

## PART 52

### SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 52.000 Scope of part.

This part (a) gives instructions for using provisions and clauses in solicitations and/or contracts, (b) sets forth the solicitation provisions and contract clauses prescribed by this regulation, and (c) presents a matrix listing the FAR provisions and clauses applicable to each principal contract type and/or purpose (e.g., fixed-price supply, cost-reimbursement research and development).

#### SUBPART 52.1—INSTRUCTIONS FOR USING PROVISIONS AND CLAUSES

#### 52.100 Scope of subpart.

This subpart (a) gives instructions for using Part 52, including the explanation and use of provision and clause numbers, prescriptions, prefaces, and the matrix; (b) prescribes procedures for incorporating, identifying, and modifying provisions and clauses in solicitations and contracts, and for using alternates; and (c) describes the derivation of FAR provisions and clauses.

#### 52.101 Using Part 52.

(a) *Definitions.* “Alternate” means a substantive variation of a basic provision or clause prescribed for use in a defined circumstance. It (1) adds wording to, (2) deletes wording from, or (3) substitutes specified wording for a portion of the basic provision or clause. The alternate version of a provision or clause is the basic provision or clause as changed by the addition, deletion, or substitution (see 52.105(a)).

“Contract clause” or “clause” means a term or condition used in contracts or in both solicitations and contracts, and applying after contract award or both before and after award.

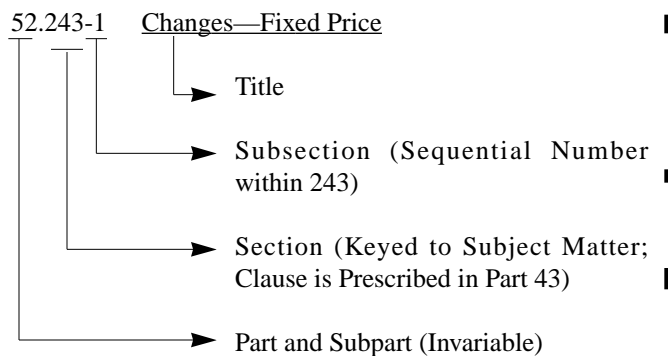
“Modification,” as used in this subpart, means a minor change in the details of a provision or clause that is specifically authorized by the FAR and does not alter the substance of the provision or clause (see 52.104).

“Solicitation provision” or “provision” means a term or condition used only in solicitations and applying only before contract award.

“Substantially as follows” or “substantially the same as,” when used in the prescription and preface of a provi-

sion or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition; *provided*, that the variation includes the salient features of the FAR provision or clause, and is not inconsistent with the intent, principle, and substance of the FAR provision or clause or related coverage of the subject matter.

(b) *Numbering.* (1) *FAR provisions and clauses.* Subpart 52.2 sets forth the texts of all FAR provisions and clauses, each in its own separate subsection. The subpart is arranged by subject matter, in the same order as, and keyed to, the parts of the FAR. Each FAR provision or clause is uniquely identified. All FAR provision and clause numbers begin with “52.2,” since the texts of all FAR provisions and clauses appear in Subpart 52.2. The next two digits of the provision or clause number correspond to the number of the FAR subject part in which the provision or clause is prescribed. The FAR provision or clause number is then completed by a hyphen and a sequential number assigned within each section of Subpart 52.2. The following example illustrates the makeup of the FAR provision or clause number:



(2)(i) *Provisions or clauses that supplement the FAR.* Provisions or clauses that supplement the FAR are—

(A) Prescribed and included in authorized agency acquisition regulations issued within an agency to satisfy the specific needs of the agency as whole;

(B) Prescribed and included in a regulation issued by a suborganization of an agency to satisfy the needs of that particular suborganization; or

(C) Developed for use at a suborganizational

level of an agency, not meant for repetitive use, but intended to meet the needs of an individual acquisition and, thus, impractical to include in either an agency or suborganization acquisition regulation. (See 1.301(c).)

(ii) Supplemental provisions or clauses published in agency acquisition regulations shall be in full text and the prescription for the use of each shall be included. Supplemental provisions or clauses published in agency acquisition regulations shall be numbered in the same manner in which FAR provisions and clauses are numbered except that—

(A) If it is included in an agency acquisition regulation that is published in the Federal Register and is codified in Title 48, Code of Federal Regulations (48 CFR), the number shall be preceded by the chapter number within 48 CFR assigned by the CFR staff; and

(B) The sequential number shall be “70” or a higher number (see 1.303).

(iii) The sequential number at the end of the number of a provision or clause that supplements the FAR, like its counterpart at the end of any FAR provision or clause number, indicates the subsection location of the provision or clause in Subpart 52.2 of the agency acquisition regulation 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;
- (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.

### 52.102-1 Incorporation by reference.

(a) Except as specified in 52.102-2, provisions and clauses may be incorporated by reference in solicitations and/or contracts if they are prescribed in—

- (1) The FAR and are authorized to be incorporated by reference (see Subpart 52.3); or
- (2) An agency acquisition regulation published by—
  - (i) The Secretary of Defense for use throughout the Department of Defense (DOD); or
  - (ii) The head of an agency outside the DOD for agency-wide use.

(b) The provisions and clauses referred to in 52.102-1(a) 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*, that they are used verbatim, or (3) require modification or the insertion by the Government of fill-in material (see 52.104). However, the contracting officer, upon request, shall provide the full text of any provision or clause incorporated by reference.

(c) 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.

#### **52.102-2 Incorporation in full text.**

(a) A provision or clause shall be incorporated in solicitations and/or contracts in full text if it—

(1) Requires completion by the offeror or prospective contractor;

(2) Is a FAR provision or clause that will be used with an authorized deviation (see Subpart 1.4);

(3) Is a FAR provision or clause that is not authorized to be incorporated by reference (see Subpart 52.3);

(4) Is prescribed for use in an agency acquisition regulation published at levels below those specified in 52.102-1(a)(2);

(5) Is a special provision or clause of the type described in 52.101(b)(2)(i)(C);

(6) Will be used in a specific acquisition or class of acquisitions covered by a written determination of the chief of the contracting office to restrict the use of incorporation by reference for valid reasons; or

(7) Is prescribed on a “substantially as follows” or “substantially the same as” basis in the FAR or an agency acquisition regulation specified in 52.102-1(a)(2), but will not be used verbatim.

(b) Provisions and clauses of the type described in 52.101(b)(2)(i)(C), if developed by an organizational element below that of the agency headquarters level, shall be subject to agency oversight through the agency procedure required by 1.202.

(c) Provisions completed as annual representations and certifications are not required to be incorporated in solicitations in full text.

#### **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 appearing 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).

(c) Under certain circumstances, a provision or clause may be used with two or more alternates. In these circumstances, each of the applicable alternates shall be cited, whether incorporated by reference or in full text; e.g., 52.209-3 FIRST ARTICLE APPROVAL—CONTRACTOR TESTING (OCT 1983)—ALTERNATE I (DEC 1983) AND ALTERNATE II (FEB 1984). However, under no circumstances may an alternate to a specific provision or clause be applied to any other provision or clause.

### 52.106 Derivations of FAR provisions and clauses.

(a) Nearly all FAR provisions and clauses have been derived from Defense Acquisition Regulation (DAR) and/or Federal Procurement Regulations (FPR) provisions and clauses. In order to enable the user of this regulation to understand the derivation, a notation has been added at the bottom of each FAR provision or clause underneath the words "(End of provision)" or "(End of clause)." The notation shows the nature of the derivation by one of the following codes:

"NM" means *new material* not in the DAR or FPR.

"R" means the FAR coverage is *rewritten* from the DAR, FPR, or other material from which it is derived.

"AV" means the FAR coverage repeats a provision or clause in the DAR, FPR, or other source *almost verbatim*. In the text of the provision or clause, titles of organizations, officials, or documents are changed or personal pronouns deleted. The language is substantially the same, with substantive differences from that of the DAR, FPR, or other provision or clause from which it is derived.

"V" means the FAR coverage repeats a DAR, FPR, or other provision or clause *verbatim*.

(b) In addition, when the derivation is from the DAR or FPR, the citation (and date when appropriate) of the DAR or FPR provision or clause from which the FAR material is derived has been included. The acronyms DAR and FPR have not been used when citing these former provisions or clauses, since their citations are distinctive: DAR citations generally begin "7-" and are dated, while the FPR citations all begin "1-" and are undated.

(c) When a provision or clause is revised or the FAR reissued, the derivation notations will be deleted.

### 52.107 Provisions and clauses prescribed in Subpart 52.1.

(a) The contracting officer shall insert the provision at 52.252-1, Solicitation Provisions Incorporated by Reference, in solicitations in order to incorporate provisions by reference.

(b) The contracting officer shall insert the clause at 52.252-2, Clauses Incorporated by Reference, in solicitations and contracts in order to incorporate clauses by reference.

(c) The contracting officer shall insert the provision at 52.252-3, Alterations in Solicitation, 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.

(d) The contracting officer shall insert the clause at 52.252-4, Alterations in Contract, in solicitations and contracts in order to revise or supplement, as necessary, other parts of the contract, or parts of the solicitations that apply to the contract phase, except for any clause authorized for use with a deviation.

(e) The contracting officer shall insert the provision at 52.252-5, Authorized Deviations in Provisions, 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.

(f) The contracting officer shall insert the clause at 52.252-6, Authorized Deviations in Clauses, in solicitations and contracts that include any FAR or supplemental 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.

**SUBPART 52.2—TEXTS OF PROVISIONS  
AND CLAUSES**

**52.200 Scope of subpart.**

This subpart sets forth the texts of all FAR provisions and clauses (see 52.101(b)(1)), and for each provision and clause, gives (a) a cross-reference to the location in the FAR that prescribes its use, and (b) directions for including it in solicitations and/or contracts.

**52.201 [Reserved]**

**52.202-1 Definitions.**

As prescribed in Subpart 2.2, insert the following clause:

**DEFINITIONS (OCT 1995)**

(a) “Head of the agency” (also called “agency head”) or “Secretary” means the Secretary (or Attorney General, Administrator, Governor, Chairperson, or other chief official, as appropriate) of the agency, including any deputy or assistant chief official of the agency; and the term “authorized representative” means any person, persons, or board (other than the Contracting Officer) authorized to act for the head of the agency or Secretary.

(b) “Commercial component” means any component that is a commercial item.

