisition procedures (see 41.202(a)). The determination required by subparagraph (c)(1)(ii) of this section shall be documented in the contract file with an information copy furnished to GSA at the address in 41.301(a).
- (2) Each areawide contract includes an authorization form for ordering service, connection, disconnection, or change in service. Upon execution of an authorization by the contracting officer and utility supplier, the utility supplier is required to furnish services, without further negotiation, at the current, applicable published or unpublished rates, unless other rates, and/or terms and conditions are separately negotiated by the Federal agency with the supplier.
- (3) The contracting officer shall execute the Authorization, and attach it to a Standard Form (SF) 26, Award/Contract, along with any modifications such as connection charges, special facilities, or service arrangements. The contracting officer shall also attach any specific fiscal, operational, and administrative requirements of the agency, applicable rate schedules, technical information and detailed maps or drawings of delivery points, details on Government ownership, maintenance, or repair of facilities, and other information deemed necessary to fully define the service conditions in the Authorization/contract.
- (d) List of areawide contracts. A list of current GSA areawide contracts is available from the GSA office specified at 41.301(a). The list identifies the types of services and the geographic area served. A copy of the contract may also be obtained from this office.
- (e) *Notification*. Agencies shall provide GSA at the address specified at 41.301(a) a copy of each SF 26 and executed Authorization issued under an areawide contract within 30 days after execution.

41.205 Separate contracts.

- (a) In the absence of an areawide contract or interagency agreement (see 41.206), agencies shall acquire utility services by separate contract subject to this part, and subject to agency contracting authority.
- (b) If an agency enters into a separate contract, the contracting officer shall document the contract file with the following information:
 - (1) The number of available suppliers.
- (2) Any special equipment, service reliability, or facility requirements and related costs.
- (3) The utility supplier's rates, connection charges, and termination liability.

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PART 42—CONTRACT ADMINISTRATION

Sec.		42.705-3	Educational institutions.
42.000	Scope of part.	42.705-3	State and local governments.
42.000	scope of part.	42.705-5	Nonprofit organizations other than educational and
Subner	et 42.1 Interagency Contract Administration and	42.703-3	state and local governments.
Subpai	rt 42.1—Interagency Contract Administration and	42.706	Distribution of documents.
42 100	Audit Services	42.707	Cost-sharing rates and limitations on indirect cost rates.
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Subpart 42.14—Traffic and Transportation Management

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Subpart 42.15—Contractor Performance Information

- 42.1500 Scope of subpart.
- 42.1501 General.
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Subpart 42.16—Small Business Contract Administration

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Subpart 42.17—Forward Pricing Rate Agreements

42.1701 Procedures.

42.000 Scope of part.

This part prescribes general policies and procedures for performing contract administration functions and related audit services.

Subpart 42.1—Interagency Contract Administration and Audit Services

42.100 Scope of subpart.

This subpart prescribes policies and procedures for obtaining and providing interagency contract administration and audit services in order to—

- (a) Provide specialized assistance through field offices located at or near contractors' establishments;
- (b) Avoid or eliminate overlapping and duplication of Government effort; and
 - (c) Provide more consistent treatment of contractors.

42.101 Policy.

(a) Agencies requiring field contract administration or audit services are encouraged to use cross-servicing arrangements with existing contract administration and contract audit components to preclude duplicate demands being made upon contractors (see 42.102(a) for the directories of cognizant offices). The customer agency and the servicing agency shall enter into a formal cross-servicing arrangement when the volume of work or other circumstances warrants a formal understanding.

- (b) Multiple reviews, inspections, and examinations of a contractor or subcontractor by several agencies involving the same practices, operations, or functions shall be eliminated to the maximum practicable extent through the use of cross-servicing arrangements.
- (c) OMB Circular No. A-73, Audit of Federal Operations and Programs, states executive branch policy on audit cross-servicing arrangements. As further provided in OFPP Policy Letter 78-4, Field Contract Support Cross-Servicing Program—
- (1) Agencies shall use cross-servicing arrangements for the audit of costs incurred under contracts of two or more agencies being performed at the same business entity, and
- (2) The responsible auditor or contracting officer shall coordinate with concerned agencies the establishment of indirect cost rates at such entities and shall convey the finally established rates to those agencies for application to their contracts to the extent allocable and allowable (see Subpart 42.7).
- (d) Subject to the fiscal regulations of the agencies concerned, agencies—
- (1) May be reimbursed in accordance with the Economy Act of 1932 (31 U.S.C. 1535) for services rendered under formal or informal cross-servicing arrangements,
- (2) Normally should refrain from seeking reimbursement for cross-servicing accomplished incidental to their own needs or Governmentwide responsibilities, and
- (3) May use the hourly rate established under the cross-servicing arrangement between the Department of Defense and the National Aeronautics and Space Administration to facilitate reimbursement arrangements.
- (e) Agencies are not expected to enter into cross-servicing arrangements that would unduly burden agency resources or otherwise obstruct an agency in fulfilling its responsibilities.

42.102 Procedures.

(a) In locating available field contract administration or audit services, contracting offices shall consult the Department of Defense Directory of Contract Administration Services Components or the Directory of Federal Contract Audit Offices. Questions regarding contract administration offices may be referred to the:

HQ Defense Logistics Agency Attn: DLA: DASC-WP 8725 John J Kingman Road Fort Belvoir VA 22060

Questions regarding audit offices may be referred to the:

Defense Contract Audit Agency Attn: CMO Publications Officer 8725 John J Kingman Road, Suite 2135 Fort Belvoir VA 22060-6219 Agencies having a field contract administration or audit cross-servicing capability shall arrange for identification of this capability (including changes as they occur) in the appropriate directory by contacting one of these offices.

- (b) Services may be obtained by direct request to the cognizant contract administration or audit component indicated in the applicable directory or as specified in a formal cross-servicing arrangement (see 42.101(a)).
- (c) Except for requests submitted under formal crossservicing arrangements, requests for services from Government agencies may be declined on a case-by-case basis if resources are inadequate to accomplish delegated tasks, provided the decision is made by an official above the level of the contract administration office, or as otherwise provided in agency regulations.
- (d) Contract administration and audit services will be performed using the procedures of the servicing agency unless formal agreements between agencies provide otherwise.
- (e) Both the requesting and servicing activities are responsible for prudent use of the services provided under either formal or informal interagency cross-servicing arrangements. When it is appropriate, servicing activities shall counsel requesting agencies or contracting offices concerning the desirability and practicality of relaxing or waiving controls and surveillance that may not be necessary to ensure satisfactory contract performance.

Subpart 42.2—Assignment of Contract Administration

42.200 Scope of subpart.

This subpart prescribes policies and procedures for (a) assigning, retaining, or reassigning contract administration responsibility, (b) withholding normal functions or delegating additional functions when assigning contracts for administration, and (c) requesting and performing supporting contract administration. Subpart 42.3 lists both the normal contract administration functions and those requiring specific authorization by the contracting office.

42.201 Definition.

"Supporting contract administration" means performance of specific contract administration functions by another contract administration office (CAO) as required by—

- (a) The CAO to which a contract is assigned for administration or
- (b) The contracting office retaining a contract for administration.

42.202 Assignment of contract administration.

(a) *Authority*. Except as provided in paragraph (b) below, assignment of a contract to a CAO for administration

- automatically carries with it the authority to perform all of the normal functions listed in 42.302(a) to the extent that those functions apply to the contract. The CAO has authority to perform the functions requiring specific authorizations, listed in 42.302(b), only to the extent specified by the contracting office. No other function shall be performed by the CAO unless delegated as provided under 42.202(c).
- (b) Withholding normal functions. In assigning a contract for administration by a CAO, the contracting office may withhold individual functions among those listed in 42.302(a) if—
- (1) Their retention by the contracting office is required by—
- (i) The contracting agency's agency-level acquisition regulations; or
- (ii) A formal interagency cross-servicing arrangement (see 42.101(a) and 42.102(b)); or
- (2) It is clear, after consultation with the CAO when appropriate, that they can best be performed by the contracting office and the decision to withhold them is approved above the contracting officer's level.
- (c) *Delegating additional functions*. For individual contracts or groups of contracts, the contracting office may delegate to the CAO functions not listed in 42.302; provided, that—
- (1) Prior coordination with the CAO ensures the availability of required resources;
- (2) In the case of authority to issue orders under provisioning procedures in existing contracts and under basic ordering agreements for items and services identified in the schedule, the head of the contracting activity or designee approves the delegation; and
- (3) The delegation does not require the CAO to undertake new or follow-on acquisitions.
- (d) *Transmittal and documentation*. When assigning a contract for administration by a CAO, the contracting officer shall—
- (1) Enter on the contract the name and address of the CAO designated to administer it;
- (2) Provide any special instructions, including any specific authorization to perform functions listed in 42.302(b), in an accompanying letter to the CAO;
- (3) Include, along with the contract furnished to the CAO, copies of all contracting agency regulations or directives that are—
- (i) Incorporated into the contract by reference; or
- (ii) Otherwise necessary to administer the contract, unless copies have been previously provided; and
- (4) Advise the contractor (and other activities as appropriate) of any functions withheld or additional functions delegated in the special instructions under subparagraph (d)(2) above.

- (e) Contract administration office responsibilities. For each contract assigned for administration, the CAO shall—
- (1) Perform the functions listed in 42.302(a) to the extent that they apply to the contract, except for any functions specifically withheld under paragraph (b) above;
- (2) Perform the functions listed in 42.302(b) to the extent that they apply and are specifically authorized by the contracting office;
- (3) Serve as a focal point for inquiries and keep the contracting office and other interested activities advised concerning all pertinent matters related to administration of the contract;
- (4) Request supporting contract administration under 42.204 when it is required; and
- (5) Reassign contract administration under 42.206(a) if reassignment is required.

42.203 Retention of contract administration.

- (a) Contracting offices shall retain for administration any contract (1) not requiring the performance of contract administration functions (see 42.302) at or near contractor facilities, or (2) for which retention by the contracting office is prescribed by agency acquisition regulations. However, 30.601(a) and (b) require that retained contracts to which Cost Accounting Standards (CAS) apply be assigned for CAS administration only. Instructions for marking and distributing these contracts are provided in 4.201(d).
- (b) Contracting offices or CAO's may request supporting contract administration under 42.204 for contracts for which they have contract administration responsibility. However, if a substantial proportion of the normal contract administration functions listed in 42.302(a) are to be requested, an official above the contracting officer's level shall review the validity of retaining administration while requesting extensive supporting contract administration.

42.204 Supporting contract administration.

- (a) A CAO assigned a contract for administration under 42.202 or a contracting office retaining administration under 42.203 may request supporting contract administration from the CAO cognizant of the contractor location where performance of specific contract administration functions is required. The request shall—
 - (1) Be in writing;
- (2) Clearly state the specific functions to be performed; and
- (3) Be accompanied by a copy of pertinent contractual and other necessary documents.

- (b) The prime contractor is responsible for managing its subcontracts. The CAO's concern with subcontracts is normally limited to evaluating the prime contractor's management of them (see Part 44). Therefore, supporting contract administration shall not be used for subcontracts unless—
- (1) The Government would otherwise incur undue cost;
- (2) Successful completion of the prime contract is threatened; or
- (3) It is authorized under paragraph (c) of this section or elsewhere in this regulation.
- (c) For major system acquisitions (see Part 34), the contracting officer may designate certain high-risk or critical subsystems or components for special surveillance (see 44.205) in addition to requesting supporting contract administration. This surveillance shall be conducted in a manner fully consistent with the policy of calling upon the cognizant CAO to perform contract administration functions at a contractor's facility (see Subpart 42.1).

42.205 Designation of the paying office.

If the information is available, the contracting officer shall enter on the contract the name and address of the office designated under agency procedures to make payments on the contract. Unless agency acquisition regulations otherwise provide, the assignment of contract administration to a CAO does not affect the designation of the paying office.

42.206 Reassignment of contract administration.

- (a) The administrative contracting officer at the CAO of initial assignment shall reassign a contract for administration when the need for reassignment results from—
 - (1) An incorrect initial assignment;
 - (2) Organizational transfer of the cognizant CAO;
 - (3) Establishment or disestablishment of a CAO; or
 - (4) A change in a CAO's geographical responsibility.
- (b) The contracting officer at the contracting office shall reassign a contract for administration when reasons other than those in paragraph (a) of this section make reassignment appropriate.
- (c) To reassign a contract, the responsible contracting officer shall use a unilateral contract modification. The CAO of initial assignment shall transfer the contract file and necessary supporting documents to the successor CAO.
- (d) When warranted by a change in circumstances and approved at a higher level, a contracting officer may recall a contract or function previously assigned for administration.

These rates shall be binding on all agencies and their contracting offices, unless otherwise specifically prohibited by statute. An agency shall not perform an audit of indirect cost rates when the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government (10 U.S.C. 2313(d) and 41 U.S.C. 254d(d)).

- (b) Billing rates and final indirect cost rates shall be used in reimbursing indirect costs under cost-reimbursement contracts and in determining progress payments under fixed-price contracts.
 - (c) Contracting officers shall—
- (1) Unless the quick-closeout procedure in 42.708 is used, use final indirect cost rates of a business unit for a given period, which shall be binding for all the cost-reimbursement contracts of the business unit for that period, subject to any specific limitation in a contract or advance agreement (when contracts of more than one agency are involved, see 42.101(c)); and
- (2) To ensure compliance with 10 U.S.C. 2324(a) and 41 U.S.C. 256(a), use established final indirect cost rates in negotiating the final price of fixed-price incentive and fixed-price redeterminable contracts and in other situations requiring that indirect costs be settled before contract prices are established.

42.703-2 Certificate of indirect costs.

- (a) *General*. In accordance with 10 U.S.C. 2324(h) and 41 U.S.C. 256(h), a proposal shall not be accepted and no agreement shall be made to establish final indirect cost rates unless the costs have been certified by the contractor.
- (b) Waiver of certification. (1) The agency head, or designee, may waive the certification requirement when—
- (i) It is determined to be in the interest of the United States; and
- (ii) The reasons for the determination are put in writing and made available to the public.
- (2) A waiver may be appropriate for a contract with—
- (i) A foreign government or international organization, such as a subsidiary body of the North Atlantic Treaty Organization;
- (ii) A state or local government subject to OMB Circular A-87;
- (iii) An educational institution subject to OMB Circular A-21; and
- (iv) A nonprofit organization subject to OMB Circular A-122.
- (c) Failure to certify. (1) If the contractor has not certified its proposal for final indirect cost rates and a waiver is not appropriate, the contracting officer may unilaterally establish the rates.

- (2) Rates established unilaterally should be—
- (i) Based on audited historical data or other available data as long as unallowable costs are excluded; and
- (ii) Set low enough to ensure that unallowable costs will not be reimbursed.
- (d) False certification. The contracting officer should consult with legal counsel to determine appropriate action when a contractor certificate of final indirect costs is thought to be false.
- (e) Penalties for unallowable costs. 10 U.S.C. 2324(a) through (d) and 41 U.S.C. 256(a) through (d) prescribe penalties for submission of unallowable costs in final indirect cost rate proposals (see 42.709 for penalties and contracting officer responsibilities).
- (f) Contract clause. (1) Except as provided in paragraph (f)(2) of this subsection, the clause at 52.242-4, Certification of Final Indirect Costs, shall be incorporated into all solicitations and contracts which provide for establishment of final indirect cost rates.
- (2) The Department of Energy may provide an alternate clause in its agency supplement for its Management and Operating contracts.

42.704 Billing rates.

- (a) The contracting officer or auditor responsible under 42.705 for determining the final indirect cost rate ordinarily shall also be responsible for determining the billing rate.
- (b) The contracting officer or auditor shall establish a billing rate on the basis of information resulting from recent review, previous audits or experience, or similar reliable data or experience of other contracting activities. In establishing the billing rate, the contracting officer or auditor should ensure that it is as close as possible to the final indirect cost rate anticipated for the contractor's fiscal period, as adjusted for any unallowable costs. When the contracting officer or auditor determines that the dollar value of contracts requiring use of a billing rate does not warrant submission of a detailed billing rate proposal, the billing rate may be established by making appropriate adjustments from the prior year's indirect cost experience to eliminate unallowable and nonrecurring costs and to reflect new or changed conditions.
- (c) Once established, billing rates may be prospectively or retroactively revised by mutual agreement of the contracting officer or auditor and the contractor at either party's request, to prevent substantial overpayment or underpayment.
- (d) The elements of indirect cost and the base or bases used in computing billing rates shall not be construed as determinative of the indirect costs to be distributed or of the bases of distribution to be used in the final settlement.
- (e) When the contractor provides to the cognizant contracting officer the certified final indirect cost rate proposal

in accordance with 42.705-1(b) or 42.705-2(b), the contractor and the Government may mutually agree to revise billing rates to reflect the proposed indirect cost rates, as approved by the Government to reflect historically disallowed amounts from prior years' audits, until the proposal has been audited and settled. The historical decrement will be determined by either the cognizant contracting officer (42.705-1(b)) or the cognizant auditor (42.705-2(b)).

42.705 Final indirect cost rates.

- (a) Final indirect cost rates shall be established on the basis of—
- (1) Contracting officer determination procedure (see 42.705-1), or
 - (2) Auditor determination procedure (see 42.705-2).
- (b) Within 120 days after settlement of the final indirect cost rates (or longer, if approved in writing by the contracting officer), the contractor shall submit a completion invoice or voucher reflecting the settled amounts and rates on all contracts physically completed in the year covered by the proposal.

42.705-1 Contracting officer determination procedure.

- (a) Applicability and responsibility. Contracting officer determination shall be used for the following, with the indicated cognizant contracting officer responsible for establishing the final indirect cost rates:
- (1) Business units of a multidivisional corporation under the cognizance of a corporate administrative contracting officer (see Subpart 42.6), with that officer responsible for the determination, assisted, as required, by the administrative contracting officers, assigned to the individual business units. Negotiations may be conducted on a coordinated or centralized basis, depending upon the degree of centralization within the contractor's organization.
- (2) Business units not under the cognizance of a corporate administrative contracting officer, but having a resident administrative contracting officer (see 42.602), with that officer responsible for the determination. For this purpose, a nonresident administrative contracting officer is considered as resident if at least 75 percent of the administrative contracting officer's time is devoted to a single contractor.
- (3) Business units not included in subparagraph (a)(1) or (2) above, but where the predominant interest (on the basis of unliquidated contract dollar amount) is in an agency whose procedures require contracting officer determination. In such cases, the responsible contracting officer will be as designated under that agency's procedures.
- (4) Educational institutions (see 42.705-3 for responsibility and procedures).
 - (5) State and local governments (see 42.705-4).

- (6) Nonprofit organizations other than educational and state and local governments (see 42.705-5).
- (b) Procedures. (1) In accordance with the Allowable Cost and Payment clause at 52.216-7 or 52.216-13, the contractor shall submit to the contracting officer and to the cognizant auditor a final indirect cost rate proposal. The required content of the proposal and supporting data will vary depending on such factors as business type, size, and accounting system capabilities. The contractor, contracting officer, and auditor must work together to make the proposal, audit, and negotiation process as efficient as possible. Accordingly, each contractor shall submit an adequate proposal to the contracting officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the contracting officer. A contractor shall support its proposal with adequate supporting data. For guidance on what generally constitutes an adequate final indirect cost rate proposal and supporting data, contractors should refer to the Model Incurred Cost Proposal in Chapter 5 of the Defense Contract Audit Agency Pamphlet (DCAAP) No. 7641.90, Information for Contractors. The Model can be obtained by-
 - (i) Contacting Internet address http://www.dtic.mil/dcaa;
- (ii) Sending a telefax request to Headquarters DCAA, ATTN: CMO, Publications Officer, at (703) 767-1061:
- (iii) Sending an E-Mail request to *CMO@hql.dcaa.mil; or
 - (iv) Writing to:

Headquarters DCAA ATTN: CMO, Publications Officer 8725 John J. Kingman Road, Suite 2135 Fort Belvoir VA 22060-6219

- (2) The auditor shall submit to the contracting officer an advisory audit report identifying any relevant advance agreements or restrictive terms of specific contracts.
- (3) The contracting officer shall head the Government negotiating team, which includes the cognizant auditor and technical or functional personnel as required. Contracting offices having significant dollar interest shall be invited to participate in the negotiation and in the preliminary discussion of critical issues. Individuals or offices that have provided a significant input to the Government position should be invited to attend.
- (4) The Government negotiating team shall develop a negotiation position. Pursuant to 10 U.S.C. 2324(f) and 41 U.S.C. 256(f), the contracting officer shall—
- (i) Not resolve any questioned costs until obtaining—
 - (A) Adequate documentation on the costs; and

- (B) The contract auditor's opinion on the allowability of the costs.
- (ii) Whenever possible, invite the contract auditor to serve as an advisor at any negotiation or meeting with the contractor on the determination of the contractor's final indirect cost rates.
 - (5) The cognizant contracting officer shall—
 - (i) Conduct negotiations;
- (ii) Prepare a written indirect cost rate agreement conforming to the requirements of the contracts;
- (iii) Prepare, sign, and place in the contractor general file (see 4.801(c)(3)) a negotiation memorandum covering—
- (A) The disposition of significant matters in the advisory audit report;
- (B) Reconciliation of all costs questioned, with identification of items and amounts allowed or disallowed in the final settlement as well as the disposition of period costing or allocability issues;
- (C) Reasons why any recommendations of the auditor or other Government advisors were not followed; and
- (D) Identification of cost or pricing data submitted during the negotiations and relied upon in reaching a settlement; and
- (iv) Distribute resulting documents in accordance with 42.706.
- (v) Notify the contractor of the individual costs which were considered unallowable and the respective amounts of the disallowance.

42.705-2 Auditor determination procedure.

- (a) Applicability and responsibility. (1) The cognizant Government auditor shall establish final indirect cost rates for business units not covered in 42.705-1(a).
- (2) In addition, auditor determination may be used for business units that are covered in 42.705-1(a) when the contracting officer and auditor agree that the indirect costs can be settled with little difficulty and any of the following circumstances apply:
- (i) The business unit has primarily fixed-price contracts, with only minor involvement in cost-reimbursement contracts.
- (ii) The administrative cost of contracting officer determination would exceed the expected benefits.
- (iii) The business unit does not have a history of disputes and there are few cost problems.
- (iv) The contracting officer and auditor agree that special circumstances require auditor determination.
- (b) *Procedures*. (1) The contractor shall submit to the cognizant contracting officer and auditor a final indirect cost rate proposal in accordance with 42.705-1(b)(1).
 - (2) The auditor shall—

- (i) Audit the proposal and seek agreement on it with the contractor;
- (ii) In coordination with the affected contracting officers, prepare an indirect cost rate agreement conforming to the requirements of the contracts;
- (iii) If agreement with the contractor is not reached, forward the audit report to the contracting officer designated by the agency with the pre-dominant interest (on the basis of unliquidated contract dollar amounts) or, where applicable, the contracting officer designated in 42.705-2(a)(2) above, who will then resolve the disagreement; and
- (iv) Distribute resulting documents in accordance with 42.706.

42.705-3 Educational institutions.

- (a) *General*. (1) Postdetermined final indirect cost rates shall be used in the settlement of indirect costs for all cost-reimbursement contracts with educational institutions, unless predetermined final indirect cost rates are authorized and used (see paragraph (b) below).
- (2) OMB Circular No. A-88, Indirect Cost Rates, Audit, and Audit Followup at Educational Institutions, (i) assigns each educational institution to a single Government agency for the negotiation of indirect cost rates and (ii) provides that those rates shall be accepted by all Federal agencies. Cognizant Government agencies and educational institutions are listed in the Directory of Federal Contract Audit Offices (see 42.102(a)).
- (3) The cognizant agency shall establish the billing rates and final indirect cost rates at the educational institution, consistent with the requirements of this subpart, Subpart 31.3, and the OMB Circular. The agency shall follow the procedures outlined in 42.705-1(b).
- (4) If the cognizant agency is unable to reach agreement with an institution, the appeals system of the cognizant agency shall be followed for resolution of the dispute.
- (b) Predetermined final indirect cost rates. (1) Under cost-reimbursement research and development contracts with universities, colleges, or other educational institutions (41 U.S.C. 254a), payment for reimbursable indirect costs may be made on the basis of predetermined final indirect cost rates. The cognizant agency is not required to establish predetermined rates, but if they are established, their use must be extended to all the institution's Government contracts.
- (2) In deciding whether the use of predetermined rates would be appropriate for the educational institution concerned, the agency should consider both the stability of the institution's indirect costs and bases over a period of years and any anticipated changes in the amount of the direct and indirect costs.

- (3) Unless their use is approved at a level in the agency (see subparagraph (a)(2) above) higher than the contracting officer, predetermined rates shall not be used when—
- (i) There has been no recent audit of the indirect costs;
- (ii) There have been frequent or wide fluctuations in the indirect cost rates and the bases over a period of years; or
- (iii) The estimated reimbursable costs for any individual contract are expected to exceed \$1 million annually.
- (4)(i) If predetermined rates are to be used and no rates have been previously established for the institution's current fiscal year, the agency shall obtain from the institution a proposal for predetermined rates.
- (ii) If the proposal is found to be generally acceptable, the agency shall negotiate the predetermined rates with the institution. The rates should be based on an audit of the institution's costs for the year immediately preceding the year in which the rates are being negotiated. If this is not possible, an earlier audit may be used, but appropriate steps should be taken to identify and evaluate significant variations in costs incurred or in bases used that may have a bearing on the reasonableness of the proposed rates. However, in the case of smaller contracts (e.g., \$100,000 or less), an audit made at an earlier date is acceptable if—
- (A) There have been no significant changes in the contractor's organization; and
- (B) It is reasonably apparent that another audit would have little effect on the rates finally agreed upon and the potential for overpayment of indirect cost is relatively insignificant.
 - (5) If predetermined rates are used—
- (i) The contracting officer shall include the negotiated rates and bases in the contract Schedule; and
- (ii) See 16.307(i), which prescribes the clause at 52.216-15, Predetermined Indirect Cost Rates.
- (6) Predetermined indirect cost rates shall be applicable for a period of not more than four years. The agency shall obtain the contractor's proposal for new predetermined rates sufficiently in advance so that the new rates, based on current data, may be promptly negotiated near the beginning of the new fiscal year or other period agreed to by the parties (see paragraphs (b) and (d) of the clause at 52.216-15, Predetermined Indirect Cost Rates).
- (7) Contracting officers shall use billing rates established by the agency to reimburse the contractor for work performed during a period not covered by predetermined rates.

42.705-4 State and local governments.

OMB Circular No. A-87 concerning cost principles for state and local governments (see Subpart 31.6) establishes the cognizant agency concept and procedures for determining a cognizant agency for approving state and local government indirect costs associated with federally-funded programs and activities. The indirect cost rates negotiated by the cognizant agency will be used by all Federal agencies that also award contracts to these same state and local governments.

42.705-5 Nonprofit organizations other than educational and state and local governments.

(See OMB Circular No. A-122.)

42.706 Distribution of documents.

- (a) The contracting officer or auditor shall promptly distribute executed copies of the indirect cost rate agreement to the contractor and to each affected contracting agency and shall provide copies of the agreement for the contract files, in accordance with the guidance for contract modifications in Subpart 4.2, Contract Distribution.
- (b) Copies of the negotiation memorandum prepared under contracting officer determination or audit report prepared under auditor determination shall be furnished, as appropriate, to the contracting offices and Government audit offices.

42.707 Cost-sharing rates and limitations on indirect cost rates.

- (a) Cost-sharing arrangements, when authorized, may call for the contractor to participate in the costs of the contract by accepting indirect cost rates lower than the anticipated actual rates. In such cases, a negotiated indirect cost rate ceiling may be incorporated into the contract for prospective application. For cost sharing under research and development contracts, see 35.003(b).
- (b)(1) Other situations may make it prudent to provide a final indirect cost rate ceiling in a contract. Examples of such circumstances are when the proposed contractor—
- (i) Is a new or recently reorganized company, and there is no past or recent record of incurred indirect costs;
- (ii) Has a recent record of a rapidly increasing indirect cost rate due to a declining volume of sales without a commensurate decline in indirect expenses; or
- (iii) Seeks to enhance its competitive position in a particular circumstance by basing its proposal on indirect cost rates lower than those that may reasonably be expected to occur during contract performance, thereby causing a cost overrun.
- (2) In such cases, an equitable ceiling covering the final indirect cost rates may be negotiated and specified in the contract.

- (c) When ceiling provisions are utilized, the contract shall also provide that—
- (1) The Government will not be obligated to pay any additional amount should the final indirect cost rates exceed the negotiated ceiling rates, and
- (2) In the event the final indirect cost rates are less than the negotiated ceiling rates, the negotiated rates will be reduced to conform with the lower rates.

42.708 Quick-closeout procedure.

- (a) The contracting officer responsible for contract closeout shall negotiate the settlement of indirect costs for a specific contract, in advance of the determination of final indirect cost rates, if—
 - (1) The contract is physically complete;
- (2) The amount of unsettled indirect cost to be allocated to the contract is relatively insignificant. Indirect cost amounts will be considered insignificant when—
- (i) The total unsettled indirect cost to be allocated to any one contract does not exceed \$1,000,000; and
- (ii) Unless otherwise provided in agency procedures, the cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15 percent of the estimated, total unsettled indirect costs allocable to cost-type contracts for that fiscal year. The contracting officer may waive the 15 percent restriction based upon a risk assessment that considers the contractor's accounting, estimating, and purchasing systems; other concerns of the cognizant contract auditors; and any other pertinent information; and
- (3) Agreement can be reached on a reasonable estimate of allocable dollars.
- (b) Determinations of final indirect costs under the quick-closeout procedure provided for by the Allowable Cost and Payment clause at 52.216-7 or 52.216-13 shall be final for the contract it covers and no adjustment shall be made to other contracts for over- or under-recoveries of costs allocated or allocable to the contract covered by the agreement.
- (c) Indirect cost rates used in the quick closeout of a contract shall not be considered a binding precedent when establishing the final indirect cost rates for other contracts.

42.709 Scope.

- (a) This section implements 10 U.S.C. 2324(a) through (d) and 41 U.S.C. 256(a) through (d). It covers the assessment of penalties against contractors which include unallowable indirect costs in—
 - (1) Final indirect cost rate proposals; or
- (2) The final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract.
- (b) This section applies to all contracts in excess of \$500,000, except fixed-price contracts without cost incen-

tives or any firm-fixed-price contracts for the purchase of commercial items.

42.709-1 General.

- (a) The following penalties apply to contracts covered by this section:
- (1) If the indirect cost is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the penalty is equal to—
- (i) The amount of the disallowed costs allocated to contracts that are subject to this section for which an indirect cost proposal has been submitted; plus
- (ii) Interest on the paid portion, if any, of the disallowance.
- (2) If the indirect cost was determined to be unallowable for that contractor before proposal submission, the penalty is two times the amount in paragraph (a)(1)(i) of this section.
- (b) These penalties are in addition to other administrative, civil, and criminal penalties provided by law.
- (c) It is not necessary for unallowable costs to have been paid to the contractor in order to assess a penalty.

42.709-2 Responsibilities.

- (a) The cognizant contracting officer is responsible for—
- (1) Determining whether the penalties in 42.709-1(a) should be assessed;
- (2) Determining whether such penalties should be waived pursuant to 42.709-5; and
- (3) Referring the matter to the appropriate criminal investigative organization for review and for appropriate coordination of remedies, if there is evidence that the contractor knowingly submitted unallowable costs.
- (b) The contract auditor, in the review and/or the determination of final indirect cost proposals for contracts subject to this section, is responsible for—
- (1) Recommending to the contracting officer which costs may be unallowable and subject to the penalties in 42.709-1(a);
- (2) Providing rationale and supporting documentation for any recommendation; and
- (3) Referring the matter to the appropriate criminal investigative organization for review and for appropriate coordination of remedies, if there is evidence that the contractor knowingly submitted unallowable costs.

42.709-3 Assessing the penalty.

Unless a waiver is granted pursuant to 42.709-5, the cognizant contracting officer shall—

(a) Assess the penalty in 42.709-1(a)(1), when the submitted cost is expressly unallowable under a cost principle

in the FAR or an executive agency supplement that defines the allowability of specific selected costs; or

- (b) Assess the penalty in 42.709-1(a)(2), when the submitted cost was determined to be unallowable for that contractor prior to submission of the proposal. Prior determinations of unallowability may be evidenced by—
- (1) A DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved (see 48 CFR 242.705-2), or any similar notice which the contractor elected not to appeal and was not withdrawn by the cognizant Government agency;
- (2) A contracting officer final decision which was not appealed;
- (3) A prior executive agency Board of Contract Appeals or court decision involving the contractor, which upheld the cost disallowance; or
- (4) A determination or agreement of unallowability under 31.201-6.
- (c) Issue a final decision (see 33.211) which includes a demand for payment of any penalty assessed under paragraph (a) or (b) of this section. The letter shall state that the determination is a final decision under the Disputes clause of the contract. (Demanding payment of the penalty is separate from demanding repayment of any paid portion of the disallowed cost.)

42.709-4 Computing interest.

For 42.709-1(a)(1)(ii), compute interest on any paid portion of the disallowed cost as follows:

- (a) Consider the overpayment to have occurred, and interest to have begun accumulating, from the midpoint of the contractor's fiscal year. Use an alternate equitable method if the cost was not paid evenly over the fiscal year.
- (b) Use the interest rate specified by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97).
- (c) Compute interest from the date of overpayment to the date of the demand letter for payment of the penalty.
- (d) Determine the paid portion of the disallowed costs in consultation with the contract auditor.

42.709-5 Waiver of the penalty.

The cognizant contracting officer shall waive the penalties at 42.709-1(a) when—

- (a) The contractor withdraws the proposal before the Government formally initiates an audit of the proposal and the contractor submits a revised proposal (an audit will be deemed to be formally initiated when the Government provides the contractor with written notice, or holds an entrance conference, indicating that audit work on a specific final indirect cost proposal has begun);
- (b) The amount of the unallowable costs under the proposal which are subject to the penalty is \$10,000 or less (i.e., if the amount of expressly or previously determined

- unallowable costs which would be allocated to the contracts specified in 42.709(b) is \$10,000 or less); or
- (c) The contractor demonstrates, to the cognizant contracting officer's satisfaction, that—
- (1) It has established policies and personnel training and an internal control and review system that provide assurance that unallowable costs subject to penalties are precluded from being included in the contractor's final indirect cost rate proposals (*e.g.*, the types of controls required for satisfactory participation in the Department of Defense sponsored self-governance programs, specific accounting controls over indirect costs, compliance tests which demonstrate that the controls are effective, and Government audits which have not disclosed recurring instances of expressly unallowable costs); and
- (2) The unallowable costs subject to the penalty were inadvertently incorporated into the proposal; *i.e.*, their inclusion resulted from an unintentional error, notwithstanding the exercise of due care.

42.709-6 Contract clause.

Use the clause at 52.242-3, Penalties for Unallowable Costs, in all solicitations and contracts over \$500,000 except fixed-price contracts without cost incentives or any firm-fixed-price contract for the purchase of commercial items. Generally, covered contracts are those which contain one of the clauses at 52.216-7, 52.216-13, 52.216-16, or 52.216-17, or a similar clause from an executive agency's supplement to the FAR.

Subpart 42.8—Disallowance of Costs

42.800 Scope of subpart.

This subpart prescribes policies and procedures for-

- (a) Issuing notices of intent to disallow costs; and
- (b) Disallowing costs already incurred during the course of performance.

42.801 Notice of intent to disallow costs.

- (a) At any time during the performance of a contract of a type referred to in 42.802, the cognizant contracting officer responsible for administering the contract may issue the contractor a written notice of intent to disallow specified costs incurred or planned for incurrence. However, before issuing the notice, the contracting officer responsible for administering the contract shall make every reasonable effort to reach a satisfactory settlement through discussions with the contractor.
- (b) A notice of intent to disallow such costs usually results from monitoring contractor costs. The purpose of the notice is to notify the contractor as early as practicable during contract performance that the cost is considered unallowable under the contract terms and to provide for

timely resolution of any resulting disagreement. In the event of disagreement, the contractor may submit to the contracting officer a written response. Any such response shall be answered by withdrawal of the notice or by making a written decision within 60 days.

- (c) As a minimum, the notice shall—
- (1) Refer to the contract's Notice of Intent to Disallow Costs clause;
- (2) State the contractor's name and list the numbers of the affected contracts;
- (3) Describe the costs to be disallowed, including estimated dollar value by item and applicable time periods, and state the reasons for the intended disallowance;
- (4) Describe the potential impact on billing rates and forward pricing rate agreements;
- (5) State the notice's effective date and the date by which written response must be received;
 - (6) List the recipients of copies of the notice; and
- (7) Request the contractor to acknowledge receipt of the notice.
- (d) The contracting officer issuing the notice shall furnish copies to all contracting officers cognizant of any segment of the contractor's organization.
- (e) If the notice involves elements of indirect cost, it shall not be issued without coordination with the contracting officer or auditor having authority for final indirect cost settlement (see 42.705).
- (f) In the event the contractor submits a response that disagrees with the notice (see paragraph (b) above), the contracting officer who issued the notice shall either withdraw the notice or issue the written decision, except when elements of indirect cost are involved, in which case the contracting officer responsible under 42.705 for determining final indirect cost rates shall issue the decision.

42.802 Contract clause.

The contracting officer shall insert the clause at 52.242-1, Notice of Intent to Disallow Costs, in solicitations and contracts when a cost-reimbursement contract, a fixed-price incentive contract, or a contract providing for price redetermination is contemplated.

42.803 Disallowing costs after incurrence.

Cost-reimbursement contracts, the cost-reimbursement portion of fixed-price contracts, letter contracts that provide for reimbursement of costs, and time-and-material and labor-hour contracts provide for disallowing costs during the course of performance after the costs have been incurred. The following procedures shall apply:

(a) Contracting officer receipt of vouchers. When contracting officers receive vouchers directly from the contractor and, with or without auditor assistance, approve

or disapprove them, the process shall be conducted in accordance with the normal procedures of the individual agency.

- (b) Auditor receipt of vouchers. (1) When authorized by agency regulations, the contract auditor may be authorized to (i) receive reimbursement vouchers directly from contractors, (ii) approve for payment those vouchers found acceptable, and (iii) suspend payment of questionable costs. The auditor shall forward approved vouchers for payment to the cognizant contracting, finance, or disbursing officer, as appropriate under the agency's procedures.
- (2) If the examination of a voucher raises a question regarding the allowability of a cost under the contract terms, the auditor, after informal discussion as appropriate, may, where authorized by agency regulations, issue a notice of contract costs suspended and/or disapproved simultaneously to the contractor and the disbursing officer, with a copy to the cognizant contracting officer, for deduction from current payments with respect to costs claimed but not considered reimbursable.
- (3) If the contractor disagrees with the deduction from current payments, the contractor may—
- (i) Submit a written request to the cognizant contracting officer to consider whether the unreimbursed costs should be paid and to discuss the findings with the contractor:
- (ii) File a claim under the Disputes clause, which the cognizant contracting officer will process in accordance with agency procedures; or
 - (iii) Do both of the above.

Subpart 42.9—Bankruptcy

42.900 Scope of subpart.

This subpart prescribes policies and procedures regarding actions to be taken when a contractor enters into proceedings relating to bankruptcy. It establishes a requirement for the contractor to notify the contracting officer upon filing a petition for bankruptcy. It further establishes minimum requirements for agencies to follow in the event of a contractor bankruptcy.

42.901 General.

The contract administration office shall take prompt action to determine the potential impact of a contractor bankruptcy on the Government in order to protect the interests of the Government.

42.902 Procedures.

- (a) When notified of bankruptcy proceedings, agencies shall, as a minimum—
- (1) Furnish the notice of bankruptcy to legal counsel and other appropriate agency offices (*e.g.*, contracting, financial, property) and affected buying activities;

- (2) Determine the amount of the Government's potential claim against the contractor (in assessing this impact, identify and review any contracts that have not been closed out, including those physically completed or terminated);
- (3) Take actions necessary to protect the Government's financial interests and safeguard Government property; and
- (4) Furnish pertinent contract information to the legal counsel representing the Government.
- (b) The contracting officer shall consult with legal counsel, whenever possible, prior to taking any action regarding the contractor's bankruptcy proceedings.

42.903 Solicitation provision and contract clause.

The contracting officer shall insert the clause at 52.242-13, Bankruptcy, in all solicitations and contracts exceeding the simplified acquisition threshold.

Subpart 42.10—[Reserved]

Subpart 42.11—Production Surveillance and Reporting

42.1101 General.

Production surveillance is a function of contract administration used to determine contractor progress and to identify any factors that may delay performance. Production surveillance involves Government review and analysis of—

- (a) Contractor performance plans, schedules, controls, and industrial processes; and
 - (b) The contractor's actual performance under them.

42.1102 Applicability.

This subpart applies to all contracts for supplies or services other than facilities, construction contracts, and Federal Supply Schedule contracts. See Part 37, especially Subpart 37.6, regarding surveillance of contracts for services.

42.1103 Policy.

The contractor is responsible for timely contract performance. The Government will maintain surveillance of contractor performance as necessary to protect its interests. When the contracting office retains a contract for administration, the contracting officer administering the contract shall determine the extent of surveillance.

42.1104 Surveillance requirements.

- (a) The contract administration office determines the extent of production surveillance on the basis of—
- (1) The criticality (degree of importance to the Government) assigned by the contracting officer (see 42.1105) to the supplies or services; and
 - (2) Consideration of the following factors:

- (i) Contract requirements for reporting production progress and performance.
 - (ii) The contract performance schedule.
 - (iii) The contractor's production plan.
- (iv) The contractor's history of contract performance.
- (v) The contractor's experience with the contract supplies or services.
 - (vi) The contractor's financial capability.
- (vii) Any supplementary written instructions from the contracting office.
- (b) Contracts at or below the simplified acquisition threshold should not normally require production surveillance.
- (c) In planning and conducting surveillance, contract administration offices shall make maximum use of any reliable contractor production control or data management systems.
- (d) In performing surveillance, contract administration office personnel shall avoid any action that may—
 - (1) Be inconsistent with any contract requirement; or
- (2) Result in claims of waivers, of changes, or of other contract modifications.

42.1105 Assignment of criticality designator.

Contracting officers shall assign a criticality designator to each contract in the space for designating the contract administration office, as follows:

<u>Criticality</u> Designator <u>Criterion</u>

- A Critical contracts, including DX-rated contracts (see Subpart 12.3), contracts citing the authority in 6.302-2 (unusual and compelling urgency), and contracts for major systems.
- B Contracts (other than those designated"A")
 for items needed to maintain a
 Government or contractor production or
 repair line, to preclude out-of-stock conditions or to meet user needs for nonstock
 items.
- C All contracts other than those designated "A" or "B."

42.1106 Reporting requirements.

- (a) When information on contract performance status is needed, contracting officers may require contractors to submit production progress reports (see 42.1107(a)). Reporting requirements shall be limited to that information essential to Government needs and shall take maximum advantage of data output generated by contractor management systems.
- (b) Contract administration offices shall review and verify the accuracy of contractor reports and advise the

contracting officer of any required action. The accuracy of contractor-prepared reports shall be verified either by a program of continuous surveillance of the contractor's report-preparation system or by individual review of each report.

- (c) The contract administration office may at any time initiate a report to advise the contracting officer (and the inventory manager, if one is designated in the contract) of any potential or actual delay in performance. This advice shall—
 - (1) Be in writing;
- (2) Be provided in sufficient time for the contracting officer to take necessary action; and
- (3) Provide a definite recommendation, if action is appropriate.

42.1107 Contract clause.

- (a) The contracting officer shall insert the clause at 52.242-2, Production Progress Reports, in solicitations and contracts when production progress reporting is required; unless a facilities contract, a construction contract, or a Federal Supply Schedule contract is contemplated.
- (b) When the clause at 52.242-2 is used, the contracting officer shall specify appropriate reporting instructions in the Schedule (see 42.1106(a)).

Subpart 42.12—Novation and Change-of-Name Agreements

42.1200 Scope of subpart.

This subpart prescribes policies and procedures for—

- (a) Recognition of a successor in interest to Government contracts when contractor assets are transferred;
 - (b) Recognition of a change in a contractor's name; and
- (c) Execution of novation agreements and change-ofname agreements by the responsible contracting officer.

42.1201 Definitions.

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

"Novation agreement" means a legal instrument executed by the—

- (a) Contractor (transferor);
- (b) Successor in interest (transferee); and
- (c) Government by which, among other things, the transferor guarantees performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets.

42.1202 Responsibility for executing agreements.

The contracting officer responsible for processing and executing novation and change-of-name agreements shall be determined as follows:

- (a) If any of the affected contracts held by the transferor have been assigned to an administrative contracting officer (ACO) (see 2.1 and 42.202), the responsible contracting officer shall be—
 - (1) This ACO; or
- (2) The ACO responsible for the corporate office, if affected contracts are in more than one plant or division of the transferor.
- (b) If none of the affected contracts held by the transferor have been assigned to an ACO, the contracting officer responsible for the largest unsettled (unbilled plus billed but unpaid) dollar balance of contracts shall be the responsible contracting officer.
- (c) If several transferors are involved, the responsible contracting officer shall be—
- (1) The ACO administering the largest unsettled dollar balance; or
- (2) The contracting officer (or ACO) designated by the agency having the largest unsettled dollar balance, if none of the affected contracts have been assigned to an ACO.

42.1203 Processing agreements.

- (a) When a firm performing Government contracts wishes the Government to recognize—
 - (1) A successor in interest to these contracts, or
- (2) A name change, the contractor shall submit a written request to the responsible contracting officer (see 42.1202).
 - (b) The responsible contracting officer shall—
- (1) Identify and request that the contractor submit the information necessary to evaluate the proposed agreement for recognizing a successor in interest or a name change. This information should include the items identified in 42.1204 (e) and (f) or 42.1205(a), as applicable;
- (2) Notify each contract administration office and contracting office affected by a proposed agreement for recognizing a successor in interest, and provide those offices with a list of all affected contracts; and
- (3) Request submission of any comments or objections to the proposed transfer within 30 days after notification. Any submission should be accompanied by supporting documentation.
- (c) Upon receipt of the necessary information, the responsible contracting officer shall determine whether or not it is in the Government's interest to recognize the proposed successor in interest on the basis of—
- (1) The comments received from the affected contract administration offices and contracting offices;

- (2) The proposed successor's responsibility under Subpart 9.1, Responsible Prospective Contractors; and
- (3) Any factor relating to the proposed successor's performance of contracts with the Government that the Government determines would impair the proposed successor's ability to perform the contract satisfactorily.
- (d) The execution of a novation agreement does not preclude the use of any other method available to the contracting officer to resolve any other issues related to a transfer of contractor assets, including the treatment of costs.
- (e) Any separate agreement between the transferor and transferee regarding the assumption of liabilities (e.g., long-term incentive compensation plans, cost accounting standards noncompliances, environmental cleanup costs, and final overhead costs) should be referenced specifically in the novation agreement.
- (f) Before novation and change-of-name agreements are executed, the responsible contracting officer shall ensure that Government counsel has reviewed them for legal sufficiency.
 - (g) The responsible contracting officer shall—
- (1) Forward a signed copy of the executed novation or change-of-name agreement to the transferor and to the transferee; and
 - (2) Retain a signed copy in the case file.
- (h) Following distribution of the agreement, the responsible contracting officer shall—
- (1) Prepare a Standard Form 30, Amendment of Solicitation/Modification of Contract, incorporating a summary of the agreement and attaching a complete list of contracts affected;
- (2) Retain the original Standard Form 30 with the attached list in the case file;
- (3) Send a signed copy of the Standard Form 30, with attached list to the transferor and to the transferee; and
- (4) Send a copy of this Standard Form 30 with attached list to each contract administration office or contracting office involved, which shall be responsible for further appropriate distribution.

42.1204 Applicability of novation agreements.

- (a) 41 U.S.C. 15 prohibits transfer of Government contracts from the contractor to a third party. The Government may, when in its interest, recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of—
 - (1) All the contractor's assets; or
- (2) The entire portion of the assets involved in performing the contract. (See 14.404-2(l) for the effect of novation agreements after bid opening but before award.) Examples of such transactions include, but are not limited to—

- (i) Sale of these assets with a provision for assuming liabilities;
- (ii) Transfer of these assets incident to a merger or corporate consolidation; and
- (iii) Incorporation of a proprietorship or partnership, or formation of a partnership.
- (b) A novation agreement is unnecessary when there is a change in the ownership of a contractor as a result of a stock purchase, with no legal change in the contracting party, and when that contracting party remains in control of the assets and is the party performing the contract. However, whether there is a purchase of assets or a stock purchase, there may be issues related to the change in ownership that appropriately should be addressed in a formal agreement between the contractor and the Government (see 42.1203(e)).
- (c) When it is in the Government's interest not to concur in the transfer of a contract from one company to another company, the original contractor remains under contractual obligation to the Government, and the contract may be terminated for reasons of default, should the original contractor not perform.
- (d) When considering whether to recognize a third party as a successor in interest to Government contracts, the responsible contracting officer shall identify and evaluate any significant organizational conflicts of interest in accordance with Subpart 9.5. If the responsible contracting officer determines that a conflict of interest cannot be resolved, but that it is in the best interest of the Government to approve the novation request, a request for a waiver may be submitted in accordance with the procedures at 9.503.
- (e) When a contractor asks the Government to recognize a successor in interest, the contractor shall submit to the responsible contracting officer three signed copies of the proposed novation agreement and one copy each, as applicable, of the following:
- (1) The document describing the proposed transaction, *e.g.*, purchase/sale agreement or memorandum of understanding.
- (2) A list of all affected contracts between the transferor and the Government, as of the date of sale or transfer of assets, showing for each, as of that date, the—
 - (i) Contract number and type;
 - (ii) Name and address of the contracting office;
 - (iii) Total dollar value, as amended; and
 - (iv) Approximate remaining unpaid balance.
 - (3) Evidence of the transferee's capability to perform.
- (4) Any other relevant information requested by the responsible contracting officer.
- (f) Except as provided in paragraph (g) of this section, the contractor shall submit to the responsible contracting officer one copy of each of the following documents, as applicable, as the documents become available:

- (1) An authenticated copy of the instrument effecting the transfer of assets; e.g., bill of sale, certificate of merger, contract, deed, agreement, or court decree.
- (2) A certified copy of each resolution of the corporate parties'boards of directors authorizing the transfer of assets.
- (3) A certified copy of the minutes of each corporate party's stockholder meeting necessary to approve the transfer of assets.
- (4) An authenticated copy of the transferee's certificate and articles of incorporation, if a corporation was formed for the purpose of receiving the assets involved in performing the Government contracts.
- (5) The opinion of legal counsel for the transferor and transferee stating that the transfer was properly effected under applicable law and the effective date of transfer.
- (6) Balance sheets of the transferor and transferee as of the dates immediately before and after the transfer of assets, audited by independent accountants.
- (7) Evidence that any security clearance requirements have been met.
- (8) The consent of sureties on all contracts listed under paragraph (e)(2) of this section if bonds are required, or a statement from the transferor that none are required.
- (g) If the Government has acquired the documents during its participation in the pre-merger or pre-acquisition review process, or the Government's interests are adequately protected with an alternative formulation of the information, the responsible contracting officer may modify the list of documents to be submitted by the contractor.
- (h) When recognizing a successor in interest to a Government contract is consistent with the Government's interest, the responsible contracting officer shall execute a novation agreement with the transferor and the transferee. It shall ordinarily provide in part that—
- (1) The transferee assumes all the transferor's obligations under the contract:
- (2) The transferor waives all rights under the contract against the Government;
- (3) The transferor guarantees performance of the contract by the transferee (a satisfactory performance bond may be accepted instead of the guarantee); and
- (4) Nothing in the agreement shall relieve the transferor or transferee from compliance with any Federal law.
- (i) The responsible contracting officer shall use the following format for agreements when the transferor and transferee are corporations and all the transferor's assets are transferred. This format may be adapted to fit specific cases and may be used as a guide in preparing similar agreements for other situations.

NOVATION AGREEMENT

The ABC Corporation (Transferor), a corporation
duly organized and existing under the laws of
[insert State] with its principal office in
[insert city]; the XYZ Corporation
(Transferee), [if appropriate add "formerly known as
the EFG Corporation"] a corporation duly organized
and existing under the laws of [insert
State] with its principal office in
[insert city]; and the UNITED STATES OF AMERICA
(Government) enter into this Agreement as of
[insert the date transfer of assets
became effective under applicable State law].
(a) The parties agree to the following facts:

- (1) The Government, represented by various Contracting Officers of the ___ name(s) of agency(ies)], has entered into certain contracts with the Transferor, namely: [insert contract or purchase order identifications]; [or delete "namely" and insert "as shown in the attached list marked `Exhibit A' and incorporated in this Agreement by reference."]. The term "the contracts," as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made between the Government and the Transferor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Transferor has any remaining rights, duties, or obligations under these contracts and purchase orders). Included in the term "the contracts" are also all modifications made under the terms and conditions of these contracts and purchase orders between the Government and the Transferee, on or after the effective date of this Agreement.
- (2) As of _, 19__, the Transferor has transferred to the Transferee all the assets of the Transferor by virtue of a [insert term descriptive of the legal transaction involved] between the Transferor and the Transferee.
- (3) The Transferee has acquired all the assets of the Transferor by virtue of the above transfer.
- (4) The Transferee has assumed all obligations and liabilities of the Transferor under the contracts by virtue of the above transfer.
- (5) The Transferee is in a position to fully perform all obligations that may exist under the
- (6) It is consistent with the Government's interest to recognize the Transferee as the successor party to the contracts.
- (7) Evidence of the above transfer has been filed with the Government.

[When a change of name is also involved; e.g., a prior or concurrent change of the Transferee's name, an appropriate statement shall be inserted (see example in paragraph (8) below)].

- (8) A certificate dated ______, 19__, signed by the Secretary of State of ______ [insert State], to the effect that the corporate name of EFG Corporation was changed to XYZ Corporation on ______, 19__, has been filed with the Government.
- (b) In consideration of these facts, the parties agree that by this Agreement—
- (1) The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the Government that it now has or may have in the future in connection with the contracts.
- (2) The Transferee agrees to be bound by and to perform each contract in accordance with the conditions contained in the contracts. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the contracts as if the Transferee were the original party to the contracts.
- (3) The Transferee ratifies all previous actions taken by the Transferor with respect to the contracts, with the same force and effect as if the action had been taken by the Transferee.
- (4) The Government recognizes the Transferee as the Transferor's successor in interest in and to the contracts. The Transferee by this Agreement becomes entitled to all rights, titles, and interests of the Transferor in and to the contracts as if the Transferee were the original party to the contracts. Following the effective date of this Agreement, the term "Contractor," as used in the contracts, shall refer to the Transferee.
- (5) Except as expressly provided in this Agreement, nothing in it shall be construed as a waiver of any rights of the Government against the Transferor.
- (6) All payments and reimbursements previously made by the Government to the Transferor, and all other previous actions taken by the Government under the contracts, shall be considered to have discharged those parts of the Government's obligations under the contracts. All payments and reimbursements made by the Government after the date of this Agreement in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of the Government's obligations under the contracts, to the extent of the amounts paid or reimbursed.
- (7) The Transferor and the Transferee agree that the Government is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer or this Agreement, other

- than those that the Government in the absence of this transfer or Agreement would have been obligated to pay or reimburse under the terms of the contracts.
- (8) The Transferor guarantees payment of all liabilities and the performance of all obligations that the Transferee—
 - (i) Assumes under this Agreement; or
- (ii) May undertake in the future should these contracts be modified under their terms and conditions. The Transferor waives notice of, and consents to, any such future modifications.
- (9) The contracts shall remain in full force and effect, except as modified by this Agreement. Each party has executed this Agreement as of the day and year first above written.

UNITED STATES OF AMERICA,
Ву
TITLE
ABC Corporation,
Title
[Corporate Seal]
XYZ CORPORATION,
Title
[Corporate Seal]
CERTIFICATE
I,, certify that I am the Secretary of ABC Corporation, that, who signed this Agreement for this corporation, was then of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this day of 19 By
CERTIFICATE
I,, certify that I am the Secretary of XYZ Corporation, that, who signed this Agreement for this corporation, was then of this corporation; and that this Agreement was duly signed for and on behalf of this corporation by authority of its governing body and within the scope of its corporate powers. Witness my hand and the seal of this corporation this day of
[Corporate Seal]

42.1205 Agreement to recognize contractor's change of name.

- (a) If only a change of the contractor's name is involved and the Government's and contractor's rights and obligations remain unaffected, the parties shall execute an agreement to reflect the name change. The contractor shall forward to the responsible contracting officer three signed copies of the Change-of-Name Agreement, and one copy each of the following:
- (1) The document effecting the name change, authenticated by a proper official of the State having jurisdiction.
- (2) The opinion of the contractor's legal counsel stating that the change of name was properly effected under applicable law and showing the effective date.
- (3) A list of all affected contracts and purchase orders remaining unsettled between the contractor and the Government, showing for each the contract number and type, and name and address of the contracting office. The contracting officer may request the total dollar value as amended and the remaining unpaid balance for each contract.
- (b) The following suggested format for an agreement may be adapted for specific cases:

CHANGE-OF-NAME AGREEMENT

The ABC Corporation (Contractor), a corporation duly organized and existing under the laws of ______ [insert State], and the UNITED STATES OF AMERICA (Government), enter into this Agreement as of _____ [insert date when the change of name became effective under applicable State law].

- (a) The parties agree to the following facts:
- (1) The Government, represented by various Contracting Officers of the ___ name(s) of agency(ies)], has entered into certain contracts and purchase orders with the XYZ Corporation, namely: _ [insert contract or purchase order identifications]; [or delete "namely" and insert "as shown in the attached list marked "Exhibit A" and incorporated in this Agreement by reference."]. The term "the contracts," as used in this Agreement, means the above contracts and purchase orders and all other contracts and purchase orders, including all modifications, made by the Government and the Contractor before the effective date of this Agreement (whether or not performance and payment have been completed and releases executed if the Government or the Contractor has any remaining rights, duties, or obligations under these contracts and purchase orders).
- (2) The XYZ Corporation, by an amendment to its certificate of incorporation, dated ______ 19___, has changed its corporate name to ABC Corporation.
 - (3) This amendment accomplishes a change

- of corporate name only and all rights and obligations of the Government and of the Contractor under the contracts are unaffected by this change.
- (4) Documentary evidence of this change of corporate name has been filed with the Government.
- (b) In consideration of these facts, the parties agree that—
- (1) The contracts covered by this Agreement are amended by substituting the name "ABC Corporation" for the name "XYZ Corporation" wherever it appears in the contracts; and
- (2) Each party has executed this Agreement as of the day and year first above written.