(c) “Commercial item” means—

(1) Any item, other than real property, that is of a type customarily used for nongovernmental purposes and that—

(i) Has been sold, leased, or licensed to the general public; or

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (c)(1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (c)(1) or (c)(2) of this clause, but for—

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. “Minor” modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as

guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (c)(1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c)(1), (2), (3), or (4) of this clause, and if the source of such services—

(i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and

(ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;

(7) Any item, combination of items, or service referred to in subparagraphs (c)(1) through (c)(6), notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.

(d) Component means any item supplied to the Federal Government as part of an end item or of another component.

(e) Nondevelopmental item means—

(1) 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;

(2) Any item described in paragraph (e)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or

(3) Any item of supply being produced that does not meet the requirements of paragraph (e)(1) or (e)(2) solely because the item is not yet in use.

(f) “Contracting Officer” means a person with the authority to enter into, administer, and/or terminate con-

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tracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(g) Except as otherwise provided in this contract, the term “subcontracts” includes, but is not limited to, purchase orders and changes and modifications to purchase orders under this contract.

(End of clause)

*Alternate I* (APR 1984). If the contract is for personal services; construction; architect-engineer services; or dismantling, demolition, or removal of improvements, delete paragraph (c) of the basic clause.

## 52.203-1 [Reserved]

### 52.203-2 Certificate of Independent Price Determination.

As prescribed in 3.103-1, insert the following provision. If the solicitation is a Request for Quotations, the terms “Quotation” and “Quoter” may be substituted for “Offer” and “Offeror.”

#### CERTIFICATE OF INDEPENDENT PRICE

##### DETERMINATION (APR 1985)

(a) The offeror certifies that—

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory—

(1) Is the person in the offeror’s organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision; or

(2)(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision \_\_\_\_\_ *[insert full name of person(s) in the offeror’s organization responsible for determining the prices offered in this*

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*bid or proposal, and the title of his or her position in the offeror’s organization];*

(ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision.

(c) If the offeror deletes or modifies subparagraph (a)(2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(End of provision)

### 52.203-3 Gratuities.

As prescribed in 3.202, insert the following clause in solicitations and contracts, except those for personal services and those between military departments or defense agencies and foreign governments that do not obligate any funds appropriated to the Department of Defense:

#### GRATUITIES (APR 1984)

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative—

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled—

(1) To pursue the same remedies as in a breach of the contract; and

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

### 52.203-4 Contingent Fee Representation and Agreement.

As prescribed in 3.404(b), insert the following provision in solicitations, except those excluded by subparagraphs

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3.404(b)(1) through (b)(6). If the solicitation is a Request for Quotations, the terms “Quotation” and “Quoter” may be substituted for “Offer” and “Offeror.”

**CONTINGENT FEE REPRESENTATION AND AGREEMENT (APR 1984)**

(a) *Representation.* The offeror represents that, except for full-time bona fide employees working solely for the offeror, the offeror—

[Note: The offeror must check the appropriate boxes. For interpretation of the representation, including the term “bona fide employee,” see Subpart 3.4 of the Federal Acquisition Regulation.]

(1) ☐ has, ☐ has not employed or retained any person or company to solicit or obtain this contract; and

(2) ☐ has, ☐ has not paid or agreed to pay to any person or company employed or retained to solicit or obtain this contract any commission, percentage, brokerage, or other fee contingent upon or resulting from the award of this contract.

(b) *Agreement.* The offeror agrees to provide information relating to the above Representation as requested by the Contracting Officer and, when subparagraph (a)(1) or (a)(2) is answered affirmatively, to promptly submit to the Contracting Officer—

(1) A completed Standard Form 119, Statement of Contingent or Other Fees, (SF 119); or

(2) A signed statement indicating that the SF 119 was previously submitted to the same contracting office, including the date and applicable solicitation or contract number, and representing that the prior SF 119 applies to this offer or quotation.

(End of provision)

**52.203-5 Covenant Against Contingent Fees.**

As prescribed in 3.404(c), insert the following clause:

**COVENANT AGAINST CONTINGENT FEES (APR 1984)**

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) “Bona fide agency,” as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

“Bona fide employee,” as used in this clause, means a person, employed by a contractor and subject to the contractor’s supervision and control as to time, place, and

manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

“Contingent fee,” as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

“Improper influence,” as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

(End of clause)

**52.203-6 Restrictions on Subcontractor Sales to the Government.**

As prescribed in 3.503-2, insert the following clause:

**RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995)**

(a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed \$100,000.

(End of clause)

*Alternate I* (OCT 1995). As prescribed in 3.503-2, substitute the following paragraph in place of paragraph (b) of the basic clause:

(b) The prohibition in paragraph (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation. For acquisitions of commercial items, the prohibition in paragraph (a) applies only to the extent that any agreement restricting sales by subcontractors results in the Federal Government being treated differently from any other prospective purchaser for the sale of the commercial item(s).

**52.203-7 Anti-Kickback Procedures.**

As prescribed in 3.502-3, insert the following clause:

**ANTI-KICKBACK PROCEDURES (JUL 1995)**

(a) *Definitions.*

“Kickback,” as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or

indirectly, to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract..

“Person,” as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

“Prime contract,” as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

“Prime Contractor” as used in this clause, means a person who has entered into a prime contract with the United States.

“Prime Contractor employee,” as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

“Subcontract,” as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

“Subcontractor,” as used in this clause, (1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

“Subcontractor employee,” as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from—

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Department of Justice.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.

(5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$100,000.

(End of clause)

## 52.203-8 Requirement for Certificate of Procurement Integrity.

As prescribed in 3.104-10(a), insert the following provision:

### REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY (SEPT 1995)

(a) *Definitions.* The definitions at FAR 3.104-4 are hereby incorporated in this provision.

(b) *Certifications.* As required in paragraph (c) of this provision, the officer or employee responsible for this offer shall execute the following certification. The certification in paragraph (b)(2) of this provision is not required for a procurement of commercial items.

#### CERTIFICATE OF PROCUREMENT INTEGRITY

(1) I, [*Name of certifier*], am the officer or employee responsible for the preparation of this offer and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Office of Federal Procurement Policy Act, as amended\* (41 U.S.C. 423), (hereinafter referred to as “the Act”), as implemented in the FAR, occurring during the conduct of this procurement (*solicitation number*).

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of [*Name of Offeror*] who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information con-



cerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act, as implemented in the FAR, pertaining to this procurement.

(3) Violations or possible violations: (*Continue on plain bond paper if necessary and label Certificate of Procurement Integrity (Continuation Sheet), ENTER NONE IF NONE EXIST*) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(4) I agree that, if awarded a contract under this solicitation, the certifications required by subsection 27(e)(1)(B) of the Act shall be maintained in accordance with paragraph (f) of this provision.

[Signature of the officer or employee responsible for the offer and date] \_\_\_\_\_

[Typed name of the officer or employee responsible for the offer] \_\_\_\_\_

\*Subsections 27(a), (b), and (d) are effective on December 1, 1990. Subsection 27(f) is effective on June 1, 1991.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of certification)

(c)(1) For procurements using sealed bidding procedures, the signed certifications shall be submitted by each bidder with the bid submission except for procurements using two-step sealed bidding procedure (see Subpart 14.5). For those procurements, the certifications shall be submitted with submission of the step two sealed bids. A certificate is not required for indefinite delivery contracts (see Subpart 16.5) unless the total estimated value of all orders eventually to be placed under the contract is expect-

ed to exceed \$100,000.

(2) For contracts and contract modifications which include options, a certificate is required when the aggregate value of the contract or contract modification and all options (see 3.104-4(e)) exceeds \$100,000.

(3) Failure of a bidder to submit the signed certificate with its bid shall render the bid nonresponsive.

(d) Pursuant to FAR 3.104-9(d), the Offeror may be requested to execute additional certifications at the request of the Government. Failure of an Offeror to submit the additional certifications shall cause its offer to be rejected.

(e) A certification containing a disclosure of a violation or possible violation will not necessarily result in the withholding of award under this solicitation. However, the Government, after evaluation of the disclosure, may cancel this procurement or take any other appropriate actions in the interests of the Government, such as disqualification of the Offeror.

(f) In making the certification in paragraph (2) of the certificate, the officer or employee of the competing contractor responsible for the offer may rely upon a one-time certification from each individual required to submit a certification to the competing contractor, supplemented by periodic training. These certifications shall be obtained at the earliest possible date after an individual required to certify begins employment or association with the contractor. If a contractor decides to rely on a certification executed prior to the suspension of section 27 (*i.e.*, prior to December 1, 1989), the Contractor shall ensure that an individual who has so certified is notified that section 27 has been reinstated. These certifications shall be maintained by the Contractor for 6 years from the date a certifying employee's employment with the company ends or, for an agent, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the Contractor.

(g) Certifications under paragraphs (b) and (d) of this provision are material representations of fact upon which

(The next page is 52-9.)



reliance will be placed in awarding a contract.

(End of provision)

*Alternate I* (SEP 1990). Procurements using other than sealed bidding procedures:

(c) For procurements, including contract modifications, in excess of \$100,000 made using procedures other than sealed bidding, the signed certifications shall be submitted by the successful Offeror to the Contracting Officer within the time period specified by the Contracting Officer when requesting the certificates except as provided in subparagraphs (c)(1) through (c)(5) of this clause. In no event shall the certificate be submitted subsequent to award of a contract or execution of a contract modification:

(1) For letter contracts, other unpriced contracts, or unpriced contract modifications, whether or not the unpriced contract or modification contains a maximum or not to exceed price, the signed certifications shall be submitted prior to the award of the letter contract, unpriced contract, or unpriced contract modification, and prior to the definitization of the letter contract or the establishment of the price of the unpriced contract or unpriced contract modification. The second certification shall apply only to the period between award of the letter contract and execution of the document definitizing the letter contract, or award of the unpriced contract or unpriced contract modification and execution of the document establishing the definitive price of such unpriced contract or unpriced contract modification.

(2) For basic ordering agreements, prior to the execution of a priced order; prior to the execution of an unpriced order, whether or not the unpriced order contains a maximum or not to exceed price; and, prior to establishing the price of an unpriced order. The second certificate to be submitted for unpriced orders shall apply only to the period between award of the unpriced order and execution of the document establishing the definitive price for such order.

(3) A certificate is not required for indefinite delivery contracts (see Subpart 16.5) unless the total estimated value of all orders eventually to be placed under the contract is expected to exceed \$100,000.

(4) For contracts and contract modifications which include options, a certificate is required when the aggregate value of the contract or contract modification and all options (see 3.104-4(e)) exceeds \$100,000.