Subpart 42.13—Suspension of Work, Stop-Work Orders, and Government Delay of Work

42.1301 General.

Situations may occur during contract performance that cause the Government to order a suspension of work, or a work stoppage. This subpart provides clauses to meet these situations and a clause for settling contractor claims for unordered Government caused delays that are not otherwise covered in the contract.

42.1302 Suspension of work.

A suspension of work under a construction or architectengineer contract may be ordered by the contracting officer for a reasonable period of time. If the suspension is unreasonable, the contractor may submit a written claim for increases in the cost of performance, excluding profit.

42.1303 Stop-work orders.

- (a) Stop-work orders may be used, when appropriate, in any negotiated fixed-price or cost-reimbursement supply, research and development, or service contract if work stoppage may be required for reasons such as advancement in the state-of-the-art, production or engineering breakthroughs, or realignment of programs.
- (b) Generally, a stop-work order will be issued only if it is advisable to suspend work pending a decision by the Government and a supplemental agreement providing for the suspension is not feasible. Issuance of a stop-work order shall be approved at a level higher than the contracting officer. Stop-work orders shall not be used in place of a termination notice after a decision to terminate has been made.
 - (c) Stop-work orders should include—
 - (1) A description of the work to be suspended;
- (2) Instructions concerning the contractor's issuance of further orders for materials or services:
- (3) Guidance to the contractor on action to be taken on any subcontracts; and
- (4) Other suggestions to the contractor for minimizing costs.
- (d) Promptly after issuing the stop-work order, the contracting officer should discuss the stop-work order with the contractor and modify the order, if necessary, in light of the discussion.
- (e) As soon as feasible after a stop-work order is issued, but before its expiration, the contracting officer shall take appropriate action to—
 - (1) Terminate the contract;
- (2) Cancel the stop-work order (any cancellation of a stop-work order shall be subject to the same approvals as were required for its issuance); or
- (3) Extend the period of the stop-work order if it is necessary and if the contractor agrees (any extension of the stop-work order shall be by a supplemental agreement).

42.1304 Government delay of work.

- (a) The clause at 52.242-17, Government Delay of Work, provides for the administrative settlement of contractor claims that arise from delays and interruptions in the contract work caused by the acts, or failures to act, of the contracting officer. This clause is not applicable if the contract otherwise specifically provides for an equitable adjustment because of the delay or interruption; *e.g.*, when the Changes clause is applicable.
- (b) The clause does not authorize the contracting officer to order a suspension, delay, or interruption of the contract work and it shall not be used as the basis or justification of such an order.
- (c) If the contracting officer has notice of an unordered delay or interruption covered by the clause, the contracting

- officer shall act to end the delay or take other appropriate action as soon as practicable.
- (d) The contracting officer shall retain in the file a record of all negotiations leading to any adjustment made under the clause, and related cost or pricing data, or information other than cost or pricing data.

42.1305 Contract clauses.

- (a) The contracting officer shall insert the clause at 52.242-14, Suspension of Work, in solicitations and contracts when a fixed-price construction or architect-engineer contract is contemplated.
- (b)(1) The contracting officer may, when contracting by negotiation, insert the clause at 52.242-15, Stop-Work Order, in solicitations and contracts for supplies, services, or research and development.
- (2) If a cost-reimbursement contract is contemplated, the contracting officer shall use the clause with its Alternate I.
- (c) The contracting officer shall insert the clause at 52.242-16, Stop-Work Order—Facilities, in solicitations and contracts when a facilities acquisition contract or a consolidated facilities contract is contemplated.
- (d) The contracting officer shall insert the clause at 52.242-17, Government Delay of Work, in solicitations and contracts when a fixed-price contract is contemplated for supplies other than commercial or modified-commercial items. The clause use is optional when a fixed-price contract is contemplated for services, or for supplies that are commercial or modified-commercial items.

Subpart 42.14—Traffic and Transportation Management

42.1401 General.

- (a) The contract administration office (CAO) shall ensure that instructions to contractors result in the most efficient and economical use of carrier services and equipment. If the transportation data regarding f.o.b. origin contracts is insufficient for Government transportation management purposes, the CAO shall obtain the data used in the evaluation of offers.
- (b) Transportation personnel assigned to or supporting the CAO, or appropriate agency personnel, are responsible for—
- (1) Furnishing timely routings and releases for port shipments;
- (2) Monitoring shipments to provide for carload or truckload quantities when practicable;
- (3) Controlling and issuing U.S. Government bills of lading (GBL's) and determining proper freight classification descriptions;

- (4) Reviewing documentation to ensure the proper distribution and validation of shipping documents;
- (5) Developing, and advising on, transportation cost differentials brought on by proposed changes in contract terms; *e.g.*, delivery schedules;
- (6) Determining, for contract requirements, the size and carrying capability of carrier equipment to transport overdimensional and/or overweight supplies, hazardous materials, or supplies requiring special shipping arrangements;
- (7) Developing information and reporting movements that may be the basis for negotiating special rates for volume movements or for rate adjustments (see 42.1402(b));
- (8) Exercising control of irregularities in preservation, packing, loading, blocking and bracing, and other causes contributing to loss and damage; sealing of carrier equipment and documentation;
- (9) Providing information on the use of transit arrangements;
- (10) Recommending, when appropriate, prepayment by contractor for f.o.b. origin shipments or parcel post (see 47.303-17 and 42.1404);
- (11) Recommending, when appropriate, the use of commercial forms and procedures for small shipments of a recurring nature if transportation costs do not exceed \$100, as authorized in 41 CFR 101-41.304-2 and, for the Department of Defense (DOD), in Chapter 32, Defense Traffic Management Regulation (DTMR) (AR 55-355, NAVSUPINST 4600.70, AFM 75-2, MCO P-4600.14A, DLAR 4500.3);
- (12) Diverting, reconsigning, tracing, and expediting shipments;
- (13) Considering the capabilities of contractors for meeting new or emergency requirements that arise during the contract administration and using these capabilities when appropriate; and
- (14) Using routings through established consolidation stations when it is in the Government's interest.
- (c) Civilian agencies shall consult and cooperate with the Office of Transportation of the General Services Administration (GSA) as required in 41 CFR 101-40. (See 47.105, Transportation assistance, for assistance to civilian Government activities or to military installations.)

42.1402 Volume movements within the continental United States.

- (a)(1) For purposes of contract administration, a volume movement is—
- (i) In DOD, the aggregate of freight shipments amounting to or exceeding 25 carloads, 25 truckloads, or 500,000 pounds, to move during the contract period from

- one origin point for delivery to one destination point or area; and
- (ii) In civilian agencies, 50 short tons (100,000 pounds) in the aggregate to move during the contract period from one origin point for delivery to one destination point or area.
- (2) Transportation personnel assigned to or supporting the CAO, or appropriate agency personnel, shall report planned and actual volume movements in accordance with agency regulations. DOD activities report to the Military Traffic Management Command (MTMC) under the Defense Traffic Management Regulation (DTMR). Civilian agencies report to GSA, Office of Transportation, or other designated offices under the Federal Property Management Regulations (FPMR), specifically 41 CFR 101-40.305-2.
- (b) Reporting of volume movements permits MTMC and GSA transportation personnel to determine the reasonableness of applicable current rates and, when appropriate, to negotiate adjusted or modified rates.

42.1403 Shipping documents covering f.o.b. origin shipments.

- (a) Except as provided in 47.303-17, when a contract specifies delivery of supplies f.o.b. origin with transportation costs to be paid by the Government, the contractor shall make shipments on U.S. Government bills of lading (GBL's), or on other shipping documents prescribed by MTMC in the case of seavan containers, furnished by the CAO or the appropriate agency transportation office. Each agency shall establish appropriate procedures by which the contractor shall obtain GBL's. The contracting officer shall not authorize the contractor to ship on commercial bills of lading for conversion to GBL's unless delivery is extremely urgent and GBL's are not readily available.
- (b) The possible application of reduced rates under section 10721 of the Interstate Commerce Act for shipments on commercial bills of lading and the Commercial Bill of Lading Notations clause are discussed at 47.104.
- (c)(1) The limited authority for the use of commercial forms and procedures to acquire freight or express transportation for small shipments of a recurring nature when transportation costs do not exceed \$100, is prescribed in the Transportation Documentation and Audit Regulation, specifically 41 CFR 101-41.304-2.
- (2) For DOD shipments, corresponding guidance is in Chapter 32 of the DTMR.

42.1404 Shipments by parcel post or other classes of mail.

42.1404-1 Parcel post eligible shipments.

(a)(1) Use of parcel post or other classes of mail permits direct movements from source of supply to the user, without

the intermediate documentation that is required when supplies are transported through depots or air or water terminals. However, the use of parcel post and other classes of mail shall be confined to deliveries of mailable matter that meet the size, weight, and distance limitations prescribed by the U.S. Postal Service. Parcel post eligible shipments for overseas destinations will not be sent via Small Package Delivery services or parcel post to CONUS military air or water terminals. These shipments will be mailed through the APO or FPO to the overseas user. Contractors shall not divide delivery quantities into mailable parcels for the purpose of avoiding shipments by other modes of transportation.

- (2) When parcel post or other classes of mail are used by contractors, they shall prepay the postage costs by using their own mailing labels or stamps and include prepaid postage costs as separate items in the invoices for supplies shipped.
- (b)(1) Authority for contractors to use indicia mail may be obtained by submitting Postal Service (PS) Form 3601, Application to Mail Without Affixing Postage Stamps, to the U.S. Postal Service for approval following agency procedures. If approval is granted, the agency shall follow the U.S. Postal Service permit requirements.
- (2) When indicia mail is used, the contractor will be provided with a completed PS Form 3601 and official penalty permit imprint mailing labels, envelopes, or cards printed on the top right side in a rectangular box: Postage and Fees Paid (first line); Government Agency Name (second line); and, the proper permit imprint number (G-000) on the third line. These must also bear in the upper left corner in every case the printed return address of the agency concerned above the printed phrases "Official Business" and "Penalty for Private Use, \$300." The name and address of a private person or firm shall not be shown.
- (c) When a contractor uses the contractor's own label for making a shipment to a post office servicing military and other agency consignees outside the United States, the contractor shall stamp or imprint the parcel immediately above the label in 1/4 inch block letters with (i) the name of the agency and (ii) the words "Official Mail-Contents for Official Use-Exempt from Customs Requirements." This permits identification and expedites handling within the postal system. Use of this marking does not eliminate the requirement for payment of postage by the contractor when so required by the contract or when the contractor is to be reimbursed for the cost of postage.
- (d) Contractors may not insure shipments at Government expense for the purpose of recovery in case of loss and/or damage, except that minimum insurance required for the purposes of obtaining receipts at point of origin and upon delivery is authorized.

42.1404-2 Contract clauses.

- (a) The contracting officer shall insert the clause at 52.242-10, F.o.b. Origin—Government Bills of Lading or Prepaid Postage, in solicitations and contracts when f.o.b. origin shipments are to be made using Government bills of lading or prepaid postage.
- (b) The contracting officer shall insert the clause at 52.242-11, F.o.b. Origin—Government Bills of Lading or Indicia Mail, in solicitations and contracts when f.o.b. origin shipments are to be made using Government bills of lading or indicia mail, if indicia mail has been authorized by the U.S. Postal Service.

42.1405 Discrepancies incident to shipment of supplies.

- (a) Discrepancies incident to shipment include overage, shortage, loss, damage, and other discrepancies between the quantity and/or condition of supplies received from commercial carriers and the quantity and/or condition of these supplies as shown on the covering bill of lading or other transportation document. Regulations and procedures for reporting and adjusting discrepancies in Government shipments are in Subpart 40.7 of the Federal Property Management Regulations (41 CFR 101-40.7). (Military installations shall consult "Reporting of Transportation Discrepancies in Shipments," AR 55-38, NAVSUP INST 4610.33C, AFR 75-18, MCO P4610.19D, DLAR 4500.15.)
- (b) Generally, when the place of delivery is f.o.b. origin, the Government consignee at destination is also accountable for the supplies, and all claims or reports dealing with discrepancies shall be initiated at that point in accordance with the property accountability regulations of the agency concerned.
- (c) If supplies are acquired on an f.o.b. destination basis, any claim arising from a discrepancy occurring in transit is a matter for settlement between the contractor and the carrier. However, the Government consignee shall—
- (1) Notify the carrier of the discrepancy by noting the exception on the carrier's delivery receipt; and
- (2) Furnish all available data to the CAO or appropriate agency office, which shall promptly transmit the data to the contractor.

42.1406 Report of shipment (REPSHIP).

42.1406-1 Advance notice.

Military (and as required, civilian agency) storage and distribution points, depots, and other receiving activities require advance notice of shipments en route from contractors' plants. Generally, this notification is required only for classified material; sensitive, controlled, and certain other protected material; explosives, and some other hazardous materials; selected shipments requiring movement control;

or minimum carload or truckload shipments. It facilitates arrangements for transportation control, labor, space, and use of materials handling equipment at destination. Also, timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges.

42.1406-2 Contract clause.

The contracting officer shall insert the clause at 52.242-12, Report of Shipment (REPSHIP), in solicitations and contracts when advance notice of shipment is required for safety or security reasons, or where carload or truckload shipments will be made to DoD installations or, as required, to civilian agency facilities.

Subpart 42.15—Contractor Performance Information

42.1500 Scope of subpart.

This subpart provides policies and establishes responsibilities for recording and maintaining contractor performance information. It implements Office of Federal Procurement Policy Letter 92-5, Past Performance Information. This subpart does not apply to procedures used by agencies in determining fees under award or incentive fee contracts. However, the fee amount paid to contractors should be reflective of the contractor's performance and the past performance evaluation should closely parallel the fee determinations.

42.1501 General.

Past performance information is relevant information, for future source selection purposes, regarding a contractor's actions under previously awarded contracts. It includes, for example, the contractor's record of conforming to contract requirements and to standards of good workmanship; the contractor's record of forecasting and controlling costs; the contractor's adherence to contract schedules, including the administrative aspects of performance; the contractor's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the contractor's business-like concern for the interest of the customer.

42.1502 Policy.

(a) Except as provided in paragraph (b) of this section, agencies shall prepare an evaluation of contractor performance for each contract in excess of \$1,000,000 (regardless of the date of contract award) and for each contract in excess of \$100,000 beginning not later than January 1, 1998 (regardless of the date of contract award), at the time the work under the contract is completed. In addition, interim evaluations should be prepared as specified by the agencies

to provide current information for source selection purposes, for contracts with a period of performance, including options, exceeding one year. This evaluation is generally for the entity, division, or unit that performed the contract. The content and format of performance evaluations shall be established in accordance with agency procedures and should be tailored to the size, content, and complexity of the contractual requirements.

(b) Agencies shall not evaluate performance for contracts awarded under Subparts 8.6 and 8.7. Agencies shall evaluate construction contractor performance and architect/engineer contractor performance in accordance with 36.201 and 36.604, respectively.

42.1503 Procedures.

- (a) Agency procedures for the past performance evaluation system shall generally provide for input to the evaluations from the technical office, contracting office and, where appropriate, end users of the product or service.
- (b) Agency evaluations of contractor performance prepared under this subpart shall be provided to the contractor as soon as practicable after completion of the evaluation. Contractors shall be given a minimum of 30 days to submit comments, rebutting statements, or additional information. Agencies shall provide for review at a level above the contracting officer to consider disagreements between the parties regarding the evaluation. The ultimate conclusion on the performance evaluation is a decision of the contracting agency. Copies of the evaluation, contractor response, and review comments, if any, shall be retained as part of the evaluation. These evaluations may be used to support future award decisions, and should therefore be marked "Source Selection Information". The completed evaluation shall not be released to other than Government personnel and the contractor whose performance is being evaluated during the period the information may be used to provide source selection information. Disclosure of such information could cause harm both to the commercial interest of the Government and to the competitive position of the contractor being evaluated as well as impede the efficiency of Government operations. Evaluations used in determining award or incentive fee payments may also be used to satisfy the requirements of this subpart. A copy of the annual or final past performance evaluation shall be provided to the contractor as soon as it is finalized.
- (c) Departments and agencies shall share past performance information with other departments and agencies when requested to support future award decisions. The information may be provided through interview and/or by sending the evaluation and comment documents to the requesting source selection official.
- (d) Any past performance information systems, including automated systems, used for maintaining contractor

performance information and/or evaluations should include appropriate management and technical controls to ensure that only authorized personnel have access to the data.

(e) The past performance information shall not be retained to provide source selection information for longer than three years after completion of contract performance.

Subpart 42.16—Small Business Contract Administration

42.1601 General.

The contracting officer shall make every reasonable effort to respond in writing within 30 days to any written request to the contracting officer from a small business concern with respect to a contract administration matter. In the event the contracting officer cannot respond to the request within the 30-day period, the contracting officer shall, within the period, transmit to the contracting officer expects to respond. This provision shall not apply to a request for a contracting officer decision under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

Subpart 42.17—Forward Pricing Rate Agreements

42.1701 Procedures.

(a) Negotiation of forward pricing rate agreements (FPRA's) may be requested by the contracting officer or the contractor or initiated by the administrative contracting officer (ACO). In determining whether or not to establish such an agreement, the ACO should consider whether the benefits to be derived from the agreement are commensurate with the effort of establishing and monitoring it. Normally, FPRA's should be negotiated only with contractors having a significant volume of Government contract proposals. The

cognizant contract administration agency shall determine whether an FPRAwill be established.

- (b) The ACO shall obtain the contractor's proposal and require that it include cost or pricing data that are accurate, complete, and current as of the date of submission. The ACO shall invite the cognizant contract auditor and contracting offices having a significant interest to participate in developing a Government objective and in the negotiations. Upon completing negotiations, the ACO shall prepare a price negotiation memorandum (PNM) (see 15.406-3) and forward copies of the PNM and FPRAto the cognizant auditor and to all contracting offices that are known to be affected by the FPRA. A Certificate of Current Cost or Pricing Data shall not be required at this time (see 15.407-3(c)).
- (c) The FPRAshall provide specific terms and conditions covering expiration, application, and data requirements for systematic monitoring to ensure the validity of the rates. The agreement shall provide for cancellation at the option of either party and shall require the contractor to submit to the ACO and to the cognizant contract auditor any significant change in cost or pricing data.
- (d) When an FPRAis invalid, the contractor should submit and negotiate a new proposal to reflect the changed conditions. If an FPRA has not been established or has been invalidated, the ACO will issue a forward pricing rate recommendation (FPRR) to buying activities with documentation to assist negotiators. In the absence of an FPRA or FPRR, the ACO shall include support for rates utilized.
- (e) The ACO may negotiate continuous updates to the FPRA. The FPRA will provide specific terms and conditions covering notification, application, and data requirements for systematic monitoring to ensure the validity of the rates.

* * * * * *

43.203 Change order accounting procedures.

- (a) Contractors' accounting systems are seldom designed to segregate the costs of performing changed work. Therefore, before prospective contractors submit offers, the contracting officer should advise them of the possible need to revise their accounting procedures to comply with the cost segregation requirements of the Change Order Accounting clause at 52.243-6.
- (b) The following categories of direct costs normally are segregable and accountable under the terms of the Change Order Accounting clause:
- (1) Nonrecurring costs (e.g., engineering costs and costs of obsolete or reperformed work).
- (2) Costs of added distinct work caused by the change order (*e.g.*, new subcontract work, new prototypes, or new retrofit or backfit kits).
- (3) Costs of recurring work (*e.g.*, labor and material costs).

43.204 Administration.

- (a) Change order documentation. When change orders are not forward priced, they require two documents: the change order and a supplemental agreement reflecting the resulting equitable adjustment in contract terms. If an equitable adjustment in the contract price or delivery terms or both can be agreed upon in advance, only a supplemental agreement need be issued, but administrative changes and changes issued pursuant to a clause giving the Government a unilateral right to make a change (e.g., an option clause) initially require only one document.
- (b) *Definitization*. (1) Contracting officers shall negotiate equitable adjustments resulting from change orders in the shortest practicable time.
- (2) Administrative contracting officers negotiating equitable adjustments by delegation under 42.302(b)(1), shall obtain the contracting officer's concurrence before adjusting the contract delivery schedule.
- (3) Contracting offices and contract administration offices, as appropriate, shall establish suspense systems adequate to ensure accurate identification and prompt definitization of unpriced change orders.
- (4) The contracting officer shall ensure that a cost analysis is made, if appropriate, under 15.404-1(c) and shall consider the contractor's segregable costs of the change, if available. If additional funds are required as a result of the change, the contracting officer shall secure the funds before making any adjustment to the contract.
- (5) When the contracting officer requires a field pricing review of requests for equitable adjustment, the contracting officer shall provide a list of any significant contract events which may aid in the analysis of the request. This list should include—

- (i) Date and dollar amount of contract award and/or modification;
- (ii) Date of submission of initial contract proposal and dollar amount;
 - (iii) Date of alleged delays or disruptions;
- (iv) Performance dates as scheduled at date of award and/or modification;
 - (v) Actual performance dates;
- (vi) Date entitlement to an equitable adjustment was determined or contracting officer decision was rendered if applicable;
- (vii) Date of certification of the request for adjustment if certification is required; and
- (viii) Dates of any pertinent Government actions or other key events during contract performance which may have an impact on the contractor's request for equitable adjustment.
- (c) Complete and final equitable adjustments. To avoid subsequent controversies that may result from a supplemental agreement containing an equitable adjustment as the result of a change order, the contracting officer should—
- (1) Ensure that all elements of the equitable adjustment have been presented and resolved; and
- (2) Include, in the supplemental agreement, a release similar to the following:

CONTRACTOR'S STATEMENT OF RELEASE

In consideration of the modification(s) agreed to herein as com-
plete equitable adjustments for the Contractor's
(describe) "proposal(s) for adjustment," the
Contractor hereby releases the Government from any and all
liability under this contract for further equitable adjustments
attributable to such facts or circumstances giving rise to the
"proposal(s) for adjustment" (except for).

43.205 Contract clauses.

- (a)(1) The contracting officer shall insert the clause at 52.243-1, Changes—Fixed-Price, in solicitations and contracts when a fixed-price contract for supplies is contemplated.
- (2) If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, the contracting officer shall use the clause with its Alternate I.
- (3) If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, the contracting officer shall use the clause with its Alternate II.
- (4) If the requirement is for architect-engineer or other professional services, the contracting officer shall use the clause with its Alternate III.

- (5) If the requirement is for transportation services, the contracting officer shall use the clause with its Alternate IV.
- (6) If it is desired to include the clause in solicitations and contracts when a research and development contract is contemplated, the contracting officer shall use the clause with its Alternate V.
- (b)(1) The contracting officer shall insert the clause at 52.243-2, Changes—Cost-Reimbursement, in solicitations and contracts when a cost-reimbursement contract for supplies is contemplated.
- (2) If the requirement is for services and no supplies are to be furnished, the contracting officer shall use the clause with its Alternate I.
- (3) If the requirement is for services and supplies are to be furnished, the contracting officer shall use the clause with its Alternate II.
- (4) If the requirement is for construction, the contracting officer shall use the clause with its Alternate III.
- (5) If a facilities contract is contemplated, the contracting officer shall use the clause with its Alternate IV.
- (6) If it is desired to include the clause in solicitations and contracts when a research and development contract is contemplated, the contracting officer shall use the clause with its Alternate V.
- (c) The contracting officer shall insert the clause at 52.243-3, Changes—Time-and-Materials or Labor-Hours, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.
- (d) The contracting officer shall insert the clause at 52.243-4, Changes, in solicitations and contracts for—
- (1) Dismantling, demolition, or removal of improvements; and
- (2) Construction, when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold.
- (e) The contracting officer shall insert the clause at 52.243-5, Changes and Changed Conditions, in solicitations and contracts for construction, when the contract amount is not expected to exceed the simplified acquisition threshold.

(f) The contracting officer may insert a clause, substantially the same as the clause at 52.243-6, Change Order Accounting, in solicitations and contracts for supply and research and development contracts of significant technical complexity, if numerous changes are anticipated. The clause may be included in solicitations and contracts for construction if deemed appropriate by the contracting officer.

Subpart 43.3—Forms

43.301 Use of forms.

- (a)(1) The Standard Form 30 (SF 30), Amendment of Solicitation/Modification of Contract, shall (except for the options stated in 43.301(a)(2) or actions processed under Part 15) be used for—
 - (i) Any amendment to a solicitation;
- (ii) Change orders issued under the Changes clause of the contract;
- (iii) Any other unilateral contract modification issued under a contract clause authorizing such modification without the consent of the contractor;
- (iv) Administrative changes such as the correction of typographical mistakes, changes in the paying office, and changes in accounting and appropriation data;
 - (v) Supplemental agreements (see 43.103); and
- (vi) Removal, reinstatement, or addition of funds to a contract.
 - (2) The SF 30 may be used for—
- (i) Modifications that change the price of contracts for the acquisition of petroleum as a result of economic price adjustment;
 - (ii) Termination notices; and
- (iii) Purchase order modifications as specified in 13.302-3.
- (3) If it is anticipated that a change will result in a price change, the estimated amount of the price change shall not be shown on copies of SF 30 furnished to the contractor.
- (b) The Optional Form 336 (OF 336), Continuation Sheet, or a blank sheet of paper, may be used as a continuation sheet for a contract modification.

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(c) *Contract clause*. The contracting officer shall insert in solicitations and contracts the clause at 52.247-41, C.&f. Destination, when the delivery term is c.& f. destination.

47.303-14 C.i.f. destination.

- (a) Explanation of delivery term. "C.i.f. destination" means free of expense to the Government delivered on board the ocean vessel to the specified point of destination, with the cost of transportation and marine insurance paid by the contractor.
- (b) Contractor responsibilities. The contractor's responsibilities are the same as those listed in 47.303-13(b), except that, in addition, the contractor shall obtain and dispatch to the Government an insurance policy or certificate providing the amount and extent of marine insurance coverage specified in the contract or agreed upon by the Government contracting officer.
- (c) *Contract clause*. The contracting officer shall insert in solicitations and contracts the clause at 52.247-42, C.i.f. Destination, when the delivery term is c.i.f. destination.

47.303-15 F.o.b. designated air carrier's terminal, point of exportation.

- (a) Explanation of delivery term. "F.o.b. designated air carrier's terminal, point of exportation" means free of expense to the Government loaded aboard the aircraft, or delivered to the custody of the air carrier (if only the air carrier performs the loading), at the air carrier's terminal specified in the contract.
 - (b) Contractor responsibilities. The contractor shall—
- (1)(i) Pack and mark the shipment to comply with contract specifications; or
- (ii) In the absence of specifications, prepare the shipment for air transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;
- (2)(i) Deliver the shipment in good order and condition into the conveyance of the carrier, or to the custody of the carrier (if only the carrier performs the loading), at the point of delivery and on the date or within the period specified in the contract; and
- (ii) Pay and bear all applicable charges up to this point;
- (3) Provide a clean Government bill of lading and/or air waybill;
- (4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the goods to the point specified in the contract; and
- (5) At the Government's request and expense, assist in obtaining the documents required for the purpose of exportation.
- (c) Contract clause. The contracting officer shall insert in solicitations and contracts the clause at 52.247-43. F.o.b.

Designated Air Carrier's Terminal, Point of Exportation, when the delivery term is f.o.b. designated air carrier's terminal, point of exportation.

47.303-16 F.o.b. designated air carrier's terminal, point of importation.

- (a) Explanation of delivery term. "F.o.b. designated air carrier's terminal, point of importation" means free of expense to the Government delivered to the air carrier's terminal at the point of importation specified in the contract.
 - (b) Contractor responsibilities. The contractor shall—
- (1)(i) Pack and mark the shipment to comply with contract specifications; or
- (ii) In the absence of specifications, prepare the shipment for air transportation in conformance with carrier requirements to protect the goods;
- (2) Prepare and distribute bills of lading or air way-bills;
- (3)(i) Deliver the shipment in good order and condition to the point of delivery specified in the contract; and
- (ii) Pay and bear all charges incurred up to the point of delivery specified in the contract, including transportation costs; export, import, or other fees or taxes; cost of landing, if any; customs duties; and costs of certificates of origin, consular invoices, or other documents that may be required for exportation or importation; and
- (4) Be responsible for any loss of and/or damage to the goods until delivery of the goods to the Government at the designated air carrier's terminal.
- (c) *Contract clause*. The contracting officer shall insert in solicitations and contracts the clause at 52.247-44, F.o.b. Designated Air Carrier's Terminal, Point of Importation, when the delivery term is f.o.b. designated air carrier's terminal, point of importation.

47.303-17 Contractor-prepaid commercial bills of lading, small package shipments.

- (a) If it is advantageous to the Government, the contracting officer may authorize the contractor to ship supplies, which have been acquired f.o.b. origin, to domestic destinations, including DOD air and water terminals by common carriers on commercial bills of lading. Such shipments shall not exceed 150 pounds by commercial air or 1,000 pounds by other commercial carriers and shall not have a security classification.
- (b) The contracting officer may authorize the shipments under paragraph (a) of this subsection to be consolidated with the contractor's own prepaid shipments for delivery to one or more destinations, if all appropriate f.o.b. origin shipments under one or more Government contracts have been consolidated initially. The contractor may be authorized to consolidate less-than-carload or less-than-truckload Government shipments with its own shipments so that the

Government can take advantage of lower carload or truck-load freight costs. The Government shall assume its pro rata share of the combined shipment cost. Agency transportation personnel shall evaluate overall transportation costs before authorizing any movement to ensure savings to the Government consistent with other contract and traffic management considerations. When consolidation is authorized, a copy of the commercial bill of lading shall be mailed promptly to each consignee.