(5) For purposes of contracts entered into under section 8(a) of the SBA, the business entity with whom the SBA contracts, and not the SBA, shall be required to comply with the certification requirements of subsection 27(e). The SBA shall obtain the signed certificate from the business entity and forward the certificate to the Contracting Officer prior to the award of a contract to the SBA.

(6) Failure of an Offeror to submit the signed certifi-

cate within the time prescribed by the Contracting Officer shall cause the offer to be rejected.

#### 52.203-9 Requirement for Certificate of Procurement Integrity—Modification.

As prescribed in 3.104-10(b), insert the following clause:

##### REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY—MODIFICATION (SEPT 1995)

(a) *Definitions.* The definitions set forth in FAR 3.104-4 are hereby incorporated in this clause.

(b) The Contractor agrees that it will execute the certification set forth in paragraph (c) of this clause when requested by the Contracting Officer in connection with the execution of any modification of this contract.

(c) *Certification.* As required in paragraph (b) of this clause, the officer or employee responsible for the modification proposal shall execute the following certification. The certification in paragraph (c)(2) of this clause is not required for a modification which procures commercial items.

##### CERTIFICATE OF PROCUREMENT INTEGRITY—MODIFICATION (NOV 1990)

(1) I, [*Name of certifier*] am the officer or employee responsible for the preparation of this modification proposal and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certification, I have no information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Office of Federal Procurement Policy Act, as amended\* (41 U.S.C. 423), (hereinafter referred to as “the Act”), as implemented in the FAR, occurring during the conduct of this procurement (*contract and modification number*).

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of [*Name of Offeror*] who has participated personally and substantially in the preparation or submission of this proposal has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR, and will report immediately to me any information concerning a violation or possible violation of subsections 27(a), (b), (d), or (f) of the Act, as implemented in the FAR, pertaining to this procurement.

(3) Violations or possible violations: (*Continue on plain bond paper if necessary and label Certificate of Procurement Integrity—Modification (Continuation Sheet)*, ENTER “NONE” IF NONE EXISTS) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

[Signature of the officer or employee responsible for the modification proposal and date] \_\_\_\_\_

[Typed name of the officer or employee responsible for the modification proposal] \_\_\_\_\_

\*Subsections 27(a), (b), and (d) are effective on December 1, 1990. Subsection 27(f) is effective on June 1, 1991.

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER TITLE 18, UNITED STATES CODE, SECTION 1001.

(End of certification)

(d) In making the certification in paragraph (2) of the certificate, the officer or employee of the competing Contractor responsible for the offer or bid, may rely upon a one-time certification from each individual required to submit a certification to the competing Contractor, supplemented by periodic training. These certifications shall be obtained at the earliest possible date after an individual required to certify begins employment or association with the contractor. If a contractor decides to rely on a certification executed prior to the suspension of section 27 (i.e., prior to December 1, 1989), the Contractor shall ensure that an individual who has so certified is notified that section 27 has been reinstated. These certifications shall be maintained by the Contractor for a period of 6 years from the date a certifying employee's employment with the company ends or, for an agency, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the contractor.

(e) The certification required by paragraph (c) of this clause is a material representation of fact upon which reliance will be placed in executing this modification.

(End of clause)

#### **52.203-10 Price or Fee Adjustment for Illegal or Improper Activity.**

As prescribed in 3.104-10(c), insert the following clause:

##### **PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (SEPT 1990)**

(a) The Government, at its election, may reduce the price of a fixed-price type contract or contract modification and the total cost and fee under a cost-type contract or contract modification by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the FAR. In the case of a contract modification, the fee subject to reduction is the fee specified in the particular contract modification at the time of execution, except as provided in subparagraph (b)(5) of this clause.

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(b) The price or fee reduction referred to in paragraph (a) of this clause shall be—

(1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;

(2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or “fee floor” specified in the contract;

(3) For cost-plus-award-fee contracts—

(i) The base fee established in the contract at the time of contract award;

(ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.

(4) For fixed-price-incentive contracts, the Government may—

(i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or

(ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.

(5) For firm-fixed-price contracts or contract modifications, by 10 percent of the initial contract price; 10 percent of the contract modification price; or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award or modification.

(c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

(End of clause)

**52.203-11 Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.**

As prescribed in 3.808, insert the following provision:  
**CERTIFICATION AND DISCLOSURE REGARDING  
 PAYMENTS TO INFLUENCE CERTAIN FEDERAL  
 TRANSACTIONS (APR 1991)**

(a) The definitions and prohibitions contained in the clause, at FAR 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of this certification.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that on or after December 23, 1989,—

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

(End of provision)

**52.203-12 Limitation on Payments to Influence Certain Federal Transactions.**

As prescribed in 3.808, insert the following clause:

**LIMITATION ON PAYMENTS TO INFLUENCE  
 CERTAIN FEDERAL TRANSACTIONS (JAN 1990)**

**(a) Definitions.**

“Agency,” as used in this clause, means executive agency as defined in 2.101.

“Covered Federal action,” as used in this clause, means any of the following Federal actions:

(a) The awarding of any Federal contract.

(b) The making of any Federal grant.

(c) The making of any Federal loan.

(d) The entering into of any cooperative agreement.

(e) The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

“Indian tribe” and “tribal organization,” as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

“Influencing or attempting to influence,” as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

“Local government,” as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

“Officer or employee of an agency,” as used in this clause, includes the following individuals who are employed by an agency:

(a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

(b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

(c) A special Government employee, as defined in section 202, title 18, United States Code.

(d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

“Person,” as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

“Reasonable compensation,” as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

“Reasonable payment,” as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

“Recipient,” as used in this clause, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

“Regularly employed,” as used in this clause, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

“State,” as used in this clause, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibitions.*

(1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) *Agency and legislative liaison by own employees.*

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this clause, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action—

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this clause are permitted under this clause.

(ii) *Professional and technical services.*

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this clause, does not apply in the case of—

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered

Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this clause, “professional and technical services” shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the

preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this clause are permitted under this clause.

(E) The reporting requirements of FAR 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(c) *Disclosure.*

(1) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to *include* profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this clause, if paid for with appropriated funds.

(2) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this clause. An event that materially affects the accuracy of the information reported includes—

(i) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(ii) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(iii) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(3) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or receives any subcontract exceeding \$100,000 under the Federal contract.

(4) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(d) *Agreement.* The Contractor agrees not to make any payment prohibited by this clause.

(e) *Penalties.*

(1) Any person who makes an expenditure prohibited under paragraph (a) of this clause or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this clause shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) *Cost allowability.* Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

(End of clause)

### 52.203-13 Procurement Integrity—Service Contracting.

As prescribed in 3.104-10(d), insert the following clause:

#### PROCUREMENT INTEGRITY—SERVICE CONTRACTING (SEP 1990)

(a) *Definitions.* The definitions in FAR 3.104-4 are hereby incorporated in this clause.

(b) The Contractor shall establish a procurement ethics training program for its employees serving as procurement officials. The program shall, as a minimum—

(1) Provide for the distribution of written explanations of the provisions of section 27 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the FAR to such employees; and

(2) Require each such employee, as a condition of serving as a procurement official, to certify to the Contracting Officer that he or she is familiar with the provisions of the Act, as implemented in the FAR, and will not engage in any conduct prohibited by subsections 27(a), (b), (d), or (f) of the Act, as implemented in the FAR, and will report immediately to the Contracting Officer any information concerning a violation or possible violation of the prohibitions.

(c) Pursuant to FAR 3.104-9(d), a Contractor employee who is serving as a procurement official may be requested to execute additional certifications.

(d) If a Contractor employee serving as a procurement official ceases performance of these duties during the conduct of such procurement expected to result in a contract or contract modification in excess of \$100,000, such employee shall certify to the Contracting Officer that he or she understands the continuing obligation, during the conduct of the agency procurement, not to disclose proprietary or source selection information related to such agency procurement.

(End of clause)

52-14 (FAC 90-2)

### 52.204-1 Approval of Contract.

As prescribed in 4.103, insert the following clause:

#### APPROVAL OF CONTRACT (DEC 1989)

This contract is subject to the written approval of [*identify title of designated agency official here*] and shall not be binding until so approved.

(End of clause)

### 52.204-2 Security Requirements.

As prescribed in 4.404(a), insert the following clause in solicitations and contracts when the contract may require access to classified information, unless the conditions specified in 4.404(d) apply:

#### SECURITY REQUIREMENTS (APR 1984)

(a) This clause applies to the extent that this contract involves access to information classified “Confidential,” “Secret,” or “Top Secret.”

(b) The Contractor shall comply with (1) the Security Agreement (DD Form 441), including the *Department of Defense Industrial Security Manual for Safeguarding Classified Information* (DOD 5220.22-M), and (2) any revisions to that manual, notice of which has been furnished to the Contractor.

(c) If, subsequent to the date of this contract, the security classification or security requirements under this contract are changed by the Government and if the changes cause an increase or decrease in security costs or otherwise affect any other term or condition of this contract, the contract shall be subject to an equitable adjustment as if the changes were directed under the Changes clause of this contract.

(d) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph (d) but excluding any reference to the Changes clause of this contract, in all subcontracts under this contract that involve access to classified information.

(End of clause)

(R 7-104.12 1971 APR)

(R 7-204.12 1971 APR)

(R 7-702.29 1973 APR)

(R 7-704.22 1976 JUL)

(R 7-902.3 1976 JUL)

*Alternate I* (APR 1984). If a cost contract for research and development with an educational institution is contemplated, add the following paragraphs (e), (f), and (g) to the basic clause:

(e) If a change in security requirements, as provided in paragraphs (b) and (c), results (1) in a change in the security classification of this contract or any of its elements from an unclassified status or a lower classification to a higher classification, or (2) in more restrictive area controls than previously required, the Contractor shall exert every reasonable effort compatible with the Contractor’s established policies to continue the performance of work under the contract in compliance with the change in security classification.



cation or requirements. If, despite reasonable efforts, the Contractor determines that the continuation of work under this contract is not practicable because of the change in security classification or requirements, the Contractor shall notify the Contracting Officer in writing. Until resolution of the problem is made by the Contracting Officer, the Contractor shall continue safeguarding all classified material as required by this contract.

(f) After receiving the written notification, the Contracting Officer shall explore the circumstances surrounding the proposed change in security classification or requirements, and shall endeavor to work out a mutually satisfactory method whereby the Contractor can continue performance of the work under this contract.

(g) If, 15 days after receipt by the Contracting Officer of the notification of the Contractor's stated inability to proceed, (1) the application to this contract of the change in security classification or requirements has not been withdrawn, or (2) a mutually satisfactory method for continuing performance of work under this contract has not been agreed upon, the Contractor may request the Contracting Officer to terminate the contract in whole or in part. The Contracting Officer shall terminate the contract in whole or in part, as may be appropriate, and the termination shall be deemed a termination under the terms of the Termination for the Convenience of the Government clause.

*Alternate II (APR 1984).* If employee identification is required for security or other reasons in a construction contract or architect-engineer contract, add the following paragraph (e) to the basic clause:

(e) The Contractor shall be responsible for furnishing to each employee and for requiring each employee engaged on the work to display such identification as may be approved and directed by the Contracting Officer. All prescribed identification shall immediately be delivered to the Contracting Officer, for cancellation upon the release of any employee. When required by the Contracting Officer, the Contractor shall obtain and submit fingerprints of all persons employed or to be employed on the project.

### 52.204-3 Taxpayer Identification.

As prescribed in 4.904, insert the following provision:

#### TAXPAYER IDENTIFICATION (MAR 1994)

##### (a) Definitions.

"Common parent," as used in this solicitation provision, means that corporate entity that owns or controls an affiliated group of corporations that files its Federal income tax returns on a consolidated basis, and of which the offeror is a member.

"Corporate status," as used in this solicitation provision, means a designation as to whether the offeror is a corporate entity, an unincorporated entity (e.g., sole proprietorship or partnership), or a corporation providing medical and health care services.

"Taxpayer Identification Number (TIN)," as used in this solicitation provision, means the number required by the IRS to be used by the offeror in reporting income tax and other returns.

(b) All offerors are required to submit the information

required in paragraphs (c) through (e) of this solicitation provision in order to comply with reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M and implementing regulations issued by the Internal Revenue Service (IRS). If the resulting contract is subject to the reporting requirements described in FAR 4.903, the failure or refusal by the offeror to furnish the information may result in a 31 percent reduction of payments otherwise due under the contract.

##### (c) Taxpayer Identification Number (TIN).

☐ TIN: \_\_\_\_\_.

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of a Federal, state, or local government;

☐ Other. State basis. \_\_\_\_\_

##### (d) Corporate Status.

☐ Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

☐ Other corporate entity;

☐ Not a corporate entity:

☐ Sole proprietorship

☐ Partnership

☐ Hospital or extended care facility described in

26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

##### (e) Common Parent.

☐ Offeror is not owned or controlled by a common parent as defined in paragraph (a) of this clause.

☐ Name and TIN of common parent:

Name \_\_\_\_\_

TIN \_\_\_\_\_

(End of provision)

### 52.204-4 Printing/Copying Double-Sided on Recycled Paper.

As prescribed in 4.304, insert the following clause:

#### PRINTING/COPYING DOUBLE-SIDED ON RECYCLED PAPER (MAY 1995)

(a) In accordance with Executive Order 12873, dated October 20, 1993, the Offeror/Contractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed/copied double-sided on recycled paper that has at least 20% postconsumer material.

(b) The 20% standard applies to high-speed copier paper, offset paper, forms bond, computer printout paper, and carbonless paper. A higher standard of 50% recovered material, with 20% postconsumer material, applies to other uncoated printing

## 52.204-5

and writing papers such as writing and office paper, book paper, cotton fiber paper, and cover stock. An alternative standard for either of the standards specified in this clause is 50% recovered material content of certain industrial by-products.

(End of clause)

**52.204-5 Women-Owned Business.**

As prescribed in 4.603, insert the following provision:

**WOMEN-OWNED BUSINESS (OCT 1995)**

(a) *Representation.* The offeror represents that it ☐ is, ☐ is not a women-owned business concern.

(b) *Definition.* "Women-owned business concern," as used in this provision, means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(End of provision)

**52.206 [Reserved]****52.207-1 Notice of Cost Comparison (Sealed-Bid).**

As prescribed in 7.305(a), insert the following provision:

**NOTICE OF COST COMPARISON  
(SEALED-BID) (FEB 1993)**

(a) This solicitation is part of a Government cost comparison to determine whether accomplishing the specified work under contract or by Government performance is more economical. If Government performance is determined to be more economical, this solicitation will be canceled and no contract will be awarded.

(b) The Government's cost estimate for performance by the Government will be based on the work statement in this solicitation and will be submitted by designated agency personnel to the Contracting Officer in a sealed envelope not later than the time set for bid opening. At the public bid opening, the Contracting Officer will open the bids and the envelope containing the cost estimate for Government performance and announce the result. This announcement will be based on an initial comparison of the cost of Government performance with the cost of contract performance, as indicated on the cost comparison form.

(c) The abstract of bids, completed cost comparison form, and detailed data supporting the cost estimate for Government performance will be made available to interested parties for review for a period of \_\_\_\_\_ [insert a number from 15 to 30, depending on the complexity of the matter (see 7.306(a)(1)(iv))] working days, beginning with the date the documents are available to interested parties. The Government will not make a final determination either for contract or Government performance during this period. During this period, directly affected parties may file with the Contracting Officer written requests, based on specific objections, for administrative review of the cost comparison result under the agency appeals procedures. The appeals procedure shall be used only

**FEDERAL ACQUISITION REGULATION (FAR)**

to resolve questions concerning the calculation of the cost comparison and will not apply to decisions regarding selection of one bidder in preference to another. Agency determinations under the appeals procedure shall be final.

(d) After evaluation of bids and resolution of any requests under the appeals procedure, the Contracting Officer will either award a contract or cancel this solicitation. The completed cost comparison analysis will be made available to interested parties.

(e) A cost estimate for Government performance is considered a bid for purposes of this solicitation's Late Modifications of Bids or Withdrawal of Bids provision, and a late modification that displaces an otherwise low cost estimate for Government performance shall not be considered.

(End of provision)

**52.207-2 Notice of Cost Comparison (Negotiated).**

As prescribed in 7.305(b), insert the following provision:

**NOTICE OF COST COMPARISON  
(NEGOTIATED) (FEB 1993)**

(a) This solicitation is part of a Government cost comparison to determine whether accomplishing the specified work under contract or by Government performance is more economical. If Government performance is determined to be more economical, this solicitation will be canceled and no contract will be awarded.

(b) The Government's cost estimate for performance by the Government will be based on the work statement in this solicitation and will be submitted by designated agency personnel to the Contracting Officer in a sealed envelope not later than the time set for receipt of initial proposals.

(c) After completion of proposal evaluation, negotiation, and selection of the most advantageous proposal, the Contracting Officer, in the presence of the preparer of the cost estimate for Government performance, will open the sealed cost estimate envelope. These officials will make a cost comparison before public announcement. Depending on whether the cost comparison result favors performance under contract or Government performance, the procedure in either subparagraph (1) or (2) following applies:

(1) If the result of the cost comparison favors performance under contract and administrative approval is obtained, the Contracting Officer will award a contract and publicly reveal the completed cost comparison form showing the cost estimate for Government performance, its detailed supporting data, and the Contractor's name. However, this award is conditioned on the offer remaining the more economical alternative after (i) completion of a public review period of \_\_\_\_\_ [insert a numeral from 15 to 30, depending upon the complexity of the matter (see 7.306(b)(3))] working days beginning with the date this information is available to interested parties and (ii) resolution of any requests for review under the agency appeals procedure (see paragraph (d) of this section). The Government assumes no liability for costs incurred during the periods specified in (i) and (ii). The Contracting Officer will then either notify

the Contractor in writing that it may proceed with performance of the contract or will cancel the contract at no cost to the Government.

(2) If the result of the cost comparison favors Government performance, the Contracting Officer will publicly disclose this result, the completed cost comparison form and its detailed supporting data, and the price of the offer most advantageous to the Government. After (i) completion of a public review period of . . . . . [insert a numeral from 15 to 30, depending upon the complexity of the matter (see 7.306(b)(3))] working days beginning with the date this information is available to interested parties and (ii) resolution of any requests for review under the agency appeals procedure (see paragraph (d) of this section), the Contracting Officer will either cancel this solicitation or award a contract, as appropriate.

(d) During the public review period, directly affected parties may file with the Contracting Officer written requests, based on specific objections, for administrative review of the cost comparison result under the agency appeals procedure. The appeals procedure shall be used only to resolve questions concerning the calculation of the cost comparison and will not apply to questions concerning award to one offeror in preference to another. Agency determinations under the appeals procedure shall be final.

(e) A cost estimate for Government performance is considered a proposal for purposes of this solicitation's Late Submissions, Modifications, and Withdrawal of Proposals or Quotations provision, and a late modification that displaces an otherwise low cost estimate for Government performance shall not be considered.

(End of provision)

### 52.207-3 Right of First Refusal of Employment.

As prescribed in 7.305(c), insert the following clause:

#### RIGHT OF FIRST REFUSAL OF EMPLOYMENT (NOV 1991)

(a) The Contractor shall give Government employees who have been or will be adversely affected or separated as a result of award of this contract the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.

(b) Within 10 days after contract award, the Contracting Officer will provide to the Contractor a list of all Government employees who have been or will be adversely affected or separated as a result of award of this contract.

(c) The Contractor shall report to the Contracting Officer the names of individuals identified on the list who are hired within 90 days after contract performance begins. This report shall be forwarded within 120 days after contract performance begins.

(End of clause)

### 52.207-4 Economic Purchase Quantity—Supplies.

As prescribed in 7.203, insert the following provision:  
ECONOMIC PURCHASE QUANTITY—SUPPLIES

(AUG 1987)

(a) Offerors are invited to state an opinion on whether the quantity(ies) of supplies on which bids, proposals or quotes are requested in this solicitation is (are) economically advantageous to the Government.

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(b) Each offeror who believes that acquisitions in different quantities would be more advantageous is invited to recommend an economic purchase quantity. If different quantities are recommended, a total and a unit price must be quoted for applicable items. An economic purchase quantity is that quantity at which a significant price break occurs. If there are significant price breaks at different quantity points, this information is desired as well.

#### OFFEROR RECOMMENDATIONS

ITEM	QUANTITY	PRICE QUOTATION	TOTAL
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(c) The information requested in this provision is being solicited to avoid acquisitions in disadvantageous quantities and to assist the Government in developing a data base for future acquisitions of these items. However, the Government reserves the right to amend or cancel the solicitation and resolicit with respect to any individual item in the event quotations received and the Government's requirements indicate that different quantities should be acquired.