- (c) Shipments under prepaid commercial bills of lading, as authorized in paragraph (a) of this subsection, do not require a contract modification. Unless otherwise provided in the contract, the supplies move for the account of, and at the risk of, the Government. The supplies become Government property when loaded on the carrier's equipment and the contractor has obtained the carrier's receipt. The contractor pays the transportation charges and is reimbursed by the Government. Loss or damage claims shall be processed in accordance with agency regulations.
- (d) The contractor's invoice for reimbursement by the Government shall show the prepaid transportation charges as agreed (see paragraph (b) of this subsection), as a separate item for each individual shipment. The contractor shall support the transportation charges with a copy of the carrier's receipted freight bill or other evidence of receipt, except as follows:
- (1) A Government agency may determine that receipted freight bills or other evidence of receipt are not required for transportation charges of \$100 or less.
- (2) A Government agency may pay an invoiced but unsupported transportation charge of \$250 or less per transaction (*i.e.*, purchase, invoice, or aggregate billing or payment for multiple purchases), if—
- (i) The contractor cannot reasonably provide a receipted freight bill; and
- (ii) The agency has determined that the charges are reasonable. Determination of reasonableness may be based on—
- (A) Past experience (authenticated transportation charges for similar shipments);
 - (B) Rate checks;
- (C) Copies of previous freight bills submitted by the contractor; or
- (D) Other information submitted by the contractor to substantiate the amount claimed.
- (3) Receipted freight bills in support of invoiced transportation charges of \$100 or less are not required for reimbursement by the Government, if—
- (i) The underlying contract specifies retention by the contractor of all records for at least 3 years after final payment under the contract; and
- (ii) The contractor agrees to furnish evidence of payment when requested by the Government.

- (e) Shipments and invoices shall not be split to reduce transportation charges to \$100 or less per transaction as a means of avoiding the required documented support for the charges. See paragraph (d)(2) of this subsection for unsupported transportation charges of \$250 or less.
- (f) The contracting officer shall insert the clause at 52.247-65, F.o.b. Origin, Prepaid Freight-Small Package Shipments, in solicitations and contracts when f.o.b. origin shipments are to be made.

47.304 Determination of delivery terms.

47.304-1 General.

- (a) The contracting officer shall determine f.o.b. terms generally on the basis of overall costs, giving due consideration to the criteria given in 47.304.
- (b) Solicitations shall specify whether offerors must submit offers f.o.b. origin, f.o.b. destination, or both; or whether offerors may choose the basis on which they make an offer. The contracting officer shall consider the most advantageous delivery point, such as—
- (1) F.o.b. origin, carrier's equipment, wharf, or specified freight station near contractor's plant; or
 - (2) F.o.b. destination.
- (c) In determining whether f.o.b. origin or f.o.b. destination is more advantageous to the Government, the contracting officer shall consider the availability of lower freight rates (Government rate tenders) to the Government for f.o.b. origin acquisitions. F.o.b. origin contracts also present other desirable traffic management features, in that they—
 - (1) Permit use of transit privileges (see 47.305-13);
- (2) Permit diversions to new destinations without price adjustment for transportation (see 47.305-11);
- (3) Facilitate use of special routings or types of equipment (*e.g.*, circuitous routing or oversize shipments) (see 47.305-14);
- (4) Facilitate, if necessary, use of premium cost transportation and permit Government-controlled transportation;
- (5) Permit negotiations for reduced freight rates (see 47.104-1(b)); and
- (6) Permit use of small shipment consolidation stations.
- (d) When destinations are tentative or unknown, the solicitation shall be f.o.b. origin only (see 47.305-5).
- (e) When the size or quantity of supplies with confidential or higher security classification requires commercial transportation services, the contracting officer shall generally specify f.o.b. origin acquisitions.
- (f) When acceptance must be at destination, solicitation shall be on an f.o.b. destination only basis.
- (g) Following are examples of situations when solicitations shall normally be on an f.o.b. destination only basis

PART 49—TERMINATION OF CONTRACTS

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49.001	Definitions.	49.206-2	Bases for settlement proposals.
49.002	Applicability.	49.206-3	Submission of inventory schedules.
		49.207	Limitation on settlements.
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49.101	Authorities and responsibilities.	Subpart 4	19.3—Additional Principles for Cost-Reimbursemen
49.102	Notice of termination.	10.201	Contracts Terminated for Convenience
49.103	Methods of settlement.	49.301	General.
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	issuance of notice of termination.	49.303-2	Submission of inventory schedules.
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49.105-3	Termination case file.	49.303-5	Final settlement.
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49.106	Fraud or other criminal conduct.	49.304-1	General.
49.107	Audit of prime contract settlement proposals and sub-	49.304-2	Submission of settlement proposal (fee only).
10.100	contract settlements.	49.304-3	Submission of vouchers.
49.108	Settlement of subcontract settlement proposals.	49.305 49.305-1	Adjustment of fee. General.
49.108-1	Subcontractor's rights.	49.305-1	Construction contracts.
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49.108-3	Settlement procedure.		
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40 100 5	approval or ratification.	49.401	General.
49.108-5	Recognition of judgments and arbitration awards.	49.402	Termination of fixed-price contracts for default.
49.108-6	Delay in settling subcontractor settlement proposals.	49.402-1	The Government's right.
49.108-7	Government assistance in settling subcontracts.	49.402-2	Effect of termination for default.
49.108-8	Assignment of rights under subcontracts.	49.402-3	Procedure for default. Procedure in lieu of termination for default.
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49.000 Scope of part.

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

49.001 Definitions.

"Claim," as used in this part, means the same as the language in 33.201.

"Continued portion of the contract," as used in this part, means the portion of a partially terminated contract that the contractor must continue to perform.

"Effective date of termination" means the date on which the notice of termination requires the contractor to stop performance under the contract. If the termination notice is received by the contractor subsequent to the date fixed for termination, then the effective date of termination means the date the notice is received.

"Other work," as used in this part, means any current or scheduled work of the contractor, whether Government or commercial, other than work related to the terminated contract.

"Partial termination" means the termination of a part, but not all, of the work that has not been completed and accepted under a contract.

"Settlement agreement," as used in this part, means a written agreement in the form of an amendment to a contract settling all or a severable portion of a settlement proposal.

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

"Terminated portion of the contract" means the portion of a terminated contract that relates to work or end items not completed and accepted before the effective date of termination that the contractor is not to continue to perform. For construction contracts that have been completely terminated for convenience, it means the entire contract, notwithstanding the completion of, and payment for, individual items of work before termination.

"Termination contracting officer" means a contracting officer who is settling terminated contracts (see "Contracting officer" in 2.1).

"Termination inventory" means the same as the language in 45.601.

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

49.002 Applicability.

- (a) This part applies to contracts that provide for termination for the convenience of the Government or for the default of the contractor (see also 13.302-4).
- (b) Contractors shall use this part, unless inappropriate, to settle subcontracts terminated as a result of modification of prime contracts. The contracting officer shall use this part as a guide in evaluating settlements of subcontracts terminated for the convenience of a contractor whenever the settlement will be the basis of a proposal for reimbursement from the Government under a cost-reimbursement contract.
- (c) The contracting officer may use this part in determining an equitable adjustment resulting from a modification under the Changes clause of any contract, except cost-reimbursement contracts.
- (d) When action to be taken or authority to be exercised under this part depends upon the "amount" of the settlement proposal, that amount shall be determined by deducting from the gross settlement proposed the amounts payable for completed articles or work at the contract price and amounts for the settlement of subcontractor settlement proposals. Credits for retention or other disposal of termination inventory and amounts for advance or partial payments shall not be deducted.

Subpart 49.1—General Principles

49.100 Scope of subpart.

(a) This subpart deals with—

completion of the work, except to the extent that they are excusable under the contract.

- (3) If the contract proceeds have been assigned to a financing institution, the surety may not be paid from unpaid earnings, unless the assignee consents to the payment in writing.
- (4) The surety shall not be paid any amount in excess of its total expenditures necessarily made in completing the work and discharging its liabilities under the payment bond of the defaulting contractor. Furthermore, payments to the surety to reimburse it for discharging its liabilities under the payment bond of the defaulting contractor shall be only on authority of—
- (i) Mutual agreement between the Government, the defaulting contractor, and the surety;
- (ii) Determination of the Comptroller General as to payee and amount; or
 - (iii) Order of a court of competent jurisdiction.

49.405 Completion by another contractor.

If the surety does not arrange for completion of the contract, the contracting officer normally will arrange for completion of the work by awarding a new contract based on the same plans and specifications. The new contract may be the result of sealed bidding or any other appropriate contracting method or procedure. The contracting officer shall exercise reasonable diligence to obtain the lowest price available for completion.

49.406 Liquidation of liability.

The contract provides that the contractor and the surety are liable to the Government for resultant damages. The contracting officer shall use all retained percentages of progress payments previously made to the contractor and any progress payments due for work completed before the termination to liquidate the contractor's and the surety's liability to the Government. If the retained and unpaid amounts are insufficient, the contracting officer shall take steps to recover the additional sum from the contractor and the surety.

Subpart 49.5—Contract Termination Clauses

49.501 General.

This subpart prescribes the principal contract termination clauses. This subpart does not apply to contracts that use the clause at 52.213-4, Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items). For contracts for the acquisition of commercial items, this part provides administrative guidance which may be followed when it is consistent with the requirements and procedures in the clause at 52.212-4, Contract Terms and Conditions - Commercial Items. In appropriate cases, agencies may authorize the use of special purpose clauses, if consistent with this chapter.

49.502 Termination for convenience of the Government.

- (a) Fixed-price contracts of \$100,000 or less (short form)—(1) General use. The contracting officer shall insert the clause at 52.249-1, Termination for Convenience of the Government (Fixed-Price) (Short Form), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to be \$100,000 or less, except—
- (i) If use of the clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form) is appropriate,
- (ii) In contracts for research and development work with an educational or nonprofit institution on a noprofit basis,
 - (iii) In contracts for architect-engineer services, or
- (iv) If one of the clauses prescribed or cited at 49.505(a), (b), or (e), is appropriate.
- (2) Dismantling and demolition. If the contract is for dismantling, demolition, or removal of improvements, the contracting officer shall use the clause with its Alternate I.
- (b) Fixed-price contracts over \$100,000—(1)(i) General use. The contracting officer shall insert the clause at 52.249-2, Termination for Convenience of the Government (Fixed-Price), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to be over \$100,000, except in contracts for
 - (A) Dismantling and demolition,
- (B) Research and development work with an educational or nonprofit institution on a no-profit basis, or
- (C) Architect-engineer services; it shall not be used if the clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form), is appropriate (see 49.502(c)), or one of the clauses prescribed or cited at 49.505(a), (b), or (e), is appropriate.
- (ii) *Construction*. If the contract is for construction, the contracting officer shall use the clause with its Alternate I.
- (iii) Partial payments. If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, the contracting officer shall use the clause with its Alternate II. In such contracts for construction, the contracting officer shall use the clause with its Alternate III.
- (2) Dismantling and demolition. The contracting officer shall insert the clause at 52.249-3, Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements) in solicitations and contracts for dismantling, demolition, or removal of improvements, when a fixed-price contract is contemplated and the contract amount is expected to be over \$100,000. If the contract is

with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, the contracting officer shall use the clause with its Alternate I.

- (c) Service contracts (short form). The contracting officer shall insert the clause at 52.249-4, Termination for Convenience of the Government (Services) (Short Form), in solicitations and contracts for services, regardless of value, when a fixed-price contract is contemplated and the contracting officer determines that because of the kind of services required, the successful offeror will not incur substantial charges in preparation for and in carrying out the contract, and would, if terminated for the convenience of the Government, limit termination settlement charges to services rendered before the date of termination. Examples of services where this clause may be appropriate are contracts for rental of unreserved parking space, laundry and drycleaning, etc.
- (d) Research and development contracts. The contracting officer shall insert the clause at 52.249-5, Termination for the Convenience of the Government (Educational and Other Nonprofit Institutions), in solicitations and contracts when either a fixed-price or cost-reimbursement contract is contemplated for research and development work with an educational or nonprofit institution on a nonprofit or no-fee basis.
- (e) Subcontracts—(1) General use. The prime contractor may find the clause at 52.249-1, Termination for Convenience of the Government (Fixed-Price) (Short Form), or at 52.249-2, Termination for Convenience of the Government (Fixed-Price), as appropriate, suitable for use in fixed-price subcontracts, except as noted in subparagraph (e)(2) of this section; provided, that the relationship between the contractor and subcontractor is clearly indicated. Inapplicable conditions (e.g., paragraph (d)) in 52.249-2 should be deleted and the periods reduced for submitting the subcontractor's termination settlement proposal (e.g., 6 months), and for requesting an equitable price adjustment (e.g., 45 days).
- (2) Research and development. The prime contractor may find the clause at 52.249-5, Termination for the Convenience of the Government (Educational and Other Nonprofit Institutions), suitable for use in subcontracts placed with educational or nonprofit institutions on a noprofit or no-fee basis; provided, that the relationship between the contractor and subcontractor is clearly indicated. Inapplicable conditions (e.g., paragraph (h)) should be deleted, the period for submitting the subcontractor's termination settlement proposal should be reduced (e.g., 6 months), the subcontract should be placed on a no-profit or no-fee basis, and the subcontract should incorporate or be

negotiated on the basis of the cost principles in Part 31 of the Federal Acquisition Regulation.

49.503 Termination for convenience of the Government and default.

- (a) Cost-reimbursement contracts—(1) General use. The contracting officer shall insert the clause at 52.249-6, Termination (Cost Reimbursement), in solicitations and contracts when a cost-reimbursement contract is contemplated, except in contracts for architect-engineer services and for research and development with an educational or nonprofit institution on a no-fee basis.
- (2) Construction. If the contract is for construction, the contracting officer shall use the clause with its Alternate I.
- (3) Partial payments. If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, the contracting officer shall use the clause with its Alternate II. In such contracts for construction, the contracting officer shall use the clause with its Alternate III.
- (4) Time-and-material and labor-hour contracts. If the contract is a time-and-material or labor-hour contract, the contracting officer shall use the clause with its Alternate IV. If the contract is with an agency of the U.S. Government or with State, local, or foreign governments or their agencies, and if the contracting officer determines that the requirement to pay interest on excess partial payments is inappropriate, the contracting officer shall use the clause with its Alternate V.
- (b) *Fixed-price contracts*. The contracting officer shall insert the clause at 52.249-7, Termination (Fixed-Price Architect-Engineer), in solicitations and contracts for architect-engineer services, when a fixed-price contract is contemplated.
- (c) *Subcontracts*. The prime contractor may find the clause at 52.249-6, Termination (Cost-Reimbursement), suitable for use in cost-reimbursement subcontracts; provided, that the relationship between the contractor and subcontractor is clearly indicated. Inapplicable conditions (*e.g.*, paragraphs (e), (j) and (n)) should be deleted and the period for submitting the subcontractor's termination settlement proposal should be reduced (*e.g.*, 6 months).

49.504 Termination of fixed-price contracts for default.

(a)(1) Supplies and services. The contracting officer shall insert the clause at 52.249-8, Default (Fixed-Price Supply and Service), in solicitations and contracts when a fixed-price contract is contemplated and the contract

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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that contains its full text. If, for example, an agency acquisition regulation contains only one provision followed by only one clause supplementing the FAR in its section 52.236 (Construction and Architect-Engineer Contracts), then the sequential numbers would be "70" for the provision and "71" for the clause.

- (c) *Prescriptions*. Each provision or clause in Subpart 52.2 is prescribed at that place in the FAR text where the subject matter of the provision or clause receives its primary treatment. The prescription includes all conditions, requirements, and instructions for using the provision or clause and its alternates, if any. The provision or clause may be referred to in other FAR locations.
- (d) *Prefaces*. Within Subpart 52.2, each provision or clause is prefaced with—
- (1) A cross-reference to the location in the FAR subject text that prescribes its use; and
- (2) Directions for inserting it in solicitations and/or contracts.
- (e) *Matrix*. (1) The matrix in Subpart 52.3 contains a column for each principal type and/or purpose of contract (*e.g.*, fixed-price supply, cost reimbursement research and development). The matrix lists the—
 - (i) Required solicitation provisions;
 - (ii) Required-when-applicable solicitation provisions;
 - (iii) Optional solicitation provisions;
 - (iv) Required contract clauses;
 - (v) Required-when-applicable contract clauses; and
 - (vi) Optional contract clauses.
- (2) For each provision or clause listed, the matrix provides information on—
- (i) Whether incorporation by reference is or is not ■ authorized (see 52.102);
 - (ii) The section of the Uniform Contract Format (UCF) in which it is to be located, if it is used in an acquisition that is subject to the UCF;
 - (iii) Its number;
- (iv) The citation of the FAR text that prescribes its use; and
 - (v) Its title.
- (3) Since the matrix does not provide sufficient information to determine the applicability of a provision or clause in the "required-when-applicable" and "optional" categories, contracting officers shall refer to the FAR text (cited in the matrix) that prescribes its use.
- (4) The FAR matrix may be reproduced at agency levels, and at subordinate levels, for the purpose of supplementing it with agency-developed provisions and clauses. The resulting consolidated matrices may be included in agency acquisition regulations.
- (f) *Dates*. Since they are subject to revision from time to time, all provisions, clauses, and alternates are dated; *e.g.*, (Dec 1983). To avoid questions concerning which version

of any provision, clause, or alternate is operative in any given solicitation or contract, its date shall be included whether it is incorporated by reference or in full text.

52.102 Incorporating provisions and clauses.

- (a) Provisions and clauses should be incorporated by reference to the maximum practical extent, rather than being incorporated in full text, even if they—
- (1) Are used with one or more alternates or on an optional basis;
- (2) Are prescribed on a "substantially as follows" or "substantially the same as" basis, provided they are used verbatim;
- (3) Require modification or the insertion by the Government of fill-in material (see 52.104); or
- (4) Require completion by the offeror or prospective contractor. This instruction also applies to provisions completed as annual representations and certifications.
- (b) Except for provisions and clauses prescribed in 52.107, any provision or clause that can be accessed electronically by the offeror or prospective contractor may be incorporated by reference in solicitations and/or contracts. However, the contracting officer, upon request, shall provide the full text of any provision or clause incorporated by reference.
- (c) Agency approved provisions and clauses prescribed in agency acquisition regulations, and provisions and clauses not authorized by Subpart 52.3 to be incorporated by reference, need not be incorporated in full text, provided the contracting officer includes in the solicitation and contract a statement that—
- (1) Identifies all provisions and clauses that require completion by the offeror or prospective contractor;
- (2) Specifies that the provisions and clauses must be completed by the offeror or prospective contractor and must be submitted with the quotation or offer; and
- (3) Identifies to the offeror or prospective contractor at least one electronic address where the full text may be accessed.
- (d) An agency may develop a group listing of provisions and clauses that apply to a specific category of contracts. An agency group listing may be incorporated by reference in solicitations and/or contracts in lieu of citing the provisions and clauses individually, provided the group listing is made available electronically to offerors and prospective contractors.
- (e) A provision or clause that is not available electronically to offerors and prospective contractors shall be incorporated in solicitations and/or contracts in full text if it
- (1) A FAR provision or clause that otherwise is not authorized to be incorporated by reference (see Subpart 52.3); or

- (2) A provision or clause prescribed for use in an agency acquisition regulation.
- (f) Provisions or clauses may not be incorporated by reference by being listed in the—
- (1) Provision at 52.252-3, Alterations in Solicitations; or
 - (2) Clause at 52.252-4, Alterations in Contract.

52.103 Identification of provisions and clauses.

- (a) Whenever any FAR provision or clause is used without deviation in a solicitation or contract, whether it is incorporated by reference or in full text, it shall be identified by number, title, and date. This identification shall also be used if the FAR provision or clause is used with an authorized deviation, except that the contracting officer shall then insert "(DEVIATION)" after the date. Solicited firms and contractors will be advised of the meaning of this insertion through the use of the (1) provision at 52.252-5, Authorized Deviations in Provisions, or (2) clause at 52.252-6, Authorized Deviations in Clauses. The above mentioned provision and clause are prescribed in 52.107(e) and (f).
- (b) Any provision or clause that supplements the FAR whether it is incorporated by reference or in full text shall be clearly identified by number, title, date, and name of the regulation. When a supplemental provision or clause is used with an authorized deviation, insert "(DEVIATION)" after the name of the regulation.
- (c) A provision or clause of the type described in 52.101(b)(2)(i)(C) shall be identified by the title, date, and the name of the agency or suborganization within the agency that developed it.
- (d) Except for provisions or clauses covered by 52.103(c), the following hypothetical examples illustrate how a provision or clause that supplements the FAR shall be identified when it is incorporated in solicitations and/or contracts by reference or in full text:
- (1) If Part 14 (Sealed Bidding) of the X Agency Acquisition Regulation, published in the *Federal Register* and codified as Chapter 99 in 48 CFR, prescribes the use of a provision entitled "Bid Envelopes," dated October 1983, and that provision is sequentially the first provision or clause appearing in Section 52.214 of the X Agency Acquisition Regulation, then the identification of that provision shall be "9952.214-70—Bid Envelopes (Oct 1983)."
- (2) Assume that Y, a major organizational element of the X Agency, is authorized to issue the Y Acquisition Regulation, which is not published in the *Federal Register* and codified in 48 CFR. If Part 36 (Construction and Architect-Engineer Contracts) of the Y Acquisition Regulation prescribes the use of a clause entitled "Refrigerated Display Cases," dated March 1983, pertaining to a specialized type of construction work, and that clause is sequentially the second provision or clause appear-

ing in Section 52.236 of the Y Acquisition Regulation, then the identification of that clause shall be "52.236-71—Refrigerated Display Cases (Mar 1983)—Y Acquisition Regulation."

52.104 Procedures for modifying and completing provisions and clauses.

- (a) Provisions and clauses shall not be modified unless the FAR authorizes their modification. Any such authorizations are contained in the provision or clause preface in Subpart 52.2; for example—
- (1) "In the following clause, the stated 60-day period may be varied from 30 to 90 days;" or
- (2) "Task Order" or other appropriate designation may be substituted for "Schedule" wherever that word appears in the clause."
- (b) When modifying provisions or clauses incorporated by reference, insert the changed wording directly below the title of the provision or clause identifying to the lowest level necessary (*e.g.*, paragraph, sentence, word), to clearly indicate what is being modified.
- (c) When modifying provisions or clauses incorporated in full text, modify the language directly by substituting the changed wording as permitted.
- (d) When completing blanks in provisions or clauses incorporated by reference, insert the fill-in information directly below the title of the provision or clause identifying to the lowest level necessary to clearly indicate the blanks being filled in.
- (e) When completing blanks in provisions or clauses incorporated in full text, insert the fill-in information in the blanks of the provision or clause.

52.105 Procedures for using alternates.

- (a) A major variation in a provision or clause is accommodated by use of an alternate. All alternates to a given provision or clause are prescribed at the point in the FAR subject text where the provision or clause is itself prescribed. The alternates to each provision or clause are titled "Alternate I," "Alternate II," "Alternate III," and so on. In Subpart 52.2, the instructions for using these alternates appear after the basic provision or clause. A statement of the manner of and conditions for its use is given for each alternate. This statement shall be read in conjunction with the preface to the provision or clause.
- (b) When an alternate is used, its date shall be cited along with the date of the basic provision or clause; *e.g.*, 52.209-3 First Article Approval—Contractor Testing (Oct 1983)—Alternate I (Dec 1983).

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) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c) or (d) of this clause, the Contractor is not required to include any FAR clause, other than those listed below (and as may be required by an addenda to this paragraph to establish the reasonableness of prices under Part 15), in a subcontract for commercial items or commercial components—
 - (1) 52.222-26, Equal Opportunity (E.O. 11246);
- (2) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 2012(a));
- (3) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793); and
- (4) 52.247-64, Preference for Privately-Owned U.S.-Flagged Commercial Vessels (46 U.S.C. 1241) (flow down not required for subcontracts awarded beginning May 1, 1996).

(End of 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 RECEIV-ING 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) (Feb 1998)

- (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 (Aug 1996) (E.O. 11755).
- (ii) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).
 - (2) Listed below are additional clauses that apply:
- (i) 52.225-11, Restrictions on Certain Foreign Purchases (Oct 1996).
 - (ii) 52.232-1, Payments (APR 1984).
- (iii) 52.232-8, Discounts for Prompt Payment (MAY 1997).
 - (iv) 52.232-11, Extras (APR 1984).
 - (v) 52.232-25, Prompt Payment (Jun 1997).
- (vi) 52.232-33, Mandatory Information for Electronic Funds Transfer Payment (Aug 1996).
 - (vii) 52.233-1, Disputes (OCT 1995).
- (viii) 52.244-6, Subcontracts for Commercial Items and Commercial Components (Oct 1995).
- (ix) 52.253-1, Computer Generated Forms (Jan 1991).
- (b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:
- (1) The clauses listed below implement provisions of law or Executive order:
- (i) 52.222-20, Walsh-Healey Public Contracts Act (DEC 1996) (41 U.S.C. 35-45) (Applies to supply contracts over \$10,000 in the United States).
- (ii) 52.222-26, Equal Opportunity (APR 1984) (E.O. 11246) (Applies to contracts over \$10,000).
- (iii) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (APR 1984) (38 U.S.C. 4212) (Applies to contracts over \$10,000).
- (iv) 52.222-36, Affirmative Action for Handicapped Workers (APR 1984) (29 U.S.C. 793) (Applies to contracts over \$2,500).
- (v) 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (JAN 1988) (38 U.S.C. 4212) (Applies to contracts over \$10,000).
- (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).
- (vii) 52.223-5, Pollution Prevention and Right-to-Know Information (MAR 1997) (E.O. 12856) (Applies to services performed on Federal facilities).
- (viii) 52.225-3, Buy American Act—Supplies (JAN 1994) (41 U.S.C. 10) (Applies to supplies, and to services involving the furnishing of supplies, if the contract was—
 - (A) Under \$25,000; or
- (B) Set aside for small business concerns, regardless of dollar value).
- (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 (Jun 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—
- (1) Within a reasonable period of time after the defect was discovered or should have been discovered; and
- (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
- (e) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
- (f) Termination for the Government's convenience. The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all

- work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.
- (g) *Termination for cause*. The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.
- (h) *Warranty*. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(End of clause)

52.214-1 Solicitation Definitions—Sealed Bidding.

As prescribed in 14.201-6(b)(1), insert the following provision:

SOLICITATION DEFINITIONS—SEALED BIDDING (JUL 1987)

"Government" means United States Government.

"Offer" means "bid" in sealed bidding.

"Solicitation" means an invitation for bids in sealed bidding.

(End of provision)

52.214-2 Type of Business Organization—Sealed Bidding.

As prescribed in 14.201-6(b)(2), insert the following provision:

Type of Business Organization—Sealed Bidding (Jul 1987)

The bidder, by checking the applicable box, represents
that—
(a) It operates as \square a corporation incorporated under the
laws of the State of, \square an individual, \square a
partnership, \square a nonprofit organization, or \square a joint ven-
ture; or
(b) If the bidder is a foreign entity, it operates as \square an
individual, \square a partnership, \square a nonprofit organization, \square a
joint venture, or \square a corporation, registered for business in
- <u></u> •
(Country)
(End of provision)

52.214-3 Amendments to Invitations for Bids.

As prescribed in 14.201-6(b)(3), insert the following provision:

AMENDMENTS TO INVITATIONS FOR BIDS (DEC 1989)

(a) If this solicitation is amended, then all terms and conditions which are not modified remain unchanged.

(b) Bidders shall acknowledge receipt of any amendment to this solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space provided for this purpose on the form for submitting a bid, (3) by letter or telegram, or (4) by facsimile, if facsimile bids are authorized in the solicitation. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(End of provision)

52.214-4 False Statements in Bids.

As prescribed in 14.201-6(b)(4), insert the following provision in all invitations for bids:

FALSE STATEMENTS IN BIDS (APR 1984)

Bidders must provide full, accurate, and complete information as required by this solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

(End of provision)

be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reduction in refunds.

- (3) If the Contractor fails to submit the quarterly statement within 45 days after the end of each quarter and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the statement submittal period, the amount of the excess shall bear interest, computed from the date the quarterly statement was due to the date of repayment, at the rate established in accordance with the Interest clause.
- (h) *Subcontracts*. No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis.
- (i) Disagreements. If the Contractor and the Contracting Officer fail to agree upon redetermined prices within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (c) of this section are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause. For the purpose of paragraphs (e), (f), and (g) of this section, and pending final settlement of the disagreement on appeal, by failure to appeal, or by agreement, this decision shall be treated as an executed contract modification.
- (j) *Termination*. If this contract is terminated before price redetermination, prices shall be established in accordance with this clause for completed supplies and services not terminated. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(End of clause)

52.216-7 Allowable Cost and Payment.

As prescribed in 16.307(a), insert the following clause:

ALLOWABLE COST AND PAYMENT (FEB 1998)

(a) *Invoicing*. The Government shall make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, in amounts determined to be allowable by the Contracting Officer in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.

- (b) Reimbursing costs. (1) For the purpose of reimbursing allowable costs (except as provided in subparagraph (b)(2) of this section, with respect to pension, deferred profit sharing, and employee stock ownership plan contributions), the term "costs" includes only—
- (i) Those recorded costs that, at the time of the request for reimbursement, the Contractor has paid by cash, check, or other form of actual payment for items or services purchased directly for the contract;
- (ii) When the Contractor is not delinquent in paying costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—
- (A) Materials issued from the Contractor's inventory and placed in the production process for use on the contract;
 - (B) Direct labor;
 - (C) Direct travel;
 - (D) Other direct in-house costs; and
- (E) Properly allocable and allowable indirect costs, as shown in the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and
- (iii) The amount of progress and other payments that have been paid by cash, check or other form of payment to the Contractor's subcontractors under similar cost standards.
- (2) Contractor contributions to any pension or other postretirement benefit, profit-sharing or employee stock ownership plan funds that are paid quarterly or more often may be included in indirect costs for payment purposes; Provided, that the Contractor pays the contribution to the fund within 30 days after the close of the period covered. Payments made 30 days or more after the close of a period shall not be included until the Contractor actually makes the payment. Accrued costs for such contributions that are paid less often than quarterly shall be excluded from indirect costs for payment purposes until the Contractor actually makes the payment.
- (3) Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (g) of this clause, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) of this clause.
- (4) Any statements in specifications or other documents incorporated in this contract by reference designating performance of services or furnishing of materials at the Contractor's expense or at no cost to the Government shall be disregarded for purposes of cost-reimbursement under this clause.
- (c) *Small business concerns*. A small business concern may be paid more often than every 2 weeks and may invoice and be paid for recorded costs for items or services pur-

chased directly for the contract, even though the concern has not yet paid for those items or services.

- (d) Final indirect cost rates. (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the Federal Acquisition Regulation (FAR) in effect for the period covered by the indirect cost rate proposal.
- (2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.
- (ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.
- (3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.
- (4) Within 120 days after settlement of the final indirect cost rates covering the year in which this contract is physically complete (or longer, if approved in writing by the Contracting Officer), the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.
- (5) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.
- (e) *Billing rates*. Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—
 - (1) Shall be the anticipated final rates; and
- (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.

- (f) *Quick-closeout procedures*. Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.
- (g) *Audit*. At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be—
- (1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or
- (2) Adjusted for prior overpayments or underpayments.
- (h) *Final payment*. (1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(4) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.
- (2) The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract, to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee whose assignment is in effect at the time of final payment shall execute and deliver—
- (i) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and
- (ii) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—
- (A) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
- (B) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of the performance of this contract; provided, that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and
- (C) Claims for reimbursement of costs, including reasonable incidental expenses, incurred by the Contractor under the patent clauses of this contract, exclud-

imum reserve in paragraph (b) if the Contractor is a non-profit organization.

COST CONTRACT—No FEE (APR 1984)

- (a) The Government shall not pay the Contractor a fee for performing this contract.
- (b) After payment of 80 percent of the total estimated cost shown in the Schedule, the Contracting Officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed one percent of the total estimated cost shown in the Schedule or \$100,000, whichever is less.

(End of clause)

Alternate I (Apr 1984). In a contract for research and development with an educational institution or a nonprofit organization, for which the Contracting Officer has determined that withholding of a portion of allowable costs is not required, delete paragraph (b) of the basic clause.

52.216-12 Cost-Sharing Contract—No Fee.

As prescribed in 16.307(f), insert the following clause in solicitations and contracts when a cost-sharing contract (other than a facilities contract) is contemplated. This clause may be modified by substituting "\$10,000" in lieu of "\$100,000" as the maximum reserve in paragraph (b) if the contract is with a nonprofit organization.

COST SHARING CONTRACT—NO FEE (APR 1984)

- (a) The Government shall not pay to the Contractor a fee for performing this contract.
- (b) After paying 80 percent of the Government's share of the total estimated cost of performance shown in the Schedule, the Contracting Officer may withhold further payment of allowable cost until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed one percent of the Government's share of the total estimated cost shown in the Schedule or \$100,000, whichever is less.

(End of clause)

Alternate I (Apr 1984). In a contract for research and development with an educational institution, for which the contracting officer has determined that withholding of a portion of allowable cost is not required, delete paragraph (b) of the basic clause.

52.216-13 Allowable Cost and Payment—Facilities.

As prescribed in 16.307(g), insert the following clause:

Allowable Costand Payment—Facilities (Feb 1998)

- (a) General. (1) For the performance of any work, duty, or obligation specified in this contract to be at Government expense, the Government shall pay the Contractor all allowable costs as determined by the Contracting Officer in accordance with the contract terms and section 31.106 of the Federal Acquisition Regulation (FAR) in effect on the contract date.
- (2) Except as otherwise specifically provided in this contract, the failure of this contract to provide for reimbursement does not preclude the Contractor from including, as part of the price or cost under any other Government contract or subcontract, an allocable portion of the costs incurred for any work, duty, or obligation performed under this contract, but not reimbursable under it.
- (b) *Invoicing*. The Government shall make payments to the Contractor when requested once each month. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for the performance of this contract.
- (c) Negotiated indirect costs. Notwithstanding the audit and adjustment of invoices or vouchers under paragraph (f) of this clause, allowable indirect costs under this contract shall be obtained by applying final indirect cost rates established as follows:
- (1) Final annual indirect cost rates and the appropriate bases shall be established in accordance with Subpart 42.7 of the FAR in effect for the period covered by the indirect cost rate proposal.
- (2)(i) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contractor Officer. The Contractor shall support its proposal with adequate supporting data.
- (ii) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.
- (3) The Contractor and the appropriate Government representative shall execute a written understanding setting forth the final indirect cost rates. The understanding shall specify (i) the agreed-upon final annual indirect cost rates, (ii) the bases to which the rates apply, (iii) the periods for which the rates apply, (iv) any specific indirect cost items treated as direct costs in the settlement, and (v) the affected contract and/or subcontract, identifying any with advance

agreements or special terms and the applicable rates. The understanding shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The understanding is incorporated into this contract upon execution.

- (4) Within 120 days after settlement of the final indirect cost rates covering the year in which this contract is physically complete (or longer, if approved in writing by the Contracting Officer), the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.
- (5) Failure by the parties to agree on a final annual indirect cost rate shall be a dispute within the meaning of the Disputes clause.
- (d) *Billing rates*. Until final annual indirect cost rates are established for any period, the Government shall reimburse the Contractor at billing rates established by the Contracting Officer or by an authorized representative (the cognizant auditor), subject to adjustment when the final rates are established. These billing rates—
 - (1) Shall be the anticipated final rates; and
- (2) May be prospectively or retroactively revised by mutual agreement, at either party's request, to prevent substantial overpayment or underpayment.
- (e) *Quick-closeout procedures*. Quick-closeout procedures are applicable when the conditions in FAR 42.708(a) are satisfied.
- (f) *Audit*. At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be—
- (1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or
- (2) Adjusted for prior overpayments or underpayments.
- (g) Assignments and releases. The Contractor shall pay to the Government any refunds, rebates, credits, or other amounts (including interest, if any) accruing to or received by the Contractor or any assignee under this contract to the extent that those amounts are properly allocable to costs for which the Contractor has been reimbursed by the Government. Reasonable expenses incurred by the Contractor for securing refunds, rebates, credits, or other amounts shall be allowable costs if approved by the Contracting Officer. Before final payment under this contract, the Contractor and each assignee shall execute and deliver—
- (1) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits or other amounts (including interest, if any) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

- (2) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, except—
- (i) Specified claims stated in exact amounts, or in estimated amounts when the exact amounts are not known;
- (ii) Claims (including reasonable incidental expenses) based upon liabilities of the Contractor to third parties arising out of performance of this contract; *provided* that the claims are not known to the Contractor on the date of the execution of the release, and that the Contractor gives notice of the claims in writing to the Contracting Officer within 6 years following the release date or notice of final payment date, whichever is earlier; and
- (iii) Claims for reimbursement of costs, including related expenses, incurred by the Contractor under the patent clauses of this contract, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)

Alternate I (Mar 1997). If the contract is for facilities acquisition, and the Contracting Officer considers it appropriate, add the following paragraphs (g) and (h) to the basic clause, and redesignate paragraph (g) of the basic clause as paragraph (i):

- (g) Withholding. After payment of 80 percent of the total estimated cost shown in the Schedule, the Contracting Officer may withhold payment of allowable costs until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed one percent of the total estimated cost shown in the Schedule or \$100,000, whichever is less
- (h) *Final payment*. Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (c)(4) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs not previously paid.

52.216-14 Allowable Cost and Payment—Facilities Use.

As prescribed in 16.307(h), insert the following clause in solicitations and contracts when a facilities use contract is contemplated:

ALLOWABLE COSTAND PAYMENT—FACILITIES USE (APR 1984)

(a) For the performance of any work, duty, or obligations specified in this contract to be at Government expense, the Government shall pay the Contractor all allowable costs as determined by the Contracting Officer in accordance with

the contract terms and section 31.106 of the Federal Acquisition Regulation (FAR) in effect on the contract date.

(b) Except as otherwise specifically provided in this contract, the failure of this contract to provide for reimbursement does not preclude the Contractor from including, as part of the price or cost under any other Government contract or subcontract, an allocable portion of the costs incurred for any work, duty, or obligation performed under this contract, but not reimbursed under it.

(End of clause)

52.216-15 Predetermined Indirect Cost Rates.

As prescribed in 16.307(i), insert the following clause:

PREDETERMINED INDIRECT COST RATES (FEB 1998)

- (a) Notwithstanding the Allowable Cost and Payment clause of this contract, the allowable indirect costs under this contract shall be obtained by applying predetermined indirect cost rates to bases agreed upon by the parties, as specified below.
- (b)(1) The Contractor shall submit an adequate final indirect cost rate proposal to the Contracting Officer and auditor within the 6-month period following the expiration of each of its fiscal years. Reasonable extensions, for exceptional circumstances only, may be requested in writing by the Contractor and granted in writing by the Contracting Officer. The Contractor shall support its proposal with adequate supporting data.
- (2) The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and the Contractor shall establish the final indirect cost rates as promptly as practical after receipt of the Contractor's proposal.
- (c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with FAR Subpart 31.3 in effect on the date of this contract.
- (d) Predetermined rate agreements in effect on the date of this contract shall be incorporated into the contract Schedule. The Contracting Officer and Contractor shall negotiate rates for subsequent periods and execute a written indirect cost rate agreement setting forth the results. The agreement shall specify (1) the agreed-upon predetermined indirect cost rates, (2) the bases to which the rates apply, (3) the period for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The indirect cost rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract. The agreement is incorporated into this contract upon execution.
- (e) Pending establishment of predetermined indirect cost rates for any fiscal year (or other period agreed to by the

- parties), the Contractor shall be reimbursed either at the rates fixed for the previous fiscal year (or other period) or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established.
- (f) Any failure by the parties to agree on any predetermined indirect cost rates under this clause shall not be considered a dispute within the meaning of the Disputes clause. If for any fiscal year (or other period specified in the Schedule) the parties fail to agree to predetermined indirect cost rates, the allowable indirect costs shall be obtained by applying final indirect cost rates established in accordance with the Allowable Cost and Payment clause.
- (g) Allowable indirect costs for the period from the beginning of performance until the end of the Contractor's fiscal year (or other period specified in the Schedule) shall be obtained using the predetermined indirect cost rates and the bases shown in the Schedule.

(End of clause)

52.216-16 Incentive Price Revision—Firm Target.

As prescribed in 16.406(a), insert the following clause:

INCENTIVE PRICE REVISION—FIRM TARGET (OCT 1997)

- (a) General. The supplies or services identified in the Schedule as Items ______ [Contracting Officer insert Schedule line item numbers] are subject to price revision in accordance with this clause; provided, that in no event shall the total final price of these items exceed the ceiling price of ______ dollars (\$ _____). Any supplies or services that are to be (1) ordered separately under, or otherwise added to, this contract and (2) subject to price revision in accordance with the terms of this clause shall be identified as such in a modification to this contract.
- (b) *Definition*. "Costs," as used in this clause, means allowable costs in accordance with Part 31 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract.
- (i) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;
- (ii) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;

- (iii) A list of all residual inventory and an estimate of its value; and
- (iv) Any other relevant data that the Contracting Officer may reasonably require.
- (2) If the Contractor fails to submit the data required by subparagraph (c)(1) of this clause within the time specified and it is later determined that the Government has overpaid the Contractor, the Contractor shall repay the excess to the Government immediately. Unless repaid within 30 days after the end of the data submittal period, the amount of the excess shall bear interest, computed from the date the data were due to the date of repayment, at the rate established in accordance with the Interest clause.
- (d) *Price revision*. Upon the Contracting Officer's receipt of the data required by paragraph (c) of this clause, the Contracting Officer and the Contractor shall promptly establish the total final price of the items specified in (a) of this clause by applying to final negotiated cost an adjustment for profit or loss, as follows:
- (1) On the basis of the information required by paragraph (c) of this clause, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for supplies delivered (or services performed) and accepted by the Government and which are subject to price revision under this clause.
- (2) The total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, as follows:
- (i) If the total final negotiated cost is equal to the total target cost, the adjustment is the total target profit.
- (ii) If the total final negotiated cost is greater than the total target cost, the adjustment is the total target profit, less _____ [Contracting Officer insert percent] percent of the amount by which the total final negotiated cost exceeds the total target cost.
- (iii) If the final negotiated cost is less than the total target cost, the adjustment is the total target profit plus _____ [Contracting Officer insert percent] percent of the amount by which the total final negotiated cost is less than the total target cost.
- (e) *Contract modification*. The total final price of the items specified in paragraph (a) of this clause shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer. This price shall not be subject to revision, notwithstanding any changes in the cost of performing the contract, except to the extent that—
- (1) The parties may agree in writing, before the determination of total final price, to exclude specific elements of cost from this price and to a procedure for subsequent disposition of those elements; and
- (2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

- (f) Adjusting billing prices. (1) Pending execution of the contract modification (see paragraph (e) of this clause), the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the target prices shown in this contract.
- (2) If at any time it appears from information provided by the contractor under subparagraph (g)(2) of this clause that the then-current billing prices will be substantially greater than the estimated final prices, the parties shall negotiate a reduction in the billing prices. Similarly, the parties may negotiate an increase in billing prices by any or all of the difference between the target prices and the ceiling price, upon the Contractor's submission of factual data showing that final cost under this contract will be substantially greater than the target cost.
- (3) Any billing price adjustment shall be reflected in a contract modification and shall not affect the determination of the total final price under paragraph (d) of this clause. After the contract modification establishing the total final price is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any resulting additional payments, refunds, or credits shall be made promptly.
- (g) Quarterly limitation on payments statement. This paragraph (g) shall apply until final price revision under this contract has been completed.
- (1) Within 45 days after the end of each quarter of the Contractor's fiscal year in which a delivery is first made (or services are first performed) and accepted by the Government under this contract, and for each quarter thereafter, the Contractor shall submit to the contract administration office (with a copy to the contracting office and the cognizant contract auditor) a statement, cumulative from the beginning of the contract, showing—
- (i) The total contract price of all supplies delivered (or services performed) and accepted by the Government and for which final prices have been established;
- (ii) The total costs (estimated to the extent necessary) reasonably incurred for, and properly allocable solely to, the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established;
- (iii) The portion of the total target profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (g)) that is in direct proportion to the supplies delivered (or services performed) and accepted by the Government and for which final prices have not been established—increased or decreased in accordance with subparagraph (d)(2) of this clause, when the amount stated under subdivision (g)(1)(ii) of this clause differs from the aggregate target costs of the supplies or services; and
- (iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted

- (1) The subcontracted supplies or services were obtainable from other sources;
- (2) The Contracting Officer ordered the Contractor in writing to purchase these supplies or services from the other source; and
- (3) The Contractor failed to comply reasonably with this order.
- (c) Upon request of the Contractor, the Contracting Officer shall ascertain the facts and extent of the failure. If the Contracting Officer determines that any failure to perform results from one or more of the causes above, the delivery schedule shall be revised, subject to the rights of the Government under the termination clause of this contract.

(End of clause)

52.250-1 Indemnification Under Public Law 85-804.

As prescribed in 50.403-3, insert the following clause in contracts whenever the approving official determines that the contractor shall be indemnified against unusually hazardous or nuclear risks (also see 50.403-2(c)):

INDEMNIFICATION UNDER PUBLIC LAW 85-804 (APR 1984)

- (a) "Contractor's principal officials," as used in this clause, means directors, officers, managers, superintendents, or other representatives supervising or directing—
- (1) All or substantially all of the Contractor's business:
- (2) All or substantially all of the Contractor's operations at any one plant or separate location in which this contract is being performed; or
- (3) A separate and complete major industrial operation in connection with the performance of this contract.
- (b) Under Public Law 85-804 (50 U.S.C 1431-1435) and Executive Order 10789, as amended, and regardless of any other provisions of this contract, the Government shall, subject to the limitations contained in the other paragraphs of this clause, indemnify the Contractor against—
- (1) Claims (including reasonable expenses of litigation or settlement) by third persons (including employees of the Contractor) for death; personal injury; or loss of, damage to, or loss of use of property;
- (2) Loss of, damage to, or loss of use of Contractor property, excluding loss of profit; and
- (3) Loss of, damage to, or loss of use of Government property, excluding loss of profit.
- (c) This indemnification applies only to the extent that the claim, loss, or damage (1) arises out of or results from a risk defined in this contract as unusually hazardous or nuclear and (2) is not compensated for by insurance or otherwise. Any such claim, loss, or damage, to the extent that

- it is within the deductible amounts of the Contractor's insurance, is not covered under this clause. If insurance coverage or other financial protection in effect on the date the approving official authorizes use of this clause is reduced, the Government's liability under this clause shall not increase as a result.
- (d) When the claim, loss, or damage is caused by willful misconduct or lack of good faith on the part of any of the Contractor's principal officials, the Contractor shall not be indemnified for—
- (1) Government claims against the Contractor (other than those arising through subrogation); or
- (2) Loss or damage affecting the Contractor's property.
- (e) With the Contracting Officer's prior written approval, the Contractor may, in any subcontract under this contract, indemnify the subcontractor against any risk defined in this contract as unusually hazardous or nuclear. This indemnification shall provide, between the Contractor and the subcontractor, the same rights and duties, and the same provisions for notice, furnishing of evidence or proof, and Government settlement or defense of claims as this clause provides. The Contracting Officer may also approve indemnification of subcontractors at any lower tier, under the same terms and conditions. The Government shall indemnify the Contractor against liability to subcontractors incurred under subcontract provisions approved by the Contracting Officer.
- (f) The rights and obligations of the parties under this clause shall survive this contract's termination, expiration, or completion. The Government shall make no payment under this clause unless the agency head determines that the amount is just and reasonable. The Government may pay the Contractor or subcontractors, or may directly pay parties to whom the Contractor or subcontractors may be liable.
 - (g) The Contractor shall—
- (1) Promptly notify the Contracting Officer of any claim or action against, or any loss by, the Contractor or any subcontractors that may be reasonably be expected to involve indemnification under this clause;
- (2) Immediately furnish to the Government copies of all pertinent papers the Contractor receives;
- (3) Furnish evidence or proof of any claim, loss, or damage covered by this clause in the manner and form the Government requires; and
- (4) Comply with the Government's directions and execute any authorizations required in connection with settlement or defense of claims or actions.
- (h) The Government may direct, control, or assist in settling or defending any claim or action that may involve indemnification under this clause.

(End of clause)

Alternate I (Apr 1984). In cost-reimbursement contracts, add the following paragraph (i) to the basic clause:

- (i) The cost of insurance (including self-insurance programs) covering a risk defined in this contract as unusually hazardous or nuclear shall not be reimbursed except to the extent that the Contracting Officer has required or approved this insurance. The Government's obligations under this clause are—
- (1) Excepted from the release required under this contract's clause relating to allowable cost; and
- (2) Not affected by this contract's Limitation of Cost or Limitation of Funds clause.

52.251-1 Government Supply Sources.

As prescribed in 51.107, insert the following clause in solicitations and contracts when the contracting officer may authorize the contractor to acquire supplies or services from a Government supply source:

GOVERNMENT SUPPLY SOURCES (APR 1984)

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be "Government-furnished property," as distinguished from "Government property." The provisions of the clause entitled "Government Property," except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

(End of clause)

Alternate I (Apr 1984). If a facilities contract is contemplated, delete the last sentence from the basic clause.

52.251-2 Interagency Fleet Management System Vehicles and Related Services.

As prescribed in 51.205, insert the following clause:

Interagency Fleet Management System Vehicles and Related Services (Jan 1991)

The Contracting Officer may issue the Contractor an authorization to obtain interagency fleet management system (IFMS) vehicles and related services for use in the performance of this contract. The use, service, and maintenance of interagency fleet management system vehicles and the use of related services by the Contractor shall be in accordance with 41 CFR 101-39 and 41 CFR 101-38.301-1.

(End of clause)

52.252-1 Solicitation Provisions Incorporated by Reference.

As prescribed in 52.107(a), insert the following provision:

SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (Feb 1998)

This solicitation incorporates one or more solicitation provisions 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. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

[Insert one or more Internet addresses]

nseri one or more internet addresses

(End of provision)

52.252-2 Clauses Incorporated by Reference.

As prescribed in 52.107(b), insert the following clause:

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]

(End of clause)

52.252-3 Alterations in Solicitation.

As prescribed in 52.107(c), insert the following provision in solicitations in order to revise or supplement, as necessary, other parts of the solicitation that apply to the solicitation phase only, except for any provision authorized for use with a deviation. Include clear identification of what is being altered.

ALTERATIONS IN SOLICITATION (APR 1984)
Portions of this solicitation are altered as follows:
(End of provision)

52.252-4 Alterations in Contract.

As prescribed in 52.107(d), insert the following clause in solicitations and contracts in order to revise or supplement, as necessary, other parts of the contract, or parts of the solicitation that apply after contract award, except for any clause authorized for use with a deviation. Include clear identification of what is being altered.

ALTERATIONS IN CONTRACT (APR 1984)

Portions of this contract are altered as follows:

(End of clause)

52.252-5 Authorized Deviations in Provisions.

As prescribed in 52.107(e), insert the following provision in solicitations that include any FAR or supplemental provision with an authorized deviation. Whenever any FAR or supplemental provision is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the provision when it is used without deviation, include regulation name for any supplemental provision, except that the contracting officer shall insert "(DEVIATION)" after the date of the provision.

AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)

- (a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the provision.
- (b) The use in this solicitation of any _______ [insert regulation name] (48 CFR Chapter ______) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of provision)

52.252-6 Authorized Deviations in Clauses.

As prescribed in 52.107(f), insert the following clause in solicitations and contracts that include any FAR or supple-

mental clause with an authorized deviation. Whenever any FAR or supplemental clause is used with an authorized deviation, the contracting officer shall identify it by the same number, title, and date assigned to the clause when it is used without deviation, include regulation name for any supplemental clause, except that the contracting officer shall insert "(DEVIATION)" after the date of the clause.

AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVI-ATION)" after the date of the clause.
- (b) The use in this solicitation or contract of any _____. [insert regulation name] (48 CFR _____) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(End of clause)

52.253-1 Computer Generated Forms.

As prescribed in FAR 53.111, insert the following clause:

COMPUTER GENERATED FORMS (JAN 1991)

- (a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, *provided* there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.
- (b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.
- (c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

(End of clause)

Subpart 52.3—Provision and Clause Matrix

52.300 Scope of subpart.

The matrix in this subpart contains a column for each principal type and/or purpose of contract (see 52.101(e)).

FAC 97-03 FEBRUARY 9, 1998

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PR OVISION OR CLAUSE	PRESCRIBED IN	P or C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.211-15 Defense Priority and Allocation Requirements.	11.604(b)	С	Yes	I	A	A	А	A	A	A	A	A	A	A	А	А	A	A	А	А	А	A	
52.211-16 Variation in Quantity.	11.703(a)	С	Yes	F	А				А					A					A		А		
52.211-17 Delivery of Excess Quantities.	11.703(b)	С	Yes	F	0									0					0		0		
52.211-18 Variation in Estimated Quantity.	11.703(c)	С	Yes								A										А		
52.212-1 Instructions to Offerors—Commercial Items.	12.301(b)(1)	P	Yes	NA	A		A		A		A			A	А	А	А	A	A	А	А	А	R
52.212-2 Evaluation — Commercial Items.	12.301(c)(1)	P	No	NA	0		0		0		0			0	0	0	0	0	0	0	0	0	0
52.212-3 Offeror Representations and Certifications— Commercial Items.	12.301(b)(2)	P	No	NA	A		A		A		A			A	Α	Α	A	A	A	A	A	А	R
52.212-4 Contract Terms and Conditions—Commercial Items.	12.301(b)(3)	С	Yes	NA	A		A		A		A			A	A	A	А	A	A	А	А	A	R
52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders— Commercial Items	12.301(b)(4)	С	No	NA	A		A		А		A			A	A	A	A	A	A	A	A	A	R
52.213-1 Fast Payment Procedure.	13.404	С	Yes		A									A					A		A		
52.213-2 Invoices.	13.302-5(b)	С	Yes																		А		
52.213-3 Notice to Supplier.	13.302-5(c)	С	Yes																		A		
52.213-4 Terms and Conditions— Simplified Acquisitions (Other Than Commercial Items).	13.302-5(d)	С	Yes																		А		

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PROVISION OR CLAUSE	PRESCRIBED IN	or C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM	DDR	A & E	FAC	IND	TRN	SAP	UTL SVC	CI
		1				1																	
52.214-1 Solicitation Definitions—Sealed Bidding.	14.201-6 (b)(1)	Р	Yes	L	А				А		А			A	А	А			A	A		А	
52.214-2 Type of Business Organization—Sealed Bidding.	14.201-6 (b)(2)	P	No	K	А				A		А			A	A	A			A	A		А	
52.214-3 Amendments to Invitations for Bids.	14.201-6 (b)(3)	P	Yes	L	A				А		А			A	A	А			А	А		A	
52.214-4 False Statements in Bids.	14.201-6 (b)(4)	P	Yes	L	A				A		А			A	A	A			А	A		А	
52.214-5 Submission of Bids.	14.201-6 (c)(1)	P	Yes	L	A				A		A			A	A	A			A	A		А	
52.214-6 Explanation to Prospective Bidders.	14.201-6 (c)(2)	P	Yes	L	A				А		А			A	A	A			A	A		A	
52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.	14.201-6 (c)(3)	P	Yes	L	А				А		A			A	A	A			A	A		А	
52.214-9 Failure to Submit Bid.	14.201-6 (e)(1)	P	Yes	L	А				А					A	А	А			А	А		A	
52.214-10 Contract Award— Sealed Bidding.	14.201-6 (e)(2)	P	Yes	L	A				A					A	A	А			А	А		A	
52.214-12 Preparation of Bids.	14.201-6(f)	P	Yes	L	А				А					A	A	A			А	А		А	
52.214-13 Telegraphic Bids.	14.201-6 (g)(1)	P	Yes	L	А				А		А			А	А	А			А	А		А	
Alternate I	14.201-6 (g)(2)	P	Yes	L	A																	А	
52.214-14 Place of Performance—Sealed Bidding.	14.201-6(h)	P	No	K	A				А					А	А	А			А	А		А	

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PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M	LMV	COM	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
	IN		ı		DOI	DOF	NOLD	NOLD	DVC	BVC	CON	CON	1 1111		DVC	<u> </u>	<u> </u>					DVC	
52.214-34 Submission of Offers in the English Language.	25.408(d)	P	Yes		А	А	A	A	А	A	А	A	A	А	А	А	А	А	А	A	А	А	
52.214-35 Submission of Offers in U.S. Currency.	14.201-6(y) 15.407(m) 25.408(d)	P	Yes		А	A	А	А	А	A	A	A	A	А	A	A	А	A	A	A	А	А	
52.215-1 Instructions to Offerors—Competitive.	15.209(a)	P	Yes	L	A	A	A	A	А	A	A	A	A	A	A		A	A	A	A		А	
Alternate I	15.209(a)(1)	P	Yes	L	А	A	A	A	А	A	A	A	А	A	А		А	A	A	A		А	
Alternate II	15.209(a)(2)	P	Yes	L	А	А	A	A	А	A	A	A	А	А	А		А	A	А	A		А	
52.215-2 Audit and Records— Negotiation.	15.209(b)(1)	С	Yes	I	А	A	A	A	А	A	A	A	A	A	А	А	А			A		А	
Alternate I	15.209(b)(2)	С	Yes	I														R					
Alternate II	15.209(b)(3)	С	Yes	I		А		А		А		А											
Alternate III	15.209(b)(4)	С	Yes	I	А	А	А	А	А	А	А	А	А	А	А	А	А	А		А		А	
52.215-3 Request for Information or Solicitation for Planning Purposes.	15.209(c)	P	Yes	L	A	А	A	A	А	A	A	A	A	A	А	А	А	A	А	A		А	
52.215-4 Type of Business Organization.	15.209(d)	P	No	K	А	A	A	A	A	A	A	A	A	A	A		A	A	A	A		A	
52.215-5 Facsimile Proposals.	15.209(e)	P	Yes	L	А	А	A	A	А	A	А	A	А	A	А	А	А	A	А	A		А	
52.215-6 Place of Performance.	15.209(f)	P	No	K	А	А	А	А	А	А	А	А	А	А	А		А	А	А	А			
52.215-7 Annual Representations and Certifications— Negotiation.	15.209(g)	Р	No	K	А	А	А	А	А	Α	А	Α	А	А	А	А	А	Α	А	Α		А	