(End of provision)

### 52.207-5 Option to Purchase Equipment.

As prescribed in 7.404, insert a clause substantially the same as the following:

#### OPTION TO PURCHASE EQUIPMENT (FEB 1995)

(a) The Government may purchase the equipment provided on a lease or rental basis under this contract. The Contracting Officer may exercise this option only by providing a unilateral modification to the Contractor. The effective date of the purchase will be specified in the unilateral modification and may be any time during the period of the contract, including any extensions thereto.

(b) Except for final payment and transfer of title to the Government, the lease or rental portion of the contract becomes complete and lease or rental charges shall be discontinued on the day immediately preceding the effective date of purchase specified in the unilateral modification

(FAC 90-27) 52-16.1

required in paragraph (a) of this clause.

(c) The purchase conversion cost of the equipment shall be computed as of the effective date specified in the unilateral modification required in paragraph (a) of this clause, on the basis of the purchase price set forth in the contract, minus the total purchase option credits accumulated during the period of lease or rental, calculated by the formula contained elsewhere in this contract.

(d) The accumulated purchase option credits available to determine the purchase conversion cost will also include any credits accrued during a period of lease or rental of the equipment under any previous Government contract if the equipment has been on continuous lease or rental. The movement of equipment from one site to another site shall be "continuous rental."

(End of clause)

**2.208-1 Required Sources for Jewel Bearings and Related Items.**

As prescribed in 8.203-1(a), insert the following clause in solicitations and contracts that may involve items (or any subassembly, component, or part of such items) in the Federal supply classes and groups listed in 8.203-1(b), except as provided in 8.203-1(a)(1) through (3):

**REQUIRED SOURCES FOR JEWEL BEARINGS  
AND RELATED ITEMS (APR 1984)**

(a) This clause applies only if supplies furnished under this contract contain jewel bearings or related items.

(b) "Jewel bearing," as used in this clause, means a piece of synthetic corundum (sapphire or ruby) of any shape, except a phonograph needle, that has one or more polished surfaces to provide supporting surfaces or low-friction contact areas for revolving, oscillating, or sliding parts in an instrument, mechanism, subassembly, or part. A jewel bearing may be unmounted or may be mounted into a ring or bushing. Examples are watch holes—olive, watch holes—straight, pallet stones, roller jewels (jewel pins), endstones (caps), vee (cone) jewels, instrument rings, cups, and double cups.

"Plant," as used in this clause, means the Government-owned, contractor-operated William Langer Plant, Rolla, North Dakota 58367 (Phone: 701-477-3193).

"Price list," as used in this clause, means the U.S. Government Jewel Bearing Price List, published periodically by the General Services Administration for jewel bearings produced by the Plant.

"Related item," as used in this clause, means a piece of synthetic corundum (sapphire or ruby), other than a jewel bearing, that (1) is made from material produced by the Verneuil flame fusion process, (2) has a geometric shape up to a maximum of 1 inch in any dimension, (3) requires extremely close tolerances and highly polished surfaces identical to those involved in manufacturing jewel bearings, and (4) is either mounted in a retaining or supporting structure or unmounted. Examples are window, nozzle, guide, knife edge, knife edge plate, insulator domed pin, slotted insulator, sphere, ring gauge, spacer, disc, valve seat, rod, vee groove, D-shaped insulator, and notched plate.

(c) All jewel bearings and related items required for the supplies to be furnished under this contract (or an equal quantity of the same type, size, and tolerances) shall be acquired from the following sources: jewel bearings from the Plant, unless the Plant declines or rejects the order; and related items from domestic manufacturers, including the Plant, if the items can be obtained from those sources. Sources other than the foregoing may be used if the foregoing sources decline or reject the order.

(1) Orders may be placed with the Plant for individual contracts, for a combination of contracts, or for stock. If the order is for an individual contract, the prime contract number shall be placed on it.

(2) Orders, and any supplements to orders, for items listed in the price list shall refer to the most recent price list and its date.

(3) Requests for quotations for items not listed in the price list should be accompanied by drawings and forwarded to the Plant as soon as possible to ensure prompt quotation or rejection of the order.

(d) At its option, the Plant may decline or reject all or part of a Contractor's or subcontractor's order. If the order is declined or rejected, the Contractor shall notify the contract administration office cognizant of this contract promptly in writing, enclosing a copy of the rejection notice. Unless the declination or rejection has been caused by current excessive and overdue Contractor indebtedness to the Plant as determined by the Plant, the Contracting Officer shall evaluate the impact and make an equitable adjustment in the contract price, in the delivery schedule, or in both, if one is warranted. This procedure shall also apply to orders for related items rejected by any other domestic manufacturer.

(e) The Contractor agrees to insert this clause, including this paragraph (e), and the prime contract number in every subcontract unless the Contractor has positive knowledge that the subassembly, component, or part being purchased does not contain jewel bearings or related items.

(End of clause)

(R 7-104.37 1977 NOV)

(R 1-1.319(e))

**52.208-2 Jewel Bearings and Related Items Certificate.**

As prescribed in 8.203-1(c), insert the following provision in solicitations that contain the clause at 52.208-1, Required Sources for Jewel Bearings and Related Items, except those for research and development:

**JEWEL BEARINGS AND RELATED ITEMS  
CERTIFICATE (APR 1984)**

(a) This is to certify that—

(1) Jewel bearings and/or related items, as defined in the Required Sources for Jewel Bearings and Related Items clause, will be incorporated into one or more items/will not be incorporated into any item *[delete one]* covered by this offer;

(2) Any jewel bearings required (or an equal quantity of the same type, size, and tolerances) will be ordered from the William Langer Plant, Rolla, North Dakota 58367, as provided in the Required Sources for Jewel Bearings and Related Items clause; and

(3) Any related items required (or an equal quantity of the same type, size, and tolerances) will be acquired from domestic manufacturers, including the Plant, if the items can be obtained from those sources.

(b) Attached to this certificate are estimates of the quantity, type, and size (including tolerances) of the jewel bearings and related items required, and identification of the components, subassemblies, or parts that require jewel bearings or related items.

Date of Execution .....  
Solicitation No. ....  
Name.....

## 52.208-4

Title.....  
 Firm.....  
 Address.....

(End of provision)  
 (R 1-2207.2 DPC 76-13 1977 NOV)  
 (R 1-2207.2(c)(3))

## 52.208-3 Reserved.

## 52.208-4 Vehicle Lease Payments.

As prescribed in 8.1104(a), insert the following clause in solicitations and contracts for leasing motor vehicles, unless the motor vehicles are leased in foreign countries:

## VEHICLE LEASE PAYMENTS (APR 1984)

(a) Upon the submission of proper invoices or vouchers, the Government shall pay rent for each vehicle at the rate(s) specified in this contract.

(b) Rent shall accrue from the beginning of this contract, or from the date each vehicle is delivered to the Government, whichever is later, and shall continue until the expiration of the contract term or the termination of this contract. However, rent shall accrue only for the period that each vehicle is in the possession of the Government.

(c) Rent shall not accrue for any vehicle that the Contracting Officer determines does not comply with the Condition of Leased Vehicles clause of this contract or otherwise does not comply with the requirements of this contract, until the vehicle is replaced or the defects are corrected.

(d) Rent shall not accrue for any vehicle during any period when the vehicle is unavailable or unusable as a result of the Contractor's failure to render services for the operation and maintenance of the vehicle as prescribed by this contract.

(e) Rent stated in monthly terms shall be prorated on the basis of 1/30th of the monthly rate for each day the vehicle is in the Government's possession. If this contract contains a mileage provision, the Government shall pay rent as provided in the Schedule.

(End of clause)  
 (R 7-1501.1 1967 APR)

## 52.208-5 Condition of Leased Vehicles.

As prescribed in 8.1104(b), insert the following clause in solicitations and contracts for leasing motor vehicles, unless the motor vehicles are leased in foreign countries:

## CONDITION OF LEASED VEHICLES (APR 1984)

Each vehicle furnished under this contract shall be of good quality and in safe operating condition, and shall comply with the Federal Motor Vehicle Safety Standards (49 CFR 571) and State safety regulations applicable to the vehicle. The Government shall accept or reject the vehicles promptly after receipt. If the Contracting Officer determines that any vehicle furnished is not in compliance with this contract, the Contracting Officer shall promptly inform the Contractor in writing. If the Contractor fails to replace the vehicle or correct the defects as required by the

## FEDERAL ACQUISITION REGULATION (FAR)

Contracting Officer, the Government may (a) by contract or otherwise, correct the defect or arrange for the lease of a similar vehicle and shall charge or set off against the Contractor any excess costs occasioned thereby, or (b) terminate the contract under the Default clause of this contract.

(End of clause)  
 (R 7-1501.2 1967 APR)

## 52.208-6 Marking of Leased Vehicles.

As prescribed in 8.1104(c), insert the following clause in solicitations and contracts for leasing motor vehicles, unless the motor vehicles are leased in foreign countries:

## MARKING OF LEASED VEHICLES (APR 1984)

(a) The Government may place nonpermanent markings or decals, identifying the using agency, on each side, and on the front and rear bumpers, of any motor vehicle leased under this contract. The Government shall use markings or decals that are removable without damage to the vehicle.

(b) The Contractor may use placards for temporary identification of vehicles except that the placards may not contain any references to the Contractor that may be construed as advertising or endorsement by the Government of the Contractor.

(End of clause)  
 (R 7-1501.5 1967 APR)

## 52.208-7 Tagging of Leased Vehicles.

As prescribed in 8.1104(d), insert a clause substantially as follows:

## TAGGING OF LEASED VEHICLES (MAY 1986)

While it is the intent that vehicles leased under this contract will operate on Federal tags, the Government reserves the right to utilize State tags if necessary to accomplish its mission. Should State tags be required, the Contractor shall furnish the Government documentation necessary to allow acquisition of such tags. Federal tags are the responsibility of the Government.

(End of clause)

## 52.208-8 Helium Requirement Forecast and Required Sources for Helium.

As prescribed in 8.505, insert the following clause:

HELIUM REQUIREMENT FORECAST AND  
REQUIRED SOURCES FOR HELIUM (FEB 1995)

## (a) Definitions.

"Bureau helium distributor" means a private helium distributor which has established and maintains eligibility to distribute helium purchased from the Bureau of Mines, as specified in 30 CFR 602.

"Bureau of Mines," as used in this clause, means the Department of the Interior, Bureau of Mines, Helium Field Operations, located at 801 South Fillmore Street, Amarillo, TX 79101-3545.