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PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R & D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.215-8 Order of Precedence— Uniform Contract Format.	15.209(h)	С	Yes	I	A	A	A	А	А	A	A	A	A	А	А		А	A	A	A		A	
52.215-9 Changes or Additions to Make-or-Buy Program.	15.408(a)	С	Yes	I	A	A	А	А	А	A			A	А	А	А	А	A	A	A		A	
Alternate I	15.408(a)(1)	С	Yes	I	А	А	A	A	А	A													
Alternate II	15.408(a)(2)	С	Yes	I	A	А	A	A	А	A													
52.215-10 Price Reduction for Defective Cost or Pricing Data.	15.408(b)	С	Yes	I	A	A	A	A	А	A	A	A	A	А	A	А	А	A	А	А		A	
52.215-11 Price Reduction for Defective Cost or Pricing Data—Modifications.	15.408(c)	С	Yes	I	A	A	А	А	А	A	А	А	A	А	А	А	А	A	А	A		A	
52.215-12 Subcontractor Cost or Pricing Data.	15.408(d)	С	Yes	I	A	A	A	A	А	A	A	A	A	А	А	А	А	A	A	A		А	
52.215-13 Subcontractor Cost or Pricing Data—Modifications.	15.408(e)	С	Yes	I	А	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A	
52.215-14 Integrity of Unit Prices.	15.408(f)(1)	С	Yes	I	A	A	A	A	А	A	A	A	А	A	A	A	А	A	A	A		А	
Alternate I	15.408(f)(2)	С	Yes	I	A	A	A	A	А	A	A	A	А	A	A	A	А	A	A	A		А	
52.215-15 Termination of Defined Benefit Pension Plans.	15.408(g)	С	Yes	I	A	A	A	A	A	А	A	A	A	A	A		A	A	A	A		А	
52.215-16 Facilities Capital Cost of Money.	15.408(h)	P	Yes	L	А	A	A	A	А	A	A	A	A	А	A		А	A	A	A		А	
52.215-17 Waiver of Facilities Capital Cost of Money.	15.408(i)	С	Yes	I	А	А	А	А	А	А	А	А	А	А	А		А	А	А	А		А	

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PART 53—FORMS 53.302-90 Optional Form 90, Release of Lien on Real SF 1408 Preaward Survey of Prospective Contractor— Property. Accounting System 53.302-91 Optional Form 91, Release of Personal SF 1414 Consent of Surety Property from Escrow. Consent of Surety and Increase of Penalty SF 1415 53.302-307 Contract Award. SF 1416 Payment Bond for Other Than Construction 53.302-308 Solicitation and Offer-Negotiated Contracts Acquisition. SF 1418 Performance Bond for Other Than Construction 53.302-309 Amendment of Solicitation. Contracts 53.302-336 Optional Form 336, Continuation Sheet. SF 1423 Inventory Verification Survey 53.302-347 Optional Form 347, Order for Supplies or SF 1424 Inventory Disposal Report Services. Inventory Schedule A (Metals in Mill Product SF 1426 53.302-348 Optional Form 348, Order for Supplies or Form) Services Schedule—Continuation. SF 1427 Inventory Schedule A—Continuation Sheet (Metals 53.302-1419 Optional Form 1419, Abstract of Offersin Mill Product Form) Construction. SF 1428 Inventory Schedule B Optional Form 1419A, Abstract of Offers-53.302-1419A SF 1429 Inventory Schedule B-Continuation Sheet Construction, Continuation Sheet. SF 1430 Inventory Schedule C (Work-in-Process) 53.303-DD-254 Department of Defense DD Form 254, SF 1431 Inventory Schedule C-Continuation Sheet (Work-Contract Security Classification in-Process) Specification. SF 1432 Inventory Schedule D (Special Tooling and Special 53.303-DD-441 Department of Defense DD Form 441, Test Equipment) Security Agreement. SF 1433 Inventory Schedule D-Continuation Sheet (Special 53.303-WH-347 Department of Labor Form WH-347, Payroll Tooling and Special Test Equipment) (For Contractor's Optional Use). SF 1434 Termination Inventory Schedule E (Short Form For Use With SF 1438 Only) Forms Authorized for Local Reproduction SF 1435 Settlement Proposal (Inventory Basis) SF LLL Disclosure of Lobbying Activities SF 1436 Settlement Proposal (Total Cost Basis) Disclosure of Lobbying Activities—Continuation SF LLL-A SF 1437 Settlement Proposal for Cost-Reimbursement Type Sheet Contracts SF 18 Request for Quotation SF 1438 Settlement Proposal (Short Form) SF 33 Solicitation, Offer and Award SF 34 Annual Bid Bond SF 1439 Schedule of Accounting Information SF 35 Annual Performance Bond SF 1440 Application for Partial Payment SF 119 Statement of Contingent or Other Fees SF 1445 Labor Standards Interview SF 129 Solicitation Mailing List Application SF 1449 Solicitation/Contract/Order for Commercial Items Reinsurance Agreement for a Miller Act SF 273 OF 90 Release of Lien on Real Property Performance Bond OF 91 Release of Personal Property from Escrow SF 274 Reinsurance Agreement for a Miller Act Payment OF 307 Contract Award Bond Solicitation and Offer-Negotiated Acquisition OF 308 SF 275 Reinsurance Agreement in Favor of the United OF 309 Amendment of Solicitation States OF 347 Order for Supplies or Services SF 279 Federal Procurement Data System (FPDS)— Individual Contract Action Report 53.000 Scope of part. SF 281 Federal Procurement Data System (FPDS)— This part— Summary Contract Action Report (\$25,000 or Less) (a) Prescribes standard forms (SF's) and references SF 294 Subcontracting Report for Individual Contracts optional forms (OF's) and agency-prescribed forms for use SF 295 Summary Subcontract Report in acquisition; SF 1403 Preaward Survey of Prospective Contractor (General) (b) Contains requirements and information generally SF 1404 Preaward Survey of Prospective Contractor applicable to the forms; and Technical (c) Illustrates the forms. SF 1405 Preaward Survey of Prospective Contractor— Production 53.001 Definitions. SF 1406 Preaward Survey of Prospective Contractor— "Exception," as used in this part, means an approved Quality Assurance departure from the established design, content, printing SF 1407 Preaward Survey of Prospective Contractor specifications, or conditions for use of any standard form. Financial Capability

53.001

Subpart 53.1—General

53.100 Scope of subpart.

This subpart contains requirements and information generally applicable to the forms prescribed in this regulation.

53.101 Requirements for use of forms.

The requirements for use of the forms prescribed or referenced in this part are contained in Parts 1 through 52, where the subject matter applicable to each form is addressed. The specific location of each requirement is identified in Subpart 53.2 and under "Forms" in the FAR Index.

53.102 Current editions.

The form prescriptions in Subpart 53.2 and the illustrations in Subpart 53.3 contain current edition dates. Contracting officers shall use the current editions unless otherwise authorized under this regulation.

53.103 Exceptions.

Agencies shall not-

- (a) Alter a standard form prescribed by this regulation; or
- (b) Use for the same purpose any form other than the standard form prescribed by this regulation without receiving in advance an exception to the form.

53.104 Overprinting.

Standard and optional forms (obtained as required by 53.107) may be overprinted with names, addresses, and other uniform entries that are consistent with the purpose of the form and that do not alter the form in any way. Exception approval for overprinting is not needed.

53.105 Computer generation.

- (a) Agencies may computer-generate the Standard and Optional Forms prescribed in the FAR without exception approval (see 53.103), provided—
- (1) The form is in an electronic format that complies with Federal Information Processing Standard Number 161; or
- (2) There is no change to the name, content, or sequence of the data elements, and the form carries the Standard or Optional Form number and edition date.
- (b) The forms prescribed by this Part may be computer generated by the public. Unless prohibited by agency regulations, forms prescribed by agency FAR supplements may also be computer generated by the public. Computer generated forms shall either comply with Federal Information Processing Standard Number 161 or shall retain the name, content, or sequence of the data elements, and shall carry

the Standard or Optional Form or agency number and edition date (see 53.111).

53.106 Special construction and printing.

Contracting offices may request exceptions (see 53.103) to standard forms for special construction and printing. Examples of common exceptions are as follows:

STANDARD FORMS	SPECIAL CONSTRUCTION AND PRINTING
(a) SF 18—	 With vertical lines omitted (for listing of supplies and services, unit, etc.); As reproducible masters; and/or In carbon interleaved pads or sets.
(b) SF's 26, 30, 33, 1447—	As die-cut stencils or reproducible masters.
(c) SF 44—	(1) With serial numbers and contracting office name and address; and/or (2) On special weight of paper and with the type of construction, number of sets per book, 2and number of parts per set as specified by the contracting officer. (Executive agencies may supplement the administrative
(d) SF 1442—	instructions on the inside front cover of the book.) (1) As die-cut stencils or reproducible masters; and/or (2) With additional wording as required by the executive agency. (However, the sequence and wording of the items appearing on the prescribed form should not be altered.

53.107 Obtaining forms.

- (a) Executive agencies shall obtain standard and optional forms from the General Services Administration (GSA) by using GSA Supply Catalog—Office Products (see 41 CFR 101-26.302). Standard forms adapted for computer preparation (see 53.105) or with special construction and printing (see 53.106) that are not available from GSA may be ordered directly from the Government Printing Office (GPO).
- (b) Contractors and other parties may obtain standard and optional forms from the Superintendent of Documents,

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GPO, Washington, DC 20402. Standard and optional formsnot available from the Superintendent of Documents may be obtained from the prescribing agency.

(c) Agency forms may be obtained from the prescribing agency.

53.108 Recommendations concerning forms.

Users of this regulation may recommend new forms or the revision, elimination, or consolidation of the forms prescribed or referenced in this regulation. Recommendations from within an executive agency shall be submitted to the cognizant council in accordance with agency procedures. Recommendations from other than executive agencies should be submitted directly to the FAR Secretariat.

53.109 Forms prescribed by other regulations.

Certain forms referred to in Subpart 53.2 are prescribed in other regulations and are specified by the FAR for use in acquisition. For each of these forms, the prescribing agency is identified by means of a parenthetical notation after the form number. For example, SF 1165, which is prescribed by the General Accounting Office (GAO), is identified as SF 1165 (GAO).

53.110 Continuation sheets.

Except as may be otherwise indicated in the FAR, all standard forms prescribed by the FAR may be continued on (a) plain paper of similar specification, or (b) specially constructed continuation sheets (*e.g.*, OF 336). Continuation sheets shall be annotated in the upper right-hand corner with the reference number of the document being continued and the serial page number.

53.111 Contract clause.

Contracting officers shall insert the clause at 52.253-1, Computer Generated Forms, in solicitations and contracts that require the contractor to submit data on Standard or Optional Forms prescribed by this regulation; and, unless prohibited by agency regulations, forms prescribed by agency supplements.

Subpart 53.2—Prescription of Forms

53.200 Scope of subpart.

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

subpart in section 53.243, Contract modifications. The following example illustrates how the subjects are keyed to the parts in which they are addressed:

53.243 Contract Modifications (SF 30). SECTION (KEYED TO FAR PART CONTAINING SUBJECT MATTER: USAGE REQUIREMENTS FOR SF 30 ARE ADDRESSED IN PART 43, CONTRACT MODIFICATIONS)

PART AND SUBPART (INVARIABLE)

53.201 Federal acquisition system.

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

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

53.202 —53.203 [Reserved]

53.204 Administrative matters.

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

The following forms, which are prescribed by the Department of Defense, shall be used by agencies covered by the Defense Industrial Security Program if contractor access to classified information is required, as specified in Subpart 4.4 and the clause at 52.204-2:

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

53.204-2 Contract reporting.

The following forms are prescribed for use by executive agencies in reporting contract actions, as specified in 4.602(c):

- (a) SF 279 (Rev. 10/97), Federal Procurement Data System (FPDS)—Individual Contract Action Report. (See 4.602(c).)
- (b) SF 281 (Rev. 5/96), Federal Procurement Data System (FPDS)—Summary Contract Action Report (\$25,000 or Less). (See 4.602(c).)

53.205 Publicizing contract actions.

53.205-1 Paid advertisements.

SF 1449, prescribed in 53.212, shall be used to place orders for paid advertisements as specified in 5.503.

53.206 — 53.208 [Reserved]

53.209 Contractor qualifications.

53.209-1 Responsible prospective contractors.

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

- (a) SF 1403 (Rev. 9/88), Preaward Survey of Prospective Contractor (General). SF 1403 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (b) SF 1404 (Rev. 9/88), Preaward Survey of Prospective Contractor—Technical. SF 1404 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (c) SF 1405 (Rev. 9/88), Preaward Survey of Prospective Contractor—Production. SF 1405 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (d) SF 1406 (Rev. 11/97), Preaward Survey of Prospective Contractor—Quality Assurance. SF 1406 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (e) SF 1407 (Rev. 9/88), Preaward Survey of Prospective Contractor—Financial Capability. SF 1407 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (f) SF 1408 (Rev. 9/88), Preaward Survey of Prospective Contractor—Accounting System. SF 1408 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

53.210—53.211 [Reserved]

53.212 Acquisition of commercial items.

SF 1449 (10/95 Ed.), Solicitation/Contract/Order for Commercial Items. SF 1449 is prescribed for use in solicitations and contracts for commercial items. Agencies may prescribe additional detailed instructions for use of the form.

53.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, 1449, and OF's 336, 347, and 348).

The following forms are prescribed as stated in this section for use in simplified acquisition procedures, orders under existing contracts or agreements, and orders from required sources of supplies and services:

(a) SF 18 (Rev. 6/95), Request for Quotations, or SF 1449 (10/95 Ed.), Solicitation/Contract/Order for Commercial Items. SF 18 is prescribed for use in obtaining price, cost, delivery, and related information from suppliers as specified in 13.307(b). SF 1449, as prescribed in 53.212,

- or other agency forms/automated formats, may also be used to obtain price, cost, delivery, and related information from suppliers as specified in 13.307(b).
- (b) SF 30 (Rev. 10/83), Amendment of Solicitation/Modification of Contract. SF 30, prescribed in 53.243, may be used for modifying purchase orders, as specified in 13.307(c)(3).
- (c) SF 44 (Rev. 10/83), Purchase Order Invoice Voucher. SF 44 is prescribed for use in simplified acquisition procedures, as specified in 13.306.
- (d) SF 1165 (6/83 Ed.), Receipt for Cash-Subvoucher. SF 1165 (GAO) may be used for imprest fund purchases, as specified in 13.307(e).
- (e) *OF 336 (4/86 Ed.), Continuation Sheet.* OF 336, prescribed in 53.214(h), may be used as a continuation sheet in solicitations, as specified in 13.307(c)(1).
- (f) SF 1449, (10/95 Ed.) Solicitation/Contract/Order for Commercial Items prescribed in 53.212, OF 347 (Rev. 6/95), Order for Supplies or Services, and OF 348 (10/83 Ed.), Order for Supplies or Services—Schedule Continuation. SF 1449, OF's 347 and 348 (or approved agency forms/automated formats) may be used as follows:
- (1) To accomplish acquisitions under simplified acquisition procedures, as specified in 13.307.
- (2) To establish blanket purchase agreements (BPA's), as specified in 13.303-2, and to make purchases under BPA's, as specified in 13.303-5.
- (3) To issue orders under basic ordering agreements, as specified in 16.703(d)(2)(i).
- (4) As otherwise specified in this chapter (*e.g.*, see 5.503(a)(2), 8.405-2, 36.701(c), and 51.102(e)(3)(ii)).

53.214 Sealed bidding.

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

- (a) SF 26 (4/85), Award/Contract. SF 26 is prescribed for use in awarding sealed bid contracts for supplies or services in which bids were obtained on SF 33, Solicitation, Offer and Award, as specified in 14.408-1(d)(1). Pending issuance of a new edition of the form, the reference in "block 1" should be amended to read "15 CFR 700".
- (b) SF 30, Amendment of Solicitation/Modification of Contract. SF 30, prescribed in 53.243, shall be used in amending invitations for bids, as specified in 14.208(a).
- (c) SF 33 (Rev. 9/97), Solicitation, Offer and Award. SF 33 is prescribed for use in soliciting bids for supplies or services and for awarding the contracts that result from the bids, as specified in 14.201-2(a)(1), unless award is accomplished by SF 26. Pending issuance of a new edition of the form, the reference in "block 1" should be amended to read "15 CFR 700" and in the Caution statement of "block 0" revise 52.215-10 to read 52.215-1.

PART 53—FORMS 53.222

- (d) SF 1447 (5/88 Ed.), Solicitation/Contract. SF 1447 is prescribed for use in soliciting supplies or services and for awarding contracts that result from the bids. It shall be used when the simplified contract format is used (see 14.201-9) and may be used in place of the SF 26 or SF 33 with other solicitations and awards. Agencies may prescribe additional detailed instructions for use of the form.
- (e) SF 129 (Rev. 12/96), Solicitation Mailing List Application. SF 129 is prescribed for use in establishing and maintaining lists of potential sources, as specified in 14.205-1(d).
- (f) SF 1409 (Rev. 9/88), Abstract of Offers, and SF 1410 (9/88), Abstract of Offers—Continuation. SF 1409 and SF 1410 are prescribed for use in recording bids, as specified in 14.403(a).
- (g) OF 17 (Rev. 12/93), Offer Label. OF 17 may be furnished with each invitation for bids to facilitate identification and handling of bids, as specified in 14.202-3(b).
- (h) *OF 336 (Rev. 3/86), Continuation Sheet.* OF 336 may be used as a continuation sheet in solicitations, as specified in 14.201-2(b).

53.215 Contracting by negotiation.

53.215-1 Solicitation and receipt of proposals.

The following forms are prescribed, as stated in the following paragraphs, for use in contracting by negotiation (except for construction, architect-engineer services, or acquisitions made using simplified acquisition procedures):

- (a) SF 26 (Rev. 4/85), Award/Contract. SF 26, prescribed in 53.214(a), may be used in entering into negotiated contracts in which the signature of both parties on a single document is appropriate, as specified in 15.509(b).
- (b) SF 30 (Rev. 10/83), Amendment of Solicitation/Modification of Contract. SF 30, prescribed in 53.243, may be used for amending requests for proposals and for amending requests for information, as specified in 15.210(b).
- (c) SF 33 (Rev. 9/97), Solicitation, Offer and Award. SF 33, prescribed in 53.214(c), may be used in connection with the solicitation and award of negotiated contracts. Award of such contracts may be made by either OF 307, SF 33, or SF 26, as specified in 53.214(c) and 15.509. Pending issuance of a new edition of the form, the reference in "block 1" should be amended to read "15 CFR 700" and in the Caution statement of "block 9" revise 52.215-10 to read 52.215-1.
- (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(a).
- (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(a).
- (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—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. 10/96), Subcontracting Report for Individual Contracts. (See 19.704(a)(5).)
- (b) SF 295 (Rev. 10/96), Summary Subcontract Report. (See 19.704(a)(5).) SF 295 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the loose-leaf edition of the FAR.

53.220—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—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. 1/90), Bid Bond. (See 28.106-1.)
- (b) SF 25 (Rev. 1/90), Performance Bond. (See 28.106-1(b).)
- (c) SF 25-A (Rev. 1/90), Payment Bond. (See 28.106-1(c).)
- (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. 1/90), Affidavit of Individual Surety. (See 28.106-1(e) and 28.203(b).)
- (f) SF 34 (Rev. 1/90), Annual Bid Bond. (See 28.106-1(f).) SF 34 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (g) SF 35 (Rev. 1/90), Annual Performance Bond. (See 28.106-1.) SF 35 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (h) SF 273 (Rev. 8/90) Reinsurance Agreement for a Miller Act Performance Bond. (See 28.106-1(h) and 28.202-1(a)(4).)
- (i) SF 274 (Rev. 8/90), Reinsurance Agreement for a Miller Act Payment Bond. (See 28.106-1(i) and 28.202-1(a)(4).)
- (j) SF 275 (Rev. 8/90), Reinsurance Agreement in Favor of the United States. (See 28.106-1(j) and 28.202-1(a)(4).)
- (k) SF 1414 (Rev. 10/93), Consent of Surety. SF 1414 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (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 and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (m) SF 1416 (Rev. 1/90), Payment Bond for Other than Construction Contracts. (See 28.106-1(m).) SF 1416 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

- (n) SF 1418 (8/96), Performance Bond for Other Than Construction Contracts. (See 28.106-1(n).)
- (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 and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (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 and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

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—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—52.234 [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 1417 (Rev. 8/90), Presolicitation Notice (Construction Contract). SF 1417 is prescribed for use in notifying prospective offerors of solicitations estimated to be \$100,000 or more and may be used if the proposed contract is estimated to be less than \$100,000, as specified in 36.701(a).
- (b) 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(e).
 - (c)—(d) [Reserved]

PART 53—FORMS 53.245

- (e) 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(b).
- (f) *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(c).
- (g) 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 1419Aare prescribed for use in recording bids (and may be used for recording proposal information), as specified in 36.701(d).

53.236-2 Architect-engineer services (SF's 252, 254, 255, 1421).

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

- (a) SF 252 (Rev. 10/83), Architect-Engineer Contract. SF 252 is prescribed for use in awarding fixed-price contracts for architect-engineer services, as specified in 36.702(a). Pending issuance of a new edition of the form, Block 8, Negotiation Authority, is deleted.
- (b) SF 254 (Rev. 11/92), Architect-Engineer and Related Services Questionnaire. SF 254 is prescribed for use to obtain information from architect-engineer firms regarding their professional qualifications, as specified in 36.702(b)(1).
- (c) SF 255 (Rev. 11/92), Architect-Engineer and Related Services Questionnaire for Specific Project. SF 255 is prescribed for use within approved dollar thresholds and as otherwise specified in 36.702(b)(2), whenever an agency requires information to supplement the SF 254 regarding the prospective firm's qualifications for a particular architect-engineer project.
- (d) SF 1421 (10/83 Ed.), Performance Evaluation (Architect-Engineer). SF 1421 is prescribed for use in evaluating and reporting on the performance of architect-engineer contractors within approved dollar thresholds and as otherwise specified in 36.702(c).

53.237—53.241 [Reserved]

53.242 Contract administration.

53.242-1 Novation and change-of-name agreements (SF 30).

SF 30, Amendment of Solicitation/Modification of Contract. SF 30, prescribed in 53.243, shall be used in connection with novation and change of name agreements, as specified in 42.1203(h).

53.243 Contract modifications (SF 30).

SF 30 (Rev. 10/83), Amendment of Solicitation/Modification of Contract. SF 30 is prescribed for use in amending invitation for bids, as specified in 14.208; modifying purchase and delivery orders, as specified in 13.302-3; and modifying contracts, as specified in 42.1203(h), 43.301, 49.602-5, and elsewhere in this regulation. The form may also be used to amend solicitations for negotiated contracts, as specified in 15.210(b). Pending the publication of a new edition of the form, Instruction (b), Item 3 (effective date), is revised in paragraphs (3) and (5) as follows:

(b) Item 3 (effective date).

* * * *

(3) For a modification issued as a confirming notice of termination for the convenience of the Government, the effective date of the confirming notice shall be the same as the effective date of the initial notice.

* * * * *

(5) For a modification confirming the termination contracting officer's previous letter determination of the amount due in settlement of a contract termination for convenience, the effective date shall be the same as the effective date of the previous letter determination.

53.244 [Reserved]

53.245 Government property.

The following forms are prescribed, as specified below, for use in reporting, redistribution, and disposal of contractor inventory (defined in 45.601) and in accounting for this property:

- (a) SF 120 (GSA), Report of Excess Personal Property, and SF 120-A (GSA), Continuation Sheet (Report of Excess Personal Property). (See 45.608-2(b)(2) and 45.608-8.)
- (b) SF 126 (GSA), Report of Personal Property for Sale, and SF 126-A (GSA), Report of Personal Property for Sale (Continuation Sheet). (See 45.610-1(c).)
- (c) SF 1423 (Rev. 12/96), Inventory Verification Survey. (See 45.606-3(b).)
- (d) *SF 1424 (Rev. 7/89), Inventory Disposal Report.* (See 45.615.) SF 1424 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

- (e) [Reserved]
- (f) SF 1426 (Rev. 12/96), Inventory Schedule A (Metals in Mill Product Form), and SF 1427 (Rev. 7/89), Inventory Schedule A-Continuation Sheet (Metals in Mill Product Form). (See 45.606 and 49.602-2(e).) Standard Form 1426 and Standard Form 1427 are authorized for local reproduction and copies are furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (g) SF 1428 (Rev. 12/96), Inventory Schedule B, and SF 1429 (Rev. 7/89), Inventory Schedule B-Continuation Sheet. (See 45.606 and 49.602-2(b).) Standard Form 1428 and Standard Form 1429 are authorized for local reproduction and copies are furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (h) SF 1430 (Rev. 12/96), Inventory Schedule C (Work-in-Process) and SF 1431 (Rev. 7/89), Inventory Schedule C-Continuation Sheet (Work-in-Process). (See 45.606 and 49.602-2(c).) Standard Form 1430 and Standard Form 1431 are authorized for local reproduction and copies are furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (i) SF 1432 (Rev. 12/96), Inventory Schedule D (Special Tooling and Special Test Equipment), and SF 1433 (Rev. 7/89), Inventory Schedule D-Continuation Sheet (Special Tooling and Special Test Equipment). (See 45.606 and 49.602-2(d).) Standard Form 1432 and Standard Form 1433 are authorized for local reproduction and copies are furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (j) SF 1434 (Rev. 12/96), Termination Inventory Schedule E (Short Form For Use With SF 1438 Only). (See 45.606 and 49.602-2(e).) Standard Form 1434 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.

53.246 [Reserved]

53.247 Transportation (U.S. Government Bill of Lading).

The U.S. Government Bill of Lading, prescribed in 41 CFR 101-41.304, shall be used for transportation of property, as specified in 47.103.

53.248 [Reserved]

53.249 Termination of contracts.

(a) The following forms are prescribed for use in connection with the termination of contracts, as specified in Subpart 49.6:

- (1) SF 1034 (GAO), Public Voucher for Purchases and Services Other than Personal. (See 49.302(a).)
- (2) SF 1435 (Rev. 9/97), Settlement Proposal (Inventory Basis). (See 49.602-1(a).) Standard Form 1435 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (3) SF 1436 (Rev. 9/97), Settlement Proposal (Total Cost Basis). (See 49.602-1(b).) Standard Form 1436 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (4) SF 1437 (Rev. 9/97), Settlement Proposal for Cost-Reimbursement Type Contracts. (See 49.602-1(c) and 49.302.) Standard Form 1437 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (5) SF 1438 (Rev. 7/89), Settlement Proposal (Short Form). (See 49.602-1(d).) Standard Form 1438 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (6) SF 1439 (Rev. 7/89), Schedule of Accounting Information. (See 49.602-3.) Standard Form 1439 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (7) SF 1440 (Rev. 7/89), Application for Partial Payment. (See 49.602-4.) Standard Form 1440 is authorized for local reproduction and a copy is furnished for this purpose in Part 53 of the looseleaf edition of the FAR.
- (b) The inventory schedule forms prescribed in 53.245(f) through (j) shall be used to support termination settlement proposals listed in paragraph (a), above, as specified in 49.602-2.

53.250 [Reserved]

53.251 Contractor use of Government supply sources (OF 347).

OF 347, Order for Supplies or Services. OF 347, prescribed in 53.213(f), may be used by contractors when requisitioning from the VA, as specified in 51.102(e)(3)(ii).

Subpart 53.3—Illustration of Forms

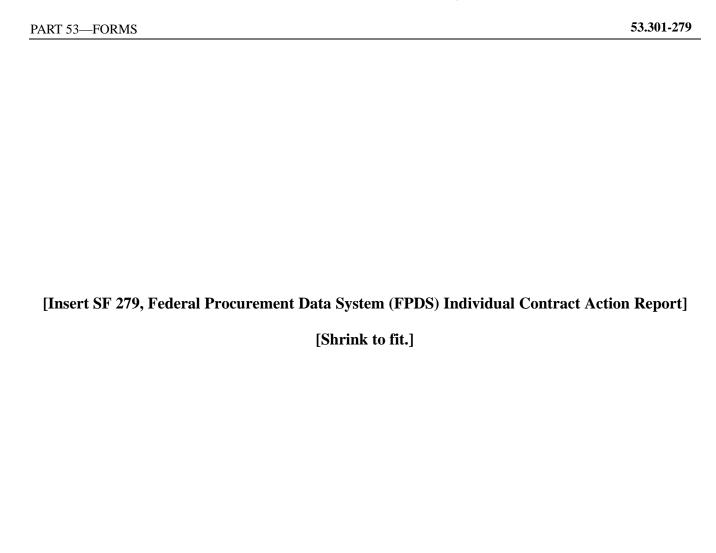
53.300 Scope of subpart.

This subpart contains illustrations of forms used in acquisitions.

[Insert SF 33, Solicitation, Offer, and Award]
[Shrink to fit.]

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FAC 97-03 DECEMBER 9, 1997



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PART 53—FORMS 53.301-1406

[Insert SF 1406, Preaward Survey of Prospective Contractor

Quality Assurance (Front)]

[Reduce to Fit]

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR **QUALITY ASSURANCE**

SERIAL NO. (For surveying activity use) OMB No.:9000-0011 Expires: 10/31/2000

PROSPECTIVE CONTRACTOR

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

		SECTION I - R	ECOMMENDAT	ION		
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[Insert SF 1406, Preaward Survey of Prospective Contractor
Quality Assurance (Back)]

[Reduce to Fit]

SECTION II - COMPANY AND SOLICITATION DATA

1. BRIEFLY DESCRIBE HOW QUALITY ASSURANCE RESPONSIBILITIES ARE ACCOMPLISHED.

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			2 ADI	DUCADI E CONTRACT QUALITY	/ DECLUDEMENT				
			3. API	PLICABLE CONTRACT QUALITY	REQUIREMENTS	•			
	A. NUMBER		B. TITLE			C. TAILO	RING (If any)		
4.	IDENTICAL C	DR SIMILAR ITEMS HAVE	BEEN	PRODUCED, SUPPLIED,	OR SERV	ICED BY PROSPECT	TIVE CONTRACTOR		
		—		THOSOCIS, CONTENES,	O	1025 51 11100120	THE CONTINUE OF OR		
	(If similar item	ns, identify:)	
			SEC	CTION III - EVALUATION	CHECKLIST			VE0	NO
			A. Ext	STATEMENTS nibits, technical data, drawin	age engoificatio	and approval	L roquiromente	YES	NO
		where applicable to the		servation, packaging, pack	<u> </u>	• • • • • • • • • • • • • • • • • • • •	requirements.		
	contract) are prospective contract	understood by the		ner (Specify)	ing, una markin	g requirements.			
	prospective co	ontractor.		, , , , , , , , , , , , , , , , , , , ,					
2.	Records avails	able indicate that the pros	spective	contractor has a satisfac	ctory quality p	performance rec	ord during the		
		12) months for similar iter			, , , , ,		Ü		
3.	Used, recondi	tioned, or remanufactured	l materia	and former Governmen	t surplus mate	erial will be furr	nished by the		
	<u> </u>	ontractor. <i>(If Yes, explai</i>							
		ontractor will require unus							
Ь.	Did prospective awarded that	ve contractor fulfill commi contract? (If No, explain	tments t	o correct deficiencies, a on INARRATIVEI	s proposed or	n previous surve	eys, when		
	avaraga mar	Tomerade: In 140, exprain	00011	NUMBER SKILLED		NUMBER SEMI-SKI	ILLED		
6.	Quality verific	ation personnel							
_						RATIO			
7.	Quality verific	ation to production perso	nnel ratio				:		
TH	E FOLLOWIN	IG ARE AVAILABLE A	ND ADE	QUATE. (If not applica	able, show "I	V/A " in "Yes" c	olumn.)		
8.	Inspection a specified ed	nd test equipment, gauge	s, and in	struments for first articl	e and product	ion <i>(including s</i>	solicitation		
9.		metrology program.							
		em procedures and contro	ols.						
		pecifications, drawings, c		nd modifications, work/	process instru	ctions.			
		determining inspection, te							
13.	Purchasing:	Processes for selecting of	qualified s	suppliers and assuring th	e quality of p	urchased mater	ials.		
		ntification, segregation, tr		, and maintenance.					
		furnished property contro	ols.						
	Process con								
17. Nonconforming product: System for timely identification, disposition, correction of deficiencies, and corrective and preventative action.									
		n, storage, packaging, pac							
		ch as: inspection, test				tc.)			
20. Controls for investigation of customer complaints and correction of deficiencies.21. Design controls system.									
22. Computer software <i>(deliverable and/or non-deliverable)</i> quality assurance program.									
23. Management review and internal quality audits.									
24. Quality assurance training program.									
		and servicing quality assu	rance pro	gram.					
	Statistical to		•						

PART 53—FORMS 53.301-1435

[Insert SF 1435, Settlement Proposal Inventory Basis (Front)]

[Reduce to Fit]

SETTLEMENT PROPOSAL (INVENTORY BASIS)

OMB No.: **9000-0012** Expires: 05/31/98

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

	FOR USE BY A	A FIXED-PF	RICE PRIME C	ONTRA	ACTOR O	R FIXE	D-PRICE	SUBCO	NTRA	CTOR	_	
	PROPOSAL APPLIES TO (Check one)				COMPANY	,						
П	PRIME CONTRACT WITH HE GOVERNMENT	SUBCON	TRACT OR SE ORDER									
	ONTRACT OR PURCHASE ORDER NO(S).				STREET A	DDRESS	ì					
	CONTRACTOR WHO SENT N	OTICE OF	TERMINATI	ON	CITY AND	STATE	(Include ZIF	Code)				
NAME												
					NAME OF	GOVERN	NMENT AGI	ENCY				
ADDR	ESS (Include ZIP Code)											
					GOVERNM	ENT PR	IME CONTR	ACT NO.	CONT	RACTOR'S REFE	REN	CE NO.
	eys payable under the contract have been	assigned, giv	e the following:									
NAME	OF ASSIGNEE				EFFECTIVE	DATE	OF TERMINA	ATION				
ADDR	ESS (Include ZIP Code)				PROPOSAL	L NO.			CHECI	K ONE		
										NTERIM		FINAL
SF 14	39, SCHEDULE OF ACCOUNTING INFOR	MATION	IS		IS N	OT ATT	ACHED (If I	not, explair	below,)		
	SECTION I - S	TATUS OF	CONTRACT			EFFEC	TIVE DAT	E OF TE	RMIN	ATION		
				FII	NISHED					ED OR NOT		
	RODUCTS COVERED BY TERM CONTRACT OR PURCHASE (DDE: ((01.101.) /	DAYAA		HAND				MENCED		TOTAL
(CONTRACT OR PURCHASE C	JKDEK	PREVIOUSLY SHIPPED AND	REC	NT TO BE CEIVED		ED IN THIS		TED	NOT TO BE		COVERED BY CONTRACT
			INVOICED		ROUGH OICING	PRO	POSAL	(Parti		COMPLETED		OR ORDER
	(a)		(b)		(c)		(d)	(e)	,,	(f)		(g)
		QUANTITY				-					_	
		\$									_	
		QUANTITY									_	
		\$									_	
		QUANTITY										
		\$	2525128111	DD 0 D 0	2055 05							
			SECTION II -	PROP				lly where		TOTAL	_ _	OR USE OF
NO	ITE	M			previou	us propo	and (c) on sal has bee INCREA DECREA	n filed)		TOTAL POSED TO		NTRACTING
NO.	(a	1)			PREVIO PROPO	ÚŠLY SED	DECRE THIS PR	ASE BY OPOSAL		DATE	AC	SENCY ONLY
	METALS	.,			(b			c)		(d)	—	(e)
2	RAW MATERIALS (other than metal	le)			<u> </u>							
3	PURCHASED PARTS	13)									—	
$\frac{3}{4}$	FINISHED COMPONENTS				1							
- 5	MISCELLANEOUS INVENTORY											
6	WORK-IN-PROCESS				<u> </u>							
7	SPECIAL TOOLING AND SPECIAL T	EST EQUIPN	MENT		 							
8	OTHER COSTS (from Schedule B)											
9	GENERAL AND ADMINISTRATIVE E	EXPENSES (from Schedule	C)								
10	TOTAL (Items 1 to 9 inclusive	:)										
11	PROFIT (explain in Schedule D)											
12	SETTLEMENT EXPENSES (from Sch	nedule E)										
13	TOTAL (Items 10 to 12 inclus	ive)			1							
14	SETTLEMENTS WITH SUBCONTRAC	CTORS (from	m Schedule F)		1							
15	ACCEPTABLE FINISHED PRODUCT											
16	GROSS PROPOSED SETTLEMENT //	tems 13 thr	u 15)									
17	DISPOSAL AND OTHER CREDITS (#	from Schedu	ıle G)									
18	NET PROPOSED SETTLEMENT (Item	n 16 less 17	")									
19	ADVANCE, PROGRESS & PARTIAL	PAYMENTS	(from Schedule	e H)								
20	NET PAYMENT REQUESTED	(Item 18	less 19)									
	(When the space p	rovided fo	r any inforn	nation	is insuf	ficient	, continu	ue on a	sepa	rate sheet.)		

[Insert SF 1435, Settlement Proposal Inventory Basis (Page 2)]
[Reduce to Fit]

	SCHEDULE A - A	ANALYSIS OF INVENTORY C	OST (Items4 and 6)	,	
Furnish the following information	(unless not reasonably available)	for inventories of finished components	and work-in-progress inc	luded in this proposal	:
	TOTAL DIRECT LABOR	TOTAL DIRECT MATERIALS	TOTAL INDIR EXPENSES	ECT	TOTAL
FINISHED COMPONENTS					
WORK-IN-PROGRESS					
NOTE: Individual items		e grouped into a single entry		, D, and G.	
	SC	HEDULE B - OTHER COSTS (A	ltem 8)		
ITE	M	EXPLANATIO	NC	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY
	SCHEDULE C - GI	NERAL AND ADMINISTRATIV	/E EXPENSES (Item	9)	
	DETAIL OF	EXPENSES		AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY
					_
		SCHEDULE D - PROFIT (Item	.11)		
			111		FOR USE OF
	EXPLAN	ATION		AMOUNT	CONTRACTING AGENCY ONLY
					1
					1
					1
					1
(Where t	he space provided for a	any information is insuffici	ent, continue on a	separate she	et.)

PART 53—FORMS 53.301-1435

[Insert SF 1435, Settlement Proposal Inventory Basis (Page 3)]
[Reduce to Fit]

SCHED	OULE E - SETTLEMENT EXPENSES (Item 12)		
ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY
SCHEDULE F - SETTLEMENTS	WITH IMMEDIATE SUBCONTRACTORS AND SU		<u> </u>
NAME AND ADDRESS OF SUBCONTRACTOR	BRIEF DESCRIPTION OF PRODUCT CANCELED	AMOUNT OF SETTLEMENT	FOR USE OF CONTRACTING AGENCY ONLY
	_		
SCHEDULE	G - DISPOSAL AND OTHER CREDITS (Item 17)		
	RIPTION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY
If practicable show separately amount of	disposal credits applicable to acceptable fin	shed product incl	uded in Item 15

(Where the space provided for any information is insufficient, continue on a separate sheet.)

[Insert SF 1435, Settlement Proposal Inventory Basis (Page 4)]

[Reduce to Fit]

	SCHEDULE H - ADVANCE, PRO	OGRESS AND PARTIAL PAYMENTS	(Item 19)	
DATE		PAYMENT	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY
(Where	e the space provided for any infor	mation is insufficient, continue o	n a separate she	eet.)
			· · · · · · · · · · · · · · · · · · ·	
		CERTIFICATE		
•	e undersigned, individually, and as an auth best knowledge and belief of the undersign	·	has examined this to	rmination settlement
and explanations have be practices; they include or	RACTOR'S OWN CHARGES. The proposed ten prepared from the books of account an analythose charges allocable to the terminate or indirectly as the basis of settlement of are fair and reasonable.	nd records of the Contractor in accordanced portion of this contract; they have be	ce with recognized co	ommercial accounting wledge that they will,
in the circumstances, the subcontractors by their charges are allocable to immediate subcontractors received from all its immediate subcontractors remote subcontract settlements with its immediate.	ONTRACTORS' CHARGES. (1) The Contrate termination settlement proposals of its subcontractors); (2) The settlements on the terminated portion of this contract, and than those that the Contractor would makediate subcontractors appropriate certificate of this certificate; and (4) The Contractor is tors or (ii) that the charges for them are ediate subcontractors, the Contractor will property in the term "subcontractors," as used above,	immediate subcontractors (exclusive of account of immediate subcontractors of the settlements were negotiated in grake if reimbursement by the Government ates with respect to their termination senas no information leading it to doubt (i) allocable to this contract. Upon receippay or credit them promptly with the am	of proposals filed aga own charges are fair ood faith and are not were not involved; (3 ettlement proposals, we the reasonableness of ot by the Contractor	ainst these immediate and reasonable, the more favorable to its 3) The Contractor has which certificates are the settlements with of amounts covering
NOTE: The Contractor s 15.406-2 and15.408 Tab	hall, under conditions stated in FAR 15.40 le 15-2).	03, be required to submit a Certificate	of Current Cost or P	'ricing Data (see FAR
NAME OF CONTRACTOR		BY (Signature of authorized official)		
		TITLE		DATE
NAME OF SUPERVISORY AC	COUNTING OFFICIAL	TITLE		.1

PART 53—FORMS 53.301-1436

[Insert SF 1436, Settlement Proposal (Total Cost Basis)(Front)]

[Reduce to Fit]

SETTLEMENT PROPOSAL (TOTAL COST BASIS)

OMB No.: **9000-0012** Expires: 05/31/98

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405

DC 20	0405.											
	FOR USE BY A F	IXED-PF	RICE PRIME C	ONTRA	CTOR O	R FIXE	D-PRICE	SUBCO	NTRA	CTOR		
	PROPOSAL APPLIES TO (Check one)	- CLIBCON	TRACT OR		COMPANY	•						
	A PRIME CONTRACT WITH THE GOVERNMENT		TRACT OR SE ORDER									
SUBC	ONTRACT OR PURCHASE ORDER NO(S).				STREET A	DDRESS						
	CONTRACTOR WHO SENT NOT	ICE OF	TERMINATIO	N	CITY AND	STATE	(Include ZI	P Code)				
NAME					1							
					NAME OF	GOVERN	IMENT AG	ENCY				
ADDR	ESS (Include ZIP Code)											
					GOVERNM	ENT PR	IME CONTE	RACT NO.	CONT	RACTOR'S REF	EREN	ICE NO.
	eys payable under the contract have been ass	signed, give	e the following:									
NAME	OF ASSIGNEE				EFFECTIVE	DATE	OF TERMIN	ATION				
ADDR	ESS (Include ZIP Code)				PROPOSAI	_ NO.			CHECI	K ONE		
					<u> </u>					NTERIM		FINAL
SF 14	39, SCHEDULE OF ACCOUNTING INFORMATION	TION	IS		IS N	TTA TO	ACHED (If	not, explai	n below	<i>'</i>)		
	SECTION I - STA	TUS OF	CONTRACT			EFFEC1	IVE DA	re of te	RMIN	ATION		
				FIN	NISHED					IED OR NOT		TOTAL
	RODUCTS COVERED BY TERMIN CONTRACT OR PURCHASE ORI		PDE VIOLICI V	DAY (145		HAND	IT NOT TO			MENCED		COVERED
,	CONTRACT OR FUNCHASE ON	DEN	PREVIOUSLY SHIPPED AND	REC	EIVED	BE RI	CEIVED	SUBSEQU COMPLE	TED	NOT TO BE		BY CONTRACT
			INVOICED		ROUGH DICING		ROUGH DICING	AND INVO	ICED*	COMPLETED	'	OR ORDER
	(a)		(b)		(c)		(d)	(e)		(f)		
	<u> </u>	UANTITY										
		\$										
	Q	UANTITY										
		\$										
	Q	UANTITY										
		\$										
			SECTION II -	PROPC				-1				
	ITEM				previou	umns (b)	and (c) or all has been	nly where en filed)		TOTAL POSED TO		FOR USE OF ONTRACTING
NO.	(a)				TOT PREVIO	USLY	ind (c) of sal has bee INCRE DECRE THIS P	ASE OR ASE BY	FAC	DATE		GENCY ONLY
					PROPC (b))	THIS PI	c)		(d)		(e)
1	DIRECT MATERIAL											
2	DIRECT LABOR											
3	INDIRECT FACTORY EXPENSE (from S		-	_								
4	SPECIAL TOOLING AND SPECIAL TEST	T EQUIPM	IENT <i>(SF 1432)</i>)								
5	OTHER COSTS (from Schedule B)											
6	GENERAL AND ADMINISTRATIVE EXP	PENSES (1	rom Schedule (C)								
7	TOTAL COSTS (Items 1 thru 6)											
8	PROFIT (Explain in Schedule D)											
9	TOTAL (Items 7 and 8)			_								
10	DEDUCT FINISHED PRODUCT INVOICE	ED OR TO	BE INVOICED [*]	•								
_11	TOTAL (Item 9 less Item 10)											
_12	SETTLEMENT EXPENSES (from Schede	ule E)										
13	TOTAL (Items 11 and 12)								<u> </u>			
_14	SETTLEMENTS WITH SUBCONTRACTO											
_15	GROSS PROPOSED SETTLEMENT (Iten											
_16	DISPOSAL AND OTHER CREDITS (from											
_17	NET PROPOSED SETTLEMENT (Item 1:											
_18	ADVANCE, PROGRESS & PARTIAL PA		*	e H)								
19	NET PAYMENT REQUESTED (Iter		-	,			<u> </u>		<u> </u>			,
the co	mn (e), Section I, should only be used in the ontinued portion of the contract and the deduct											
Section	n I.											

NOTE: File inventory schedules (SF 1426, 1428, 1430, and 1432) for allocable inventories on hand at date of termination (See 49.206).

(When the space provided for any information is insufficient, continue on a separate sheet.)

[Insert SF 1436, Settlement Proposal (Total Cost Basis)(Page 2)]

[Reduce to Fit]

SCHED	ULE A - INDIRECT FACTORY EXPENSE (Item 3)		
DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY
NOTE: Individual items of small a	and the second into a single anti- in Cal	andulas P. C. D. E. a	nd C
	mounts may be grouped into a single entry in Sch SCHEDULE B - OTHER COSTS (Item5)	iedules B, C, D, E, a	na G.
ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY
SCHEDULE C -	GENERAL AND ADMINISTRATIVE EXPENSES (I	tem 6)	I LOB HEL OF
DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY
	SCHEDULE D - PROFIT (Item8)		
EVDI	ANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY
EAFL	ANATION	AMOONT	AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

PART 53—FORMS 53.301-1436

[Insert SF 1436, Settlement Proposal (Total Cost Basis)(Page 3)]

[Reduce to Fit]

SCHE	DULE E - SETTLEMENT EXPENSES (Item 12)		
ITEM	EXPLANATION	AMOUNT	CONTRACTING AGENCY ONLY
SCHEDULE F - SETTLEMENTS	WITH IMMEDIATE SUBCONTRACTORS AND S		FOR USE OF
NAME AND ADDRESS OF SUBCONTRACTOR	BRIEF DESCRIPTION OF PRODUCT CANCELED	AMOUNT OF SETTLEMENT	CONTRACTING AGENCY ONLY
	G - DISPOSAL AND OTHER CREDITS (Item 16		FOR USE OF
DESCF	RIPTION	AMOUNT	CONTRACTING AGENCY ONLY
(If practicable, show separately amount of	disposal credits applicable to acceptable finishe	d product included or	n SF 1428.)
(Where the space provided	for any information is insufficient, continue on a	separate sheet.)	

[Insert SF 1436, Settlement Proposal (Total Cost Basis)(Page 4)]

[Reduce to Fit]

	SCHEDULE H - ADVANCE, PROGRES	SS AND PARTIAL PAYMENTS	(Item 19)				
DATE	TYPE OF PAYN	TYPE OF PAYMENT					
				1			
				<u> </u>			
				<u> </u>			
				1			
				1			
(\	Where the space provided for any information	on is insufficient, continue on a	separate sheet.)				
	CER [*]	ΓΙFICATE					
This is to certify tha termination settlement	t the undersigned, individually, and as ar proposal and that, to the best knowledge a	n authorized representative o nd belief of the undersigned:	f the Contractor, h	nas examined this			
supporting schedules a with recognized comm they have been prepa	ONTRACTOR'S OWN CHARGES. The properties of the proposal or claim against an agency of the	the books of account and red aly those charges allocable to ay, be used directly or indire	cords of the Contract the terminated portice ectly as the basis o	ctor in accordance on of this contract; f settlement of a			
considered adequate proposals filed agains subcontractors own clastlements were negowould make if reimb subcontractors approp the form of this certif with more remote subamounts covering settlements.	UBCONTRACTORS' CHARGES. (1) The Cin the circumstances, the termination set these immediate subcontractors by the harges are fair and reasonable, the charge oriated in good faith and are not more favoursement by the Government were not riate certificates with respect to their termicate; and (4) The Contractor has no information of the contractors or (ii) that the charges for the lements with its immediate subcontractors, at that it has not previously done so. The termination in the contractor of the termination of the contractor of the contractor of the termination of the contractor of the contrac	ettlement proposals of its im ir subcontractors); (2) The sets are allocable to the terminal rable to its immediate subcontinuolved; (3) The Contractor innation settlement proposals, mation leading it to doubt (i) mare allocable to this contractor will pay or cred	mediate subcontrac ettlements on acco ated portion of this tractors than those thas received from which certificates at the reasonableness of the the manual traction of the manual tra	tors (exclusive of unt of immediate contract, and the hat the Contractor all its immediate re substantially in of the settlements the Contractor of ith the amounts so			
	or shall, under conditions stated in FAR 15.3-2 and 15.408 Table 15-2).	.403, be required to submit a	Certificate of Curre	ent Cost or Pricing			
NAME OF CONTRACTOR		BY (Signature of authorized official)					
		TITLE		DATE			
		1					

TITLE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL



[Insert SF 1437, Settlement Proposal for Cost-Reimbursement Type Contracts]

[Reduce to Fit]

SETTLEMENT PROPOSAL FOR COST-REIMBURSEMENT TYPE CONTRACTS

OMB No.: **9000-0012** Expires: 05/31/98

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

To be used by prime contractors submitting settlement proposals on cost-reimbursement type contracts under Part 49 of the Federal Acquisition Regulation. Also suitable for use in connection with terminated cost-reimbursement type subcontracts.

COMPANY		PROPOSAL NUMBER	CHECK ONE				
STREET ADDRESS		GOVERNMENT PRIME CONTRACT NO.	REFERENCE NO.				
CITY AND STATE (Include ZIP Code)		EFFECTIVE DATE OF TERMINATION	N				
ITEM	TOTAL PREVIOUSLY SUBMITTED	INCREASE OR DECREASE BY THIS PROPOSAL	TOTAL SUBMITTED TO DATE				
(a)	(b)	(c)	(d)				
1. DIRECT MATERIAL	\$	\$	\$				
2. DIRECT LABOR							
3. INDIRECT FACTORY EXPENSE							
4. SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT							
5. OTHER COSTS							
6. GENERAL AND ADMINISTRATIVE EXPENSE							
7. TOTAL COST (Items 1 thru 6)	\$	\$	\$				
8. FEE							
9. SETTLEMENT EXPENSES							
10. SETTLEMENTS WITH SUBCONTRACTORS							
11. GROSS PROPOSED SETTLEMENT (Items 7 thru 10)							
12. DISPOSAL AND OTHER CREDITS							
13. NET PROPOSED SETTLEMENT (Item 11 less 12)	\$	\$	\$				
14. PRIOR PAYMENTS TO CONTRACTOR	\$	\$	\$				
15. NET PAYMENT REQUESTED (Item 13 less 14)	\$	\$	\$				

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

- (a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 10) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.
- (b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

NOTE: The Contractor shall, under conditions stated in FAR 15.403, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.406-2 and 15.408 Table 15-2).

NAME OF CONTRACTOR	BY (Signature of authorized official)							
	TITLE	DATE						
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE							

SC	LICI	TATION, C	FFER AN	D AWA	KI) I		ACT IS A S (15 CF		D ORDER		RATING		PAGE	OF 	PAGES
2. C	ONTRA	CT NUMBER	3. SO	LICITATION			YPE OF S			5. DAT	E ISSUED	6. REQUIS	I SITION/PURG	CHAS	E NUMBER
							SEALE	D BID (IFB)						
							NEGOT		, ,						
7. IS	SUED E	BY			CODE		8.	ADDRE	SS OFFER 1	TO (If ot	her than Item	7)			
NO.	TE: Ir	n sealed bid	solicitations	s"offer"	and "offeror"				"bidder".	ı					
							LICITAT								
		offers in original a		col	oies for furnishing t	the supp	lies or ser	vices ir	the Schedu	ule will b				1 8, oi	r if
hai	ndcarrie	ed, in the deposit	ory located in								until	local time ·/		Date)	
		LATE Submissio this solicitation.	ns, Modification	s, and With	ndrawals: See Sect	ion L, P	rovision N	o. 52.2	214-7 or 52	215-1.	All offers are	subject to al			tions
	10. 1	FOR A	. NAME				В. 7	ELEPH	ONE (NO C	OLLECT	CALLS)	C. E-MAIL A	DDRESS		
IN	IFORM	MATION					AREA CO	DE N	IUMBER		EXT.				
	CA	LL:													
					1		SLE OF CC		rs						
(X)	SEC.		DESCR		_	PAGE	(S) (X)	SEC.		DAD	DESCRI				PAGE(S)
	Α	SOLICITATION	PART I - THE I/CONTRACT F		=				CONTRAC		T II - CONTRA	ACT CLAUSE:	5		
	В		SERVICES AND		OSTS			<u>'</u> ΡΔ			CUMENTS, E	XHIRITS AND	OTHER AT	TACI	<u> </u> -
	C		SPECS./WORK					J	LIST OF A					.,	
	D	PACKAGING A	ND MARKING						PART I	IV - REP	RESENTATION	NS AND INST	RUCTIONS		
	Е	INSPECTION A	AND ACCEPTAN	ICE				1/	REPRESEN	OITATIO	NS, CERTIFICA	ATIONS AND	OTHER		
	F	DELIVERIES O	R PERFORMAN	CE				K	STATEME	NTS OF	OFFERORS				
	G	CONTRACT A	DMINISTRATIO	N DATA				L	INSTRS.,	CONDS	, AND NOTIC	ES TO OFFE	RORS		
	Н	SPECIAL CON	TRACT REQUIR	EMENTS				М			CTORS FOR A	WARD			
					OFFER (Mus			•							
		•	• •		es the provisions at			imum E	d Acceptan						
					ees, if this offer is a	•				_	lendar days (6		•		
					receipt of offers spe hin the time specifie				any or all ite	ms upor	which prices	are offered a	t the price s	et opp	oosite
		OUNT FOR PRO			10 CALENDAR DA				R DAYS (%)	30 C/	ALENDAR DA	/S (%)	CALE	NDAR	DAYS (%)
(S	ee Sect	ion I, Clause No.	52.232-8)												
		OWLEDGMEN [*] (The offeror ackr			AMENDM	AMENDMENT NO.			DATE		AMENDM	NT NO.	D		TE
an	nendme	ents to the SOLIC	SITATIÖN for of												
	a reiate ted):	ed documents nui	mberea ana						T.						
			CODE		FACILIT	Υ				AND TI or print)	TLE OF PERS	ON AUTHOR	IZED TO SIG	SN OF	FER
15A.	NAMI ADDF								1.750	σ. μ,					
	OF O	FFER-													
	15B	B. TELEPHONE N	UMBER	150	CLIECK IE DEMI	ET A NIC			17. SIGNA	TURE			18. OF	FER	DATE
AREA	CODE	NUMBER	EXT.	DIFF	CHECK IF REMITERENT FROM AB	OVE -	ENTER S	UCH							
				ADD	RESS IN SCHEDU	JLE.									
					AWARD (To	be c	<u> </u>								
19. /	ACCEPT	TED AS TO ITEM	IS NUMBERED		20. AMOUNT		21. 4	ACCOU	nting and	APPRO	PRIATION				
00	VIITUO	DITY FOR LICINI	OTHER THAN		ODENI COMPETITI	ON							ITEN 4		
22. /			J OTHER THAN		OPEN COMPETITI	ON:			T INVOICE		.DDRESS ss otherwise s	necified	ITEM		
24.		S.C. 2304(c) ISTERED BY (If a) other than Item	71	.S.C. 253(c) ()			NT WILL BE		·				
		.012.125 21 /// 0		., .	ODE			, (I I I	VI VVICE DE	IVII (DE I	. .	COI)E [
26. [NAME (OF CONTRACTIN	NG OFFICER (T)	ype or print	·)		27. L	JNITED	STATES OF	F AMER	CA		28. A\	NARD	DATE
									(Signatur	e of Cor	tracting Office	er)			
IMPO	RTAN	T - Award will be	made on this F	orm, or on	Standard Form 26,	, or by o	other auth	orized o	official writte	en notice					