"Helium requirement forecast" means an estimate by the Contractor or subcontractor of the amount of helium required for performance of the contract or subcontract.

“Major helium requirement” means a helium requirement during a calendar month of 5,000 or more standard cubic feet (measured at 14.7 pounds per square inch absolute pressure and 70 degrees Fahrenheit temperature), including liquid helium gaseous equivalent. In any month in which the major requirement threshold is met, all helium purchased during that month is considered part of the major helium requirement.

(b) *Requirements*—(1) *Helium Requirement Forecast*. The Contractor shall provide to the Contracting Officer a helium requirement forecast, point of contact, and telephone number within ten days of award.

(2) *Sources of Helium*. Except for helium acquired by the Contractor before the award of this contract, and to the extent that supplies are readily available, the Contractor shall purchase all major requirements of helium from—

(i) The Department of the Interior’s Bureau of Mines;

(ii) A Bureau helium distributor (a copy of the “List by Shipping Points of Private Distributors Eligible to Sell Helium to Federal Agencies,” may be obtained from the Bureau of Mines); or

(iii) A General Services Administration Federal Supply Schedule contract, if use is authorized by the Contracting Officer (see Subpart 51.1);

(3) Promptly upon award of any subcontract or order that involves a major helium requirement, the Contractor shall provide to the Bureau of Mines, and to the Contracting Officer, written notification that includes—

(i) The prime contract number;

(ii) The name, address and telephone number of the subcontractor, including a point of contact; and

(iii) A copy of the subcontractor’s helium requirement forecast.

(c) *Subcontracts*—(1) The Contractor shall insert this clause, including this paragraph (c), in any subcontract or order that involves furnishing of a major helium requirement.

(2) When a subcontract involves a major helium requirement, the following statement shall be included: Helium furnished under this contract or order shall be helium that has been purchased from the Bureau of Mines, or a listed Bureau helium distributor.

(End of clause)

#### 52.209-1 Qualification Requirements.

As prescribed in 9.206-2, insert the following clause:

##### QUALIFICATION REQUIREMENTS (FEB 1995)

(a) Definition: “Qualification requirement,” as used in this clause, means a Government requirement for testing or other quality assurance demonstration that must be completed before award.

(b) One or more qualification requirements apply to the supplies or services covered by this contract. For those supplies or services requiring qualification, whether the

covered product or service is an end item under this contract or simply a component of an end item, the product, manufacturer, or source must have demonstrated that it meets the standards prescribed for qualification before award of this contract. The product, manufacturer, or source must be qualified at the time of award whether or not the name of the product, manufacturer, or source is actually included on a qualified products list, qualified manufacturers list, or qualified bidders list. Offerors should contact the agency activity designated below to obtain all requirements that they or their products or services, or their subcontractors or their products or services, must satisfy to become qualified and to arrange for an opportunity to demonstrate their abilities to meet the standards specified for qualification.

(Name) \_\_\_\_\_

(Address) \_\_\_\_\_

(c) If an offeror, manufacturer, source, product or service covered by a qualification requirement has already met the standards specified, the relevant information noted below should be provided.

Offeror's Name \_\_\_\_\_

Manufacturer's Name \_\_\_\_\_

Source's Name \_\_\_\_\_

Item Name \_\_\_\_\_

Service Identification \_\_\_\_\_

Test Number \_\_\_\_\_ (to the extent known)

(d) Even though a product or service subject to a qualification requirement is not itself an end item under this contract, the product, manufacturer, or source must nevertheless be qualified at the time of award of this contract. This is necessary whether the Contractor or a subcontractor will ultimately provide the product or service in question. If, after award, the Contracting Officer discovers that an applicable qualification requirement was not in fact met at the time of award, the Contracting Officer may either terminate this contract for default or allow performance to continue if adequate consideration is offered and the action is determined to be otherwise in the Government's best interests.

(e) If an offeror, manufacturer, source, product or service has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, the offeror must submit evidence of qualification prior to award of this contract. Unless determined to be in the Government’s interest, award of this contract shall not be delayed to permit an offeror to submit evidence of qualification.

(f) Any change in location or ownership of the plant where a previously qualified product or service was manufactured or performed requires reevaluation of the qualification. Similarly, any change in location or ownership of a previously qualified manufacturer or source requires reevaluation of the qualification. The reevaluation must be accomplished before the date of award.

(End of clause)

#### 52.209-2 [Reserved]

**52.209-3 First Article Approval—Contractor Testing.**

As prescribed in 9.308-1(a) and (b), insert the following clause:

FIRST ARTICLE APPROVAL—  
CONTRACTOR TESTING (SEP 1989)  
[Contracting Officer shall insert details]

(a) The Contractor shall test \_\_\_\_ unit(s) of Lot/Item \_\_\_\_ as specified in this contract. At least \_\_\_\_ calendar days before the beginning of first article tests, the Contractor shall notify the Contracting Officer, in writing, of the time and location of the testing so that the Government may witness the tests.

(b) The Contractor shall submit the first article test report within \_\_\_\_ calendar days from the date of this contract to \_\_\_\_ [insert address of the Government activity to receive the report] marked “FIRST ARTICLE TEST REPORT: Contract No. \_\_\_\_\_, Lot/Item No. \_\_\_\_\_” Within \_\_\_\_ calendar days after the Government receives the test report, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.

(c) If the first article is disapproved, the Contractor, upon Government request, shall repeat any or all first article tests. After each request for additional tests, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional tests following a disapproval. The Contractor shall then conduct the tests and deliver another report to the Government under the terms and conditions and within the time specified by the Government. The Government shall take action on this report within the time specified in paragraph (b) above. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule, or for any additional costs to the Government related to these tests.

(d) If the Contractor fails to deliver any first article report on time, or the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract.

(e) Unless otherwise provided in the contract, and if the approved first article is not consumed or destroyed in testing, the Contractor may deliver the approved first article as part of the contract quantity if it meets all contract requirements for acceptance.

(f) If the Government does not act within the time specified in paragraph (b) or (c) above, the Contracting Officer shall, upon timely written request from the Contractor,

equitably adjust under the changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) Before first article approval, the acquisition of materials or components for, or the commencement of production of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government.

(h) The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the offeror/contractor and have been accepted by the Government. The offeror/contractor may request a waiver.

(End of clause)

*Alternate I* (SEP 1989). As prescribed in 9.308-1(a)(2) and (b)(2), add the following paragraph (i) to the basic clause:

(i) The Contractor shall produce both the first article and the production quantity at the same facility and shall submit a certification to this effect with each first article.

*Alternate II* (SEP 1989). As prescribed in 9.308-1(a)(3) and (b)(3), substitute the following paragraph (g) for paragraph (g) of the basic clause:

(g) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

**52.209-4 First Article Approval—Government Testing.**

As prescribed in 9.308-2(a) and (b), insert the following clause:

FIRST ARTICLE APPROVAL—GOVERNMENT  
TESTING (SEP 1989)

[Contracting Officer shall insert details]

(a) The Contractor shall deliver \_\_\_\_ unit(s) of Lot/Item \_\_\_\_ within \_\_\_\_ calendar days from the date of this contract to the Government at \_\_\_\_\_ [insert name and address of the testing facility] for first article tests. The shipping docu-



mentation shall contain this contract number and the Lot/Item identification. The characteristics that the first article must meet and the testing requirements are specified elsewhere in this contract.

(b) Within \_\_\_\_\_ calendar days after the Government receives the first article, the Contracting Officer shall notify the Contractor, in writing, of the conditional approval, approval, or disapproval of the first article. The notice of conditional approval or approval shall not relieve the Contractor from complying with all requirements of the specifications and all other terms and conditions of this contract. A notice of conditional approval shall state any further action required of the Contractor. A notice of disapproval shall cite reasons for the disapproval.

(c) If the first article is disapproved, the Contractor, upon Government request, shall submit an additional first article for testing. After each request, the Contractor shall make any necessary changes, modifications, or repairs to the first article or select another first article for testing. All costs related to these tests are to be borne by the Contractor, including any and all costs for additional tests following a disapproval. The Contractor shall furnish any additional first article to the Government under the terms and conditions and within the time specified by the Government. The Government shall act on this first article within the time limit specified in paragraph (b) of this clause. The Government reserves the right to require an equitable adjustment of the contract price for any extension of the delivery schedule or for any additional costs to the Government related to these tests.

(d) If the Contractor fails to deliver any first article on time, or the Contracting Officer disapproves any first article, the Contractor shall be deemed to have failed to make delivery within the meaning of the Default clause of this contract.

(e) Unless otherwise provided in the contract, the Contractor—

(1) May deliver the approved first article as a part of the contract quantity, provided it meets all contract requirements for acceptance and was not consumed or destroyed in testing; and

(2) Shall remove and dispose of any first article from the Government test facility at the Contractor's expense.

(f) If the Government does not act within the time specified in paragraphs (b) or (c) of this clause, the Contracting Officer shall, upon timely written request from the Contractor, equitably adjust under the Changes clause of this contract the delivery or performance dates and/or the contract price, and any other contractual term affected by the delay.

(g) The Contractor is responsible for providing operating and maintenance instructions, spare parts support, and repair of the first article during any first article test.

(h) Before first article approval, the acquisition of materials or components for, or the commencement of produc-

tion of, the balance of the contract quantity is at the sole risk of the Contractor. Before first article approval, the costs thereof shall not be allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government.

(i) The Government may waive the requirement for first article approval test where supplies identical or similar to those called for in the schedule have been previously furnished by the Offeror/Contractor and have been accepted by the Government. The Offeror/Contractor may request a waiver.

(End of clause)

*Alternate I* (SEP 1989). As prescribed in 9.308-2(a)(2) and (b)(2), add the following paragraph (j) to the basic clause:

(j) The Contractor shall produce both the first article and the production quantity at the same facility and shall submit a certification to this effect with each first article.

*Alternate II* (SEP 1989). As prescribed in 9.308-2(a)(3) and (b)(3), substitute the following paragraph (h) for paragraph (h) of the basic clause:

(h) Before first article approval, the Contracting Officer may, by written authorization, authorize the Contractor to acquire specific materials or components or to commence production to the extent essential to meet the delivery schedules. Until first article approval is granted, only costs for the first article and costs incurred under this authorization are allocable to this contract for (1) progress payments, or (2) termination settlements if the contract is terminated for the convenience of the Government. If first article tests reveal deviations from contract requirements, the Contractor shall, at the location designated by the Government, make the required changes or replace all items produced under this contract at no change in the contract price.

#### **52.209-5 Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.**

As prescribed in 9.409(a), insert the following provision:

##### **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS (MAY 1989)**

(a)(1) The Offeror certifies, to the best of its knowledge and belief, that—

(i) The Offeror and/or any of its Principals—

(A) Are ☐ are not ☐ presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have ☐ have not ☐, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for:

commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

(C) Are ☐ are not ☐ presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in subdivision (a)(1)(i)(B) of this provision.

(ii) The Offeror has ☐ has not ☐, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principals," for the purposes of this certification, means officers; directors; owners; partners; and, persons having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a subsidiary, division, or business segment, and similar positions).

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER SECTION 1001, TITLE 18, UNITED STATES CODE.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government,

the Contracting Officer may terminate the contract resulting from this solicitation for default.

(End of provision)

#### **52.209-6 Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.**

As prescribed in 9.409(b), insert the following clause:

##### **PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (JUL 1995)**

(a) The Government suspends or debars Contractors to protect the Government's interests. The Contractor shall not enter into any subcontract in excess of \$25,000 with a Contractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.

(b) The Contractor shall require each proposed first-tier subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.

(c) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs). The notice must include the following:

(1) The name of the subcontractor.

(2) The Contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

(End of clause)

#### **52.209-7 Organizational Conflicts of Interest Certificate—Marketing Consultants.**

As prescribed in 9.507-1(b), insert the following provision:

##### **ORGANIZATIONAL CONFLICTS OF INTEREST CERTIFICATE—MARKETING CONSULTANTS (OCT 1995)**

(a) *Definitions.*

(1) "Marketing consultant" means any independent

contractor who furnishes advice, information, direction, or assistance to an offeror or any other contractor in support of the preparation or submission of an offer for a Government contract by that offeror. An independent Contractor is not a marketing consultant when rendering—

- (i) Services excluded in Subpart 37.2;
- (ii) Routine engineering and technical services (such as installation, operation, or maintenance of systems, equipment, software, components, or facilities);
- (iii) Routine legal, actuarial, auditing, and accounting services; or
- (iv) Training services.

(2) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An individual or firm that employs, retains, or engages contractually one or more marketing consultants in connection with a contract, shall submit to the contracting officer, with respect to each marketing consultant, the certificates described below, if the individual or firm is notified that it is the apparent successful offeror.

(c) The certificate must contain the following:

(1) The name of the agency and the number of the solicitation in question.

(2) The name, address, telephone number, and federal taxpayer identification number of the marketing consultant.

(3) The name, address, and telephone number of a responsible officer or employee of the marketing consultant who has personal knowledge of the marketing consultants involvement in the contract.

(4) A description of the nature of the services rendered by or to be rendered by the marketing consultant.

(5) The name, address, and telephone number of the client or clients, and the name of a responsible officer or employee of the marketing consultant who is knowledgeable about the services provided to such client(s), and a description of the nature of the services rendered to such client(s), if, based on information provided to the Contractor by the marketing consultant, any marketing consultant is rendering or, in the 12\* months preceding the date of the certificate, has rendered services respecting the same subject matter of the instant solicitation, or directly relating to such subject matter, to the Government or any other client (including any foreign government or person).

\* If approved by the head of the contracting activity, this period may be increased up to 36 months.

(6) A statement that the person who signs the certificate

for the prime Contractor has informed the marketing consultant of the existence of Subpart 9.5 and Office of Federal Procurement Policy Letter 89-1.

(7) The signature, name, title, employer's name, address, and telephone number of the persons who signed the certificates for both the apparent successful offeror and the marketing consultant.

(d) In addition, the apparent successful offeror shall forward to the Contracting Officer a certificate signed by the marketing consultant that the marketing consultant has been told of the existence of Subpart 9.5 and Office of Federal Procurement Policy Letter 89-1, and the marketing consultant has made inquiry, and to the best of the consultant's knowledge and belief, the consultant has provided no unfair competitive advantage to the prime Contractor with respect to the services rendered or to be rendered in connection with the solicitation, or that any unfair competitive advantage that, to the best of the consultant's knowledge and belief, does or may exist, has been disclosed to the offeror.

(e) Failure of the offeror to provide the certifications may result in the offeror being determined ineligible for award. Misrepresentation of any fact may result in the assessment of penalties associated with false certifications or such other provisions provided for by law or regulation.

(End of provision)

#### 52.209-8 Organizational Conflicts of Interest Certificate—Advisory and Assistance Services.

As prescribed in 9.507-1(c), insert the following provision:

##### ORGANIZATIONAL CONFLICTS OF INTEREST CERTIFICATE—ADVISORY AND ASSISTANCE SERVICES (NOV 1991)

(a) "Organizational conflict of interest" means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

(b) An offeror notified that it is the apparent successful offeror shall provide the certificate described in paragraph (c) of this provision.

(c) The certificate must contain the following:

(1) Name of the agency and the number of the solicitation in question.

(2) The name, address, telephone number, and federal taxpayer identification number of the apparent successful offeror.

(3) A description of the nature of the services rendered by or to be rendered on the instant contract.

(4) The name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible

officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12\* months preceding the date of the certification, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable.

\* If approved by the head of the contracting activity, this period may be increased up to 36 months.

(5) A statement that the person who signs the certificate has made inquiry and that, to the best of his or her knowledge and belief, no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract, or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated in writing to the Contracting Officer or his or her representatives.

(6) The signature, name, employer's name, address, and telephone number of the person who signed the certificate.

(d) Failure of the offeror to provide the certification may result in the offeror being determined ineligible for award. Misrepresentation of any fact may result in the assessment of penalties associated with false certifications or such other provisions provided for by law or regulation.

(End of provision)

## 52.210 [Reserved]

### 52.211-1 Availability of Specifications Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

As prescribed in 11.203(a), insert the following provision:

—AVAILABILITY OF SPECIFICATIONS LISTED IN—  
THE GSA INDEX OF FEDERAL SPECIFICATIONS,  
STANDARDS AND COMMERCIAL ITEM  
DESCRIPTIONS (MAR 1994)

(a) A single copy of each specification cited in this solicitation is available without charge from the GSA Federal Supply Service Bureau Specifications Section (3FBP-W), 470 East L'Enfant Plaza, SW., Suite 8100, Washington, DC 20407 (Tel. 202-755-0325 or 755-0326), or from any of the General Services Administration Business Service Centers which are located in Boston, MA; New York, NY; Philadelphia, PA; Atlanta, GA; Kansas City, MO; and Fort Worth, TX. Additional copies may be purchased from the GSA Specifications Section in Washington, D.C.

52-24 (FAC 90-33)

(b) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(End of provision)

### 52.211-2 Availability of Specifications Listed in the DOD Index of Specifications and Standards (DODISS).

As prescribed in 11.203(b), insert the following provision:

AVAILABILITY OF SPECIFICATIONS LISTED IN  
THE DOD INDEX OF SPECIFICATIONS AND STANDARDS (DODISS) (MAR 1994)

Single copies of specifications cited in this solicitation may be obtained by submitting a written request to the supply point listed below. The request must contain the title of the specification, its number, date, applicable amendment(s), and the solicitation or contract number. A telephone order entry system is available with the use of a touch tone telephone. A Customer Number is required to use this system and may be obtained by written request to the address listed below or by telephone (215-697-2179). In case of urgency, telegraphic requests are acceptable. Voluntary standards, which are not available to offerors and contractors from Government sources, may be obtained from the organization responsible for their preparation, maintenance, or publication.

Standardization Document

Order Desk, Building 4, Section D

700 Robbins Avenue

Philadelphia, PA 19111-5094

Facsimile No. 215-697-2978

Telephone Order Entry System (TOES) Numbers  
215-697-1187 through and including 215-697-1197

(End of provision)

### 52.211-3 Availability of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.

As prescribed in 11.203(c), insert a provision substantially the same as the following:

AVAILABILITY OF SPECIFICATIONS NOT LISTED  
IN THE GSA INDEX OF FEDERAL SPECIFICATIONS,  
STANDARDS AND COMMERCIAL ITEM  
DESCRIPTIONS (JUN 1988)

The specifications cited in this solicitation may be obtained from:

(Activity) \_\_\_\_\_

(Complete address) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Telephone number) \_\_\_\_\_

(Person to be contacted) \_\_\_\_\_

\_\_\_\_\_

## PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.211-7

The request should identify the solicitation number and the specification requested by date, title, and number, as cited in the solicitation.

(End of provision)

**52.211-4 Availability for Examination of Specifications Not Listed in the GSA Index of Federal Specifications, Standards and Commercial Item Descriptions.**

As prescribed in 11.203(d), insert a provision substantially the same as the following:

AVAILABILITY FOR EXAMINATION OF  
SPECIFICATIONS NOT LISTED IN THE  
GSA INDEX OF FEDERAL SPECIFICATIONS,  
STANDARDS AND COMMERCIAL ITEM  
DESCRIPTIONS (JUN 1988)

(Activity) \_\_\_\_\_

(Complete address) \_\_\_\_\_

\_\_\_\_\_

(Telephone number) \_\_\_\_\_

(Person to be contacted) \_\_\_\_\_

(Time(s) for viewing) \_\_\_\_\_

(End of provision)

**52.211-5 New Material.**

As prescribed in 11.203(e), insert the following clause:  
NEW MATERIAL (MAY 1995)

(a) *Definitions.*

“Material”, as used in this clause, includes, but is not limited to, raw material, parts, items, components, and end products.

“New”, as used in this clause, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.

“Other than new”, as used in this clause, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.

(b) Unless this contract specifies otherwise, the Contractor represents that the supplies, including any residual inventory and former Government surplus property identified under the Other Than New Material, Residual Inventory, and Former Government Surplus Property clause of this contract, are new and are not of such age or so deteriorated as to impair their usefulness or safety.

(c) If the Contractor believes that furnishing other than new material will be in the Government's interest, the Contractor shall so notify the Contracting Officer in writing and request authority to use such material. The Contractor's notice shall include the reasons for the request along with a proposal for any consideration due the Government if the Contracting Officer authorizes the use of other than new material.

(End of clause)

**52.211-6 Listing of Other Than New Material, Residual Inventory, and Former Government Surplus Property.**

As prescribed in 11.203(f), insert the following provision:

LISTING OF OTHER THAN NEW MATERIAL,  
RESIDUAL INVENTORY, AND FORMER  
GOVERNMENT SURPLUS PROPERTY  
(MAY 1995)

(a) *Definitions.*

“Material”, as used in this provision, includes, but is not limited to, raw material, parts, items, components, and end products.