FEDERAL PROCUREMENT DATA SYSTEM (FPDS) INDIVIDUAL CONTRACT ACTION REPORT

INTERAGENCY REPORT CONTROL NUMBER 0206-GSA-QU

1. REPORTING AGENCY CODE (FIPS 95)(4 Pos.)			fied with no spec		3. MODIFIO (Left justifie characters)	d; can	not exceed 4			FFICE ORDER NUMBER (Left ed 15 characters) (15 Pos.)
5. CONTRACTING OFFICE alpha-numeric character of		. ACTION DATE (4 nd 2 digit month, e.			7. TYP	E OF D	ATA ENTRY (T PERIOD (4 digit fiscal year and 1 er, e.g., 20001) (5 Pos.)
				-	В.	Origina Deletin Correc	ıg			
	9. KIND OF	CONTRACT ACTIO	ON (1 Pos.)	'		-	10. DOLLAR			OBLIGATED THIS ACTION (Right se lead zeros) (8 Pos.)
A. Initial Letter Contract B. Definitive Contract S Contract C. New Definitive Contr D. Purchase Orders/BP/A	uperseding Letter act A Calls Using Simp	G. Orde H. Mod J. Tern lified K. Tern	er Under BOA er/Modification U ification nination for Defa instance Multiple	ult veniend	ce	dule		OF OBLIGATI (1 Pos.)	ON S	2. PRINCIPAL PRODUCT OR ERVICE (FPDS Product Service Code Manual) (4 Pos.)
Acquisition Procedure E. Order Under Single A Contract			er Under Multiple Il Load of Federa			ct	A. C B. C	Obligated Deobligated		
13. PRINCIPAL STANDA CLASSIFICATION (SIC) (Manual) (4 Pos.)			L ITEM ACQUIS Pos.) Y - Yes N - No	SITION	15. CONTF	RACTO	r namé <i>(30 f</i>	Pos.)		
16. CONTRACTOR IDEN NUMBER (9 Pos.)	ITIFICATION	17a. PRINCIPAL F MANCE (State an (7 Pos.) STATE				(FIPS	GOVT. OR	ACT FOR FOR INTERNATION ZATION <i>(1 Pos</i>	NAL	19. TARIFF OR REGULATED (Pre-CICA) (1 Pos.)
							Y - Y N - N			Y - Yes N - No
20. MULTI-YEAR 21. FOR (1 Pos.)	RESERVED 22 FPDS <i>(2 Pos.)</i> MA	. COUNTRY OF ANUFACTURE		RIOR 1	OF PROCUE TO AWARD	REMEN		YPE OF CONT		DR MODIFICATION (1 Pos.) tion S. Cost - No Fee
Y - Yes N - No	(FI)	PS 10-3) (2 Pos.) .	B. Not	opsized synop:	Pos.) d prior to avaiszed due to sized for other	urgen	J. Fi K. Fi Pi CY L. Fi	xed-Price vith xed-Price with rice Adjustmen xed-Price Incer ost-Plus-Award	Econom t ntive	T. Cost-Sharing
	APPLICABILITY (A F. II an							n 25 = A) (1 Pos.) K. Set-Aside
A. CICA Applica B. Purchase Ord Calls Using S Acquisition Procedures C. Subject to St	ers/BPA E. Co implified Ac Pro	e-CICA ommercial Items cquisition Under Tes ogram	B. Full and Compe	d Oper etitive F d Oper nation	Competition Competition Competition Proposal Competition Compe	n -	F.	Multiple Aw . Alternative : . Reserved	ard Sch	nedule L. Other Than Full and
27. AUTHOR		THAN FULL AND C if item 26 = L) (1		ΓΙΟΝ		RE	28. NUMBER CEIVED <i>(Comp</i> 25 = A or B	lete only if iter	m •	29. EXTENT COMPETED (1 Pos.)
A. Unique Source B. Follow-on Contract C. Unsolicited Research Proposal D. Patent/Data Rights E. Utilities F. Standardization G. Only One Source - Other H. Urgency J. Mobilization, Essential R&D Capability, of Services K. Reserved L. International Agreement M. Authorized by Statute N. Authorized for Resale P. National Security O. Public Interest					A. Competed B. 2-5 C. 6-10 D. 11-15 E. 16-20 E. 21-50 A. Competed B. Not Availa Competing Competing Competing A. Competed Competing Co				A. Competed Action B. Not Available for Competition C. Follow-on to Competed Action D. Not Competed	
30. TYP	E OF CONTRACTO	OR <i>(1 Pos.)</i>	3	BU	OMEN-OWNED USINES 32. PREFERENCE PROGRAM (1 Pos.)				OGRAM (1 Pos.)	
A. Small Disadvantaged B. Other Small Business C. Large Business D. JWOD Nonprofit Ag E. Nonprofit Educationa Organization F. Nonprofit Hospital G. Other Nonprofit Orga H. State/Local Govt - Ed	lospital overnment r Perform- llege/ ty Institu-		Y - Yes N - No		A. Directed to JWOD Nonprofit Agency B. 8(a) Contract Award C. Reserved D. Small Business Set-Aside E. Reserved F. Reserved		de	G. Buy Indian/Self- Determination H. No Preference Program or Not Listed J. Small Disadvantaged Business Set-Aside		
33. SUBCONTRACTING Small Disadvantaged, and	l Women-	34. SUBJEC	T TO LABOR ST	ATUT	ES (1 Pos.)		→ COMPLETION	TED CONTRAC N DATE (4 dig	it	6. CONTRACTOR'S TIN (9 Pos.)
Owned Small Business) (A. Required B. Not Requi		A. Walsh-Heal B. Reserved C. Service Cor D. Davis-Baco	ntract Act	Heale	Subject to V ey, Service (or Davis-B	Con-	calendar year e.g., 20001.	and 2 digit m 2) (6 Pos.)	onth,	
37. COMMON PARENT	S NAME <i>(30 Pos.,</i>)					ı			8. COMMON PARENT'S TIN 9 Pos.)
39 RESERVED FOR FPD:	S (4 Pos.)	40. RESERVED	FOR FPDS (1 F	Pos.)			41. RESERV	ED FOR FPDS	(5 Pos.))
SMALL BUS	INESS COMPETITI						R, DOD, DOE, I		4, <i>GSA</i> ,	HHS, NASA, and VA)
TION TEST PRO- GRAM (1 Pos.)	SMALL BUSINES		GING SMALL S RESERVE 1 Pos.)		NUMBER O			•	AGE AN	INUAL GROSS REVENUE
Y - Yes N - No	Y - Yes N - No	C. 101 - 250 P. 2,000,001 - 3 D. 251 - 500 R. 3,500,001 - 5 E. 501-750 S. 5,000,001 - 10				000,001 - 2,000,000 000,001 - 3,500,000 500,001 - 5,000,000 000,001 - 10,000,000 ,000,001 - 17,000,000				
46. RESERVED FOR FPD	OS (10 Pos.)	47. OPT	IONAL REPORTI	ED DA	TA ELEMEN	ITS <i>(30</i>	0 Pos.)			
48. FOR AGENCY INTER	RNAL USE									

b. SIGNATURE

49. CONTRACTING OFFICER OR REPRESENTATIVE

c. TELEPHONE AREA CODE | NUMP

d. DATE SUBMITTED

a. TYPED NAME

PREAWARD SURVEY OF PROSPECTIVE CONTRACTOR **QUALITY ASSURANCE**

SERIAL NO. (For surveying activity use) OMB No.:9000-0011 Expires: 10/31/2000

PROSPECTIVE CONTRACTOR

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

		SECTION I - R	ECOMMENDAT	ION		
1. RECOMMEND:	☐ AWARD	NO AWARD (#	Provide full substa	ntiation for recommendation	in 4. NARRATIVE)	
2. IF PROSPECTIVE CO	ONTRACTOR RECEIVES AWA	RD, A POST AWARD	CONFERENCE IS I	RECOMMENDED.	YES	□ NO
3. AN ON-SITE SU	JRVEY WAS PERFORME	D.			YES	□ NO
4. NARRATIVE						
				IF CONT	INUATION SHEETS	—
	5. SURVEY MADE BY			ATTACH	ED - MARK HERE	
A. SIGNATURE	5. SURVEY MADE BY	B. DATE SIGNED	A. SIGNATURE	6. SURVEY REVIEWIN		REVIEWED
C. NAME			C. NAME			
D. OFFICE			D. OFFICE			
E. AREA CODE	F. TELEPHONE NUMBER	G. EXT.	E. AREA CODE	F. TELEPHONE NUMBER	G. EXT.	

SECTION II - COMPANY AND SOLICITATION DATA

1. BRIEFLY DESCRIBE HOW QUALITY ASSURANCE RESPONSIBILITIES ARE ACCOMPLISHED.

			2 0	UALITY ASSURANCE OFFICIAL	S CONTACTED					
			2. Q				C. YEARS OF	QUALITY		
		A. NAME		В.	TITLE		ASSURANCE EX		E	
			2 ADI	DUCADI E CONTRACT QUALITY	/ DECLUDEMENT					
			3. API	PLICABLE CONTRACT QUALITY	REQUIREMENTS	•				
	A. NUMBER B. TITLE C. TAILORING (If any)									
4.	IDENTICAL C	DR SIMILAR ITEMS HAVE	BEEN	PRODUCED, SUPPLIED,	OR SERV	ICED BY PROSPECT	TIVE CONTRACTOR			
		—		THOSOCIS, CONTENES,	O	1025 51 11100120	THE CONTINUE OF OR			
	(If similar item	ns, identify:)		
			SEC	CTION III - EVALUATION	CHECKLIST			VE0	NO	
			A. Ext	STATEMENTS nibits, technical data, drawin	age engoificatio	and approval	L roquiromente	YES	NO	
		where applicable to the		servation, packaging, pack	<u> </u>	• • • • • • • • • • • • • • • • • • • •	requirements.			
	contract) are prospective contract	understood by the		ner (Specify)	ing, una markin	g requirements.				
	prospective co	ontractor.		, , , , , , , , , , , , , , , , , , , ,						
2.	Records avails	able indicate that the pros	spective	contractor has a satisfac	ctory quality p	performance rec	ord during the			
		12) months for similar iter			, , , , ,		Ü			
3.	Used, recondi	tioned, or remanufactured	l materia	and former Governmen	t surplus mate	erial will be furr	nished by the			
prospective contractor. (If Yes, explain in Section I NARRATIVE)										
		ontractor will require unus								
Ь.	Did prospective awarded that	ve contractor fulfill commi contract? (If No, explain	tments t	o correct deficiencies, a on INARRATIVEI	s proposed or	n previous surve	eys, when			
	avaraga mar	Tomerade: In 140, exprain	00011	NUMBER SKILLED		NUMBER SEMI-SKI	ILLED			
6.	Quality verific	ation personnel								
_						RATIO				
7.	Quality verific	ation to production perso	nnel ratio				:			
TH	E FOLLOWIN	IG ARE AVAILABLE A	ND ADE	QUATE. (If not applica	able, show "I	V/A " in "Yes" c	olumn.)			
8.	Inspection a specified ed	nd test equipment, gauge	s, and in	struments for first articl	e and product	ion <i>(including s</i>	solicitation			
9.		metrology program.								
		em procedures and contro	ols							
		pecifications, drawings, c		nd modifications, work/	process instru	ctions.				
		determining inspection, te								
13.	Purchasing:	Processes for selecting of	qualified s	suppliers and assuring th	e quality of p	urchased mater	ials.			
		ntification, segregation, tr		, and maintenance.						
		furnished property contro	ols.							
	Process con									
	and prevent	ning product: System for ative action.				deficiencies, an	id corrective			
		n, storage, packaging, pac								
		ch as: inspection, test				tc.)				
		investigation of customer	complai	nts and correction of de	riciencies.					
	Design cont	oftware <i>(deliverable and</i>	Vor non	deliverablel quality ass	urance progra	ım				
		it review and internal qual			arance progra					
		rance training program.	, additt							
		and servicing quality assu	rance pro	gram.						
	Statistical to		•							

SETTLEMENT PROPOSAL (INVENTORY BASIS)

OMB No.: **9000-0012** Expires: 05/31/98

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

	FOR USE BY A	A FIXED-PF	RICE PRIME C	ONTRA	ACTOR O	R FIXE	D-PRICE	SUBCO	NTRA	CTOR	_		
	PROPOSAL APPLIES TO (Check one)				COMPANY	,							
П	A PRIME CONTRACT WITH THE GOVERNMENT	SUBCON	TRACT OR SE ORDER										
					STREET ADDRESS								
CONTRACTOR WHO SENT NOTICE OF TERMINATION				CITY AND	STATE	(Include ZIF	Code)						
NAME													
					NAME OF	GOVERN	NMENT AGI	ENCY					
ADDR	ESS (Include ZIP Code)												
					GOVERNM	ENT PR	IME CONTR	ACT NO.	CONT	RACTOR'S REFE	REN	ICE NO.	
	eys payable under the contract have been	assigned, giv	e the following:										
NAME	OF ASSIGNEE				EFFECTIVE	DATE	OF TERMINA	ATION					
ADDR	ESS (Include ZIP Code)				PROPOSAL	L NO.			CHECI	K ONE			
										NTERIM		FINAL	
SF 14	39, SCHEDULE OF ACCOUNTING INFOR	MATION	IS		IS N	OT ATT	ACHED (If I	not, explair	below,)			
	SECTION I - S	TATUS OF	CONTRACT			EFFEC	TIVE DAT	E OF TE	RMIN	ATION			
				FII	NISHED					ED OR NOT			
	RODUCTS COVERED BY TERM CONTRACT OR PURCHASE (DDE: ((01.101.) /	DAYAA		HAND				MENCED		TOTAL	
(CONTRACT OR PURCHASE C	JKDEK	PREVIOUSLY SHIPPED AND	REC	NT TO BE CEIVED		ED IN THIS		TED	NOT TO BE		COVERED BY CONTRACT	
			INVOICED		ROUGH OICING	PRO	PROPOSAL		ial n only)	COMPLETED		OR ORDER	
	(a)	T	(b)		(c)		(d)	(e)	,,	(f)	_	(g)	
		QUANTITY									_	<u> </u>	
		\$									-		
		QUANTITY										·	
		\$ QUANTITY				-					_		
											_		
		\$	SECTION II -	DDODO	OCED CE	TTI ENA	FNIT						
			SECTION II -	PHOP				lv where		TOTAL	_	OR USE OF	
NO.	ITE	:M			(Use Columns (b) and (c) only where previous proposal has been filed) TOTAL INCREASE OR PREVIOUSLY DECREASE BY							ONTRACTING	
NO.	(a	1)			PREVIOUSLY DECREASE B PROPOSED THIS PROPOS			10PUSAL	USAL			AGENCY ONLY	
	METALS				(b) (c)					(d)	—	(e)	
	RAW MATERIALS (other than metal	ls)			<u> </u>								
	PURCHASED PARTS	.0,											
4	FINISHED COMPONENTS												
5	MISCELLANEOUS INVENTORY												
6	WORK-IN-PROCESS												
7	SPECIAL TOOLING AND SPECIAL T	EST EQUIPN	MENT		1								
8	OTHER COSTS (from Schedule B)												
9	GENERAL AND ADMINISTRATIVE E	EXPENSES (from Schedule	C)									
10	TOTAL (Items 1 to 9 inclusive	9)											
11	PROFIT (explain in Schedule D)												
12	•												
13	13 TOTAL (Items 10 to 12 inclusive)												
14	SETTLEMENTS WITH SUBCONTRAC	CTORS (from	m Schedule F)										
15	ACCEPTABLE FINISHED PRODUCT												
16	GROSS PROPOSED SETTLEMENT (/	tems 13 thr	u 15)										
17	DISPOSAL AND OTHER CREDITS (#	from Schedu	ıle G)										
18	NET PROPOSED SETTLEMENT (Item	n 16 less 17	")										
19	ADVANCE, PROGRESS & PARTIAL			e <i>H)</i>									
20	NET PAYMENT REQUESTED				<u> </u>								
	(When the space p	rovided fo	r any inforn	nation	is insuf	ticient	, contin	ue on a	sepa	rate sheet.)			

	SCHEDULE A - A	ANALYSIS OF INVENTORY C	OST (Items4 and 6)	,	
Furnish the following information	(unless not reasonably available)	for inventories of finished components	and work-in-progress inc	luded in this proposal	:
	TOTAL DIRECT LABOR	TOTAL DIRECT MATERIALS	TOTAL INDIR EXPENSES	ECT	TOTAL
FINISHED COMPONENTS					
WORK-IN-PROGRESS					
NOTE: Individual items		e grouped into a single entry		, D, and G.	
	SC	HEDULE B - OTHER COSTS (A	ltem 8)		
ITE	M	EXPLANATIO	NC	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY
	SCHEDULE C - GI	NERAL AND ADMINISTRATIV	/E EXPENSES (Item	9)	
	DETAIL OF	EXPENSES		AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY
					_
		SCHEDULE D - PROFIT (Item	.11)		
			111		FOR USE OF
	EXPLAN	ATION		AMOUNT	CONTRACTING AGENCY ONLY
					1
					1
					†
					1
(Where t	he space provided for a	any information is insuffici	ent, continue on a	separate she	et.)

SCHED	OULE E - SETTLEMENT EXPENSES (Item 12)		
ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY
SCHEDULE F - SETTLEMENTS	WITH IMMEDIATE SUBCONTRACTORS AND SU		<u> </u>
NAME AND ADDRESS OF SUBCONTRACTOR	BRIEF DESCRIPTION OF PRODUCT CANCELED	AMOUNT OF SETTLEMENT	FOR USE OF CONTRACTING AGENCY ONLY
	_		
SCHEDULE	G - DISPOSAL AND OTHER CREDITS (Item 17)		
	RIPTION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY
If practicable show separately amount of i	disposal credits applicable to acceptable fin	shed product incl	uded in Item 15

(Where the space provided for any information is insufficient, continue on a separate sheet.)

	SCHEDULE H - ADVANCE, PRO	GRESS AND PARTIAL PAYMENTS	(Item 19)	
DATE	TYPEOF P		AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY
(Where	e the space provided for any inform	mation is insufficient, continue o	n a separate she	eet.)
			<u> </u>	
		CERTIFICATE		
•	e undersigned, individually, and as an autho best knowledge and belief of the undersigne	·	has examined this te	ermination settlement
and explanations have be practices; they include or	RACTOR'S OWN CHARGES. The proposed en prepared from the books of account and those charges allocable to the terminated or indirectly as the basis of settlement of a are fair and reasonable.	d records of the Contractor in accordand portion of this contract; they have be	ce with recognized co	ommercial accounting wledge that they will,
in the circumstances, the subcontractors by their charges are allocable to immediate subcontractors received from all its immediate subcontractors remote subcontract settlements with its immediate.	ONTRACTORS' CHARGES. (1) The Contract etermination settlement proposals of its subcontractors); (2) The settlements on a the terminated portion of this contract, and than those that the Contractor would makediate subcontractors appropriate certificate of this certificate; and (4) The Contractor hours or (ii) that the charges for them are ediate subcontractors, the Contractor will properties that the contractor will properties the contractor of the term "subcontractors," as used above, in	immediate subcontractors (exclusive of account of immediate subcontractors of the settlements were negotiated in goodke if reimbursement by the Government tes with respect to their termination seas no information leading it to doubt (i) allocable to this contract. Upon receiping or credit them promptly with the am	of proposals filed aga own charges are fair ood faith and are not were not involved; (3 ettlement proposals, v the reasonableness of ot by the Contractor	ainst these immediate and reasonable, the more favorable to its 3) The Contractor has which certificates are the settlements with of amounts covering
NOTE: The Contractor s 15.406-2 and15.408 Tab	hall, under conditions stated in FAR 15.40 le 15-2).	3, be required to submit a Certificate	of Current Cost or P	'ricing Data (see FAR
NAME OF CONTRACTOR		BY (Signature of authorized official)		
		TITLE		DATE
NAME OF SUPERVISORY AC	COUNTING OFFICIAL	TITLE		

SETTLEMENT PROPOSAL (TOTAL COST BASIS)

OMB No.: **9000-0012** Expires: 05/31/98

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DC 20	0405.											
	FOR USE BY A F	IXED-PF	RICE PRIME C	ONTRA	CTOR O	R FIXE	D-PRICE	SUBCO	NTRA	CTOR		
	PROPOSAL APPLIES TO (Check one)	- CLIBCON	TRACT OR		COMPANY	•						
	A PRIME CONTRACT WITH THE GOVERNMENT		TRACT OR SE ORDER									
SUBC	ONTRACT OR PURCHASE ORDER NO(S).				STREET A	DDRESS						
	CONTRACTOR WHO SENT NOT	ICE OF	TERMINATIO	N	CITY AND	STATE	(Include ZI	P Code)				
NAME					1							
					NAME OF	GOVERN	IMENT AG	ENCY				
ADDR	ESS (Include ZIP Code)											
					GOVERNM	ENT PR	IME CONTE	RACT NO.	CONT	RACTOR'S REF	EREN	NCE NO.
	eys payable under the contract have been ass	signed, give	e the following:									
NAME	OF ASSIGNEE				EFFECTIVE	DATE	OF TERMIN	ATION				
ADDR	ESS (Include ZIP Code)				PROPOSAI	_ NO.			CHECI	K ONE		
					<u> </u>					NTERIM		FINAL
SF 14	39, SCHEDULE OF ACCOUNTING INFORMATION	TION	IS		IS N	TTA TO	ACHED (If	not, explai	n below	<i>(</i>)		
	SECTION I - STA	TUS OF	CONTRACT			EFFEC1	IVE DA	re of te	RMIN	ATION		
				FIN	NISHED					IED OR NOT	'	TOTAL
	RODUCTS COVERED BY TERMIN CONTRACT OR PURCHASE ORI		PDE VIOLICI V	DAY (145		HAND	IT NOT TO			/IENCED		COVERED
,	CONTRACT OR FUNCHASE ON	DEN	PREVIOUSLY SHIPPED AND	REC	EIVED	BE RI	CEIVED	SUBSEQU COMPLE	TED	NOT TO BE		BY CONTRACT
			INVOICED		ROUGH DICING		ROUGH DICING	AND INVO	ICED*	COMPLETED)	OR ORDER
	(a)		(b)		(c)		(d)	(e)		(f)		
	<u> </u>	UANTITY										
		\$										
	Q	UANTITY										
		\$										
	<u> </u>	UANTITY										
		\$										
			SECTION II -	PROPC								
	ITEM				previou	umns (b)	and (c) or all has been	nly where en filed)		TOTAL OPOSED TO	l	for USE of Ontracting
NO.	(a)				TOT PREVIO	USLY	ind (c) of sal has bee INCRE DECRE THIS P	ASE OR ASE BY	FAC	DATE	ı	GENCY ONLY
					PROPC (b))	THIS PI	c)		(d)	$ldsymbol{ldsymbol{eta}}$	(e)
1	DIRECT MATERIAL										<u> </u>	
2	DIRECT LABOR										<u> </u>	
3	INDIRECT FACTORY EXPENSE (from S		-	_							<u> </u>	
4	SPECIAL TOOLING AND SPECIAL TEST	T EQUIPM	IENT <i>(SF 1432)</i>)							<u> </u>	
5	OTHER COSTS (from Schedule B)										<u> </u>	
6	GENERAL AND ADMINISTRATIVE EXP	PENSES (1	rom Schedule (C)							<u> </u>	
7	TOTAL COSTS (Items 1 thru 6)										<u> </u>	
8	PROFIT (Explain in Schedule D)										<u> </u>	
9	TOTAL (Items 7 and 8)			_							<u> </u>	
10	DEDUCT FINISHED PRODUCT INVOICE	ED OR TO	BE INVOICED [*]	•							$ldsymbol{ldsymbol{eta}}$	
_11	TOTAL (Item 9 less Item 10)										<u> </u>	
_12	SETTLEMENT EXPENSES (from Schede	lule E)									<u> </u>	
13	TOTAL (Items 11 and 12)								<u> </u>		<u> </u>	
_14	SETTLEMENTS WITH SUBCONTRACTO										<u> </u>	
_15	GROSS PROPOSED SETTLEMENT (Iten										<u> </u>	
_16	DISPOSAL AND OTHER CREDITS (from										<u> </u>	
_17	NET PROPOSED SETTLEMENT (Item 1:										<u> </u>	
_18	ADVANCE, PROGRESS & PARTIAL PA		*	e H)							<u> </u>	
19	NET PAYMENT REQUESTED (Iter		-	,			<u> </u>		<u> </u>		<u>Ļ</u>	,
the co	mn (e), Section I, should only be used in the ontinued portion of the contract and the deduct											
Section	n I.											

NOTE: File inventory schedules (SF 1426, 1428, 1430, and 1432) for allocable inventories on hand at date of termination (See 49.206).

(When the space provided for any information is insufficient, continue on a separate sheet.)

SCHED	ULE A - INDIRECT FACTORY EXPENSE (Item 3)		
DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY
			_
			_
NOTE: Individual items of small a	may make may be assumed into a simple antiquin Cab	andulas P. C. D. E. a	nd C
	mounts may be grouped into a single entry in Sch SCHEDULE B - OTHER COSTS (Item5)	ledules B, C, D, E, a	iia G.
ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY
SCHEDULE C -	GENERAL AND ADMINISTRATIVE EXPENSES (I	tem 6)	
DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY
			_
			_
	SCHEDULE D - PROFIT (Item8)		
FVDI	ANATION	AMOUNT	FOR USE OF
EAPL	ANATION	AWOUNT	FOR USE OF CONTRACTING AGENCY ONLY
			1

(Where the space provided for any information is insufficient, continue on a separate sheet.)

SCHED	OULE E - SETTLEMENT EXPENSES (Item 12)		
ITEM	EXPLANATION	AMOUNT	CONTRACTING AGENCY ONLY
SCHEDULE F - SETTLEMENTS	WITH IMMEDIATE SUBCONTRACTORS AND S	UPPLIERS (Item 14)	
NAME AND ADDRESS OF SUBCONTRACTOR	BRIEF DESCRIPTION OF PRODUCT CANCELED	AMOUNT OF SETTLEMENT	FOR USE OF CONTRACTING AGENCY ONLY
SCHEDULE	G - DISPOSAL AND OTHER CREDITS (Item 16	i)	FUR USE UF
DESCR	RIPTION	AMOUNT	CONTRACTING AGENCY ONLY
(If practicable, show separately amount of	disposal credits applicable to acceptable finishe	d product included o	n SF 1428 \
	for any information is insufficient, continue on a		

	SCHEDULE H - ADVANCE, PROGRES	SS AND PARTIAL PAYMENTS	(Item 19)	
DATE	TYPE OF PAYM	MENT	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY
				1
				<u> </u>
				<u> </u>
				1
				1
(\	Where the space provided for any information	on is insufficient, continue on a	separate sheet.)	
	CER [*]	ΓΙFICATE		
This is to certify tha termination settlement	t the undersigned, individually, and as ar proposal and that, to the best knowledge a	n authorized representative o nd belief of the undersigned:	f the Contractor, h	nas examined this
supporting schedules a with recognized comm they have been prepa	ONTRACTOR'S OWN CHARGES. The properties of the proposal or claim against an agency of the	the books of account and red aly those charges allocable to ay, be used directly or indire	cords of the Contract the terminated portice ectly as the basis o	ctor in accordance on of this contract; f settlement of a
considered adequate proposals filed agains subcontractors own clastlements were negowould make if reimb subcontractors approp the form of this certif with more remote subamounts covering settlements.	UBCONTRACTORS' CHARGES. (1) The Cin the circumstances, the termination set these immediate subcontractors by the harges are fair and reasonable, the charge oriated in good faith and are not more favoursement by the Government were not riate certificates with respect to their termicate; and (4) The Contractor has no information of the contractors or (ii) that the charges for the lements with its immediate subcontractors, at that it has not previously done so. The termination in the contractor of the termination of the contractor of the contractor of the termination of the contractor of the contrac	ettlement proposals of its im ir subcontractors); (2) The sets are allocable to the terminal rable to its immediate subcontinuolved; (3) The Contractor innation settlement proposals, mation leading it to doubt (i) mare allocable to this contractor will pay or cred	mediate subcontrac ettlements on acco ated portion of this tractors than those thas received from which certificates at the reasonableness of the the manual traction. Upon receipt by dit them promptly w	tors (exclusive of unt of immediate contract, and the hat the Contractor all its immediate re substantially in of the settlements the Contractor of ith the amounts so
	or shall, under conditions stated in FAR 15.3-2 and 15.408 Table 15-2).	.403, be required to submit a	Certificate of Curre	ent Cost or Pricing
NAME OF CONTRACTOR		BY (Signature of authorized official)		
		TITLE		DATE
		1		

TITLE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL

SETTLEMENT PROPOSAL FOR COST-REIMBURSEMENT TYPE CONTRACTS

OMB No.: 9000-0012 Expires: 05/31/98

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

To be used by prime contractors submitting settlement proposals on cost-reimbursement type contracts under Part 49 of the Federal Also suitable for use in connection with terminated cost-reimbursement type subcontracts

COMPANY		PROPOSAL NUMBER	CHECK ONE
			PARTIAL FINAL
STREET ADDRESS		GOVERNMENT PRIME	REFERENCE NO.
		CONTRACT NO.	
CITY AND STATE (Include ZIP Code)		EFFECTIVE DATE OF TERMINATIO	N
ITEM	TOTAL PREVIOUSLY	INCREASE OR DECREASE	
IIEWI	SUBMITTED	BY THIS PROPOSAL	DATE
(a)	(b)	(c)	(d)
1. DIRECT MATERIAL	\$	\$	\$
2. DIRECT LABOR			
3. INDIRECT FACTORY EXPENSE			
4. SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT			
5. OTHER COSTS			
6. GENERAL AND ADMINISTRATIVE EXPENSE			
7. TOTAL COST (Items 1 thru 6)	\$	\$	\$
8. FEE			
9. SETTLEMENT EXPENSES			
10. SETTLEMENTS WITH SUBCONTRACTORS			
11. GROSS PROPOSED SETTLEMENT (Items 7 thru 10)			
12. DISPOSAL AND OTHER CREDITS			
13. NET PROPOSED SETTLEMENT (Item 11 less 12)	\$	\$	\$
14. PRIOR PAYMENTS TO CONTRACTOR	\$	\$	\$
15. NET PAYMENT REQUESTED (Item 13 less 14)	\$	\$	\$

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

- (a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 10) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.
- (b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors' own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimburgement by the Government were not involved. (2) The Contractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

NOTE: The Contractor shall, under conditions stated in FAR 15.403, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.406-2 and 15.408 Table 15-2).

NAME OF CONTRACTOR	BY (Signature of authorized official)	
NAME OF CONTRACTOR	Signature of authorized official)	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

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