“New”, as used in this provision, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.

“Other than new”, as used in this provision, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.

(b) If the offeror proposes to furnish other than new material, residual inventory resulting from terminated Government contracts, or former Government surplus property, the offeror shall provide the following information as an attachment to the offer:

- (1) A complete description of the materials.
- (2) Quantity.
- (3) Name of Government agency from which acquired.
- (4) Date of acquisition, if applicable.

No other than new material, residual inventory or former Government surplus property other than that listed on the attachment shall be furnished under the resulting contract unless authorized in writing by the Contracting Officer.

(c) All material to be furnished under the resultant contract must comply with the terms and specifications contained in the contract.

(End of provision)

**52.211-7 Other Than New Material, Residual Inventory, and Former Government Surplus Property.**

As prescribed in 11.203(g), insert the following clause:

OTHER THAN NEW MATERIAL, RESIDUAL  
INVENTORY, AND FORMER GOVERNMENT  
SURPLUS PROPERTY (MAY 1995)

(a) *Definitions.*

“Material”, as used in this clause, includes, but is not limited to, raw material, parts, items, components, and end products.

“New”, as used in this clause, means previously unused or composed of previously unused materials and may include unused residual inventory or unused former Government surplus property.

“Other than new”, as used in this clause, includes, but is not limited to, recycled, recovered, remanufactured, used, and reconditioned.

(b) The Contractor shall not furnish any other than new material, residual inventory resulting from terminated Government contracts, or former Government surplus property, unless such materials were listed in the applicable attachment to the offer and approved by the Contracting Officer or unless otherwise authorized in writing by the Contracting Officer.

(c) All materials furnished under this contract shall comply with the terms and specifications contained in the contract.  
(End of clause)

#### 52.211-8 Time of Delivery.

As prescribed in 11.404(a)(2), insert the following clause:  
TIME OF DELIVERY (JUL 1995)

(a) The Government requires delivery to be made according to the following schedule:

#### REQUIRED DELIVERY SCHEDULE [Contracting Officer insert specific details]

ITEM NO.	QUANTITY	WITHIN DAYS
		AFTER DATE OF CONTRACT
_____	_____	_____
_____	_____	_____
_____	_____	_____

The Government will evaluate equally, as regards time of delivery, offers that propose delivery of each quantity within the applicable delivery period specified above. Offers that propose delivery that will not clearly fall within the applicable required delivery period specified above, will be considered nonresponsive and rejected. The Government reserves the right to award under either the required delivery schedule or the proposed delivery schedule, when an offeror offers an earlier delivery schedule than required above. If the offeror proposes no other delivery schedule, the required delivery schedule above will apply.

#### OFFEROR'S PROPOSED DELIVERY SCHEDULE

ITEM NO.	QUANTITY	WITHIN DAYS
		AFTER DATE OF CONTRACT
_____	_____	_____
_____	_____	_____
_____	_____	_____

(b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed, or otherwise furnished to the successful offeror, results in a binding contract. The Government will mail or otherwise furnish to the offeror an award or notice of award not later than the day award is dated. Therefore, the offeror should compute the time

available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding (i) five calendar days for delivery of the award through the ordinary mails, or (ii) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term "working day" excludes weekends and U.S. Federal holidays.) If, as so computed, the offered delivery date is later than the required delivery date, the offer will be considered nonresponsive and rejected.

(End of clause)

*Alternate I* (APR 1984). If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date of award, the contracting officer may substitute the following paragraph (b) for paragraph (b) of the basic clause. The time may be expressed by substituting "on or before"; "during the months \_"; or "not sooner than \_ or later than \_" as headings for the third column of paragraph (a) the basic clause.

(b) The delivery dates or specific periods above are based on the assumption that the Government will make award by \_\_\_\_\_. [Contracting Officer insert date]. Each delivery date in the delivery schedule above will be extended by the number of calendar days after the above date that the contract is in fact awarded. Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed or otherwise furnished to the successful offeror results in a binding contract. Therefore, the offeror should compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails.

*Alternate II* (APR 1984). If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date the contractor will receive notice of award, the contracting officer may substitute the following paragraph (b) for paragraph (b) of the basic clause. The time may be expressed by substituting "within days after the date of receipt of a written notice of award" as the heading for the third column of paragraph (a) of the basic clause.

(b) The delivery dates or specific periods above are based on the assumption that the successful offeror will receive notice of award by \_\_\_\_\_. [Contracting Officer insert date]. Each delivery date in the delivery schedule above will be extended by the number of calendar days after the above date that the Contractor receives notice of award; provided, that the Contractor promptly acknowledges receipt of notice of award.

*Alternate III* (APR 1984). If the delivery schedule is to be based on the actual date the contractor receives a written notice of award, the contracting officer may delete para-

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graph (b) of the basic clause. The time may be expressed by substituting “within days after the date of receipt of awritten notice of award” as the heading for the third column of paragraph (a) of the basic clause.

**52.211-9 Desired and Required Time of Delivery.**

As prescribed in 11.404(a)(3), insert the following clause:

**DESIRED AND REQUIRED TIME OF  
DELIVERY (JUL 1995)**

(a) The Government desires delivery to be made according to the following schedule:

**DESIRED DELIVERY SCHEDULE**  
[Contracting Officer insert specific details]

ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT
_____	_____	_____
_____	_____	_____
_____	_____	_____

If the offeror is unable to meet the desired delivery schedule, it may, without prejudicing evaluation of its offer, propose a delivery schedule below. However, the offeror's proposed delivery schedule must not extend the delivery period beyond the time for delivery in the Government's required delivery schedule as follows:

**REQUIRED DELIVERY SCHEDULE**  
[Contracting Officer insert specific details]

ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT
_____	_____	_____
_____	_____	_____
_____	_____	_____

Offers that propose delivery of a quantity under such terms or conditions that delivery will not clearly fall within the applicable required delivery period specified above, will be considered nonresponsive and rejected. If the offeror proposes no other delivery schedule, the desired delivery schedule above will apply.

**OFFEROR'S PROPOSED DELIVERY SCHEDULE**

ITEM NO.	QUANTITY	WITHIN DAYS AFTER DATE OF CONTRACT
_____	_____	_____
_____	_____	_____
_____	_____	_____

(b) Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed or otherwise furnished to the successful offeror results in a binding contract. The Government will mail or otherwise furnish to the offeror an award or notice of award not later than the day the award is dated. Therefore, the offeror shall compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails. However, the Government will evaluate an offer that proposes delivery based on the Contractor's date of receipt of the contract or notice of award by adding (i) five calendar days for delivery of the award through the ordinary mails, or (ii) one working day if the solicitation states that the contract or notice of award will be transmitted electronically. (The term "working day" excludes weekends and U.S. Federal holidays.) If, as so computed, the offered delivery date is later than the required delivery date, the offer will be considered nonresponsive and rejected.

(End of clause)

*Alternate I* (APR 1984). If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date of award, the contracting officer may substitute the following paragraph (b) for paragraph (b) of the basic clause. The time may be expressed by substituting “on or before”; “during the months \_\_\_\_”; or “not sooner than \_\_, or later than \_\_\_\_” as headings for the third column of paragraph (a) of the basic clause.

(b) The delivery dates or specific periods above are based on the assumption that the Government will make award by \_\_\_\_\_. [Contracting Officer insert date]. Each delivery date in the delivery schedule above will be extended by the number of calendar days after the above date that the contract is in fact awarded. Attention is directed to the Contract Award provision of the solicitation that provides that a written award or acceptance of offer mailed or otherwise furnished to the successful offeror results in a binding contract. Therefore, the offeror shall compute the time available for performance beginning with the actual date of award, rather than the date the written notice of award is received from the Contracting Officer through the ordinary mails.

*Alternate II* (APR 1984). If the delivery schedule is expressed in terms of specific calendar dates or specific periods and is based on an assumed date the contractor receives notice of award, the contracting officer may substitute the following paragraph (b) for paragraph (b) of the basic clause. The time may be expressed by substituting “within days after the date of receipt of a written notice of award” as the heading of the third column of paragraph (a) of the basic clause.

(b) The delivery dates or specific periods above are based

on the assumption that the successful offeror will receive notice of award by \_\_\_\_\_ [*Contracting Officer insert date*]. Each delivery date in the delivery schedule above will be extended by the number of calendar days after the above date that the Contractor receives notice of award; *provided*, that the Contractor promptly acknowledges receipt of notice of award.

*Alternate III* (APR 1984). If the delivery schedule is to be based on the actual date the contractor receives a written notice of award, the contracting officer may delete paragraph (b) of the basic clause. The time may be expressed by substituting “within days after the date of receipt of a written notice of award” as the heading of the third column of paragraph (a) of the basic clause.

#### 52.211-10 Commencement, Prosecution, and Completion of Work.

As prescribed in 11.404(b), insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated. The clause may be changed to accommodate the issuance of orders under indefinite-delivery contracts for construction.

##### COMMENCEMENT, PROSECUTION, AND COMPLETION OF WORK (APR 1984)

The Contractor shall be required to (a) commence work under this contract within \_\_\_\_\_ [*Contracting Officer insert number*] calendar days after the date the Contractor receives the notice to proceed, (b) prosecute the work diligently, and (c) complete the entire work ready for use not later than \_\_\_\_\_.\* The time stated for completion shall include final cleanup of the premises.

(End of clause)

\*The Contracting Officer shall specify either a number of days after the date the contractor receives the notice to proceed, or a calendar date.

*Alternate I* (APR 1984). If the completion date is expressed as a specific calendar date, computed on the basis of the contractor receiving the notice to proceed by a certain day, add the following paragraph to the basic clause:

The completion date is based on the assumption that the successful offeror will receive the notice to proceed by \_\_\_\_\_. [*Contracting Officer insert date*]. The completion date will be extended by the number of calendar days after the above date that the Contractor receives the notice to proceed, except to the extent that the delay in issuance of the notice to proceed results from the failure of the Contractor to execute the contract and give the required performance and payment bonds within the time specified in the offer.

#### 52.211-11 Liquidated Damages—Supplies, Services, or Research and Development.

As prescribed in 11.504(a), the contracting officer may insert the following clause in solicitations and contracts when a fixed-price contract is contemplated for supplies,

services, or research and development (see 11.502(b)):

##### LIQUIDATED DAMAGES—SUPPLIES, SERVICES, OR RESEARCH AND DEVELOPMENT (APR 1984)

(a) If the Contractor fails to deliver the supplies or perform the services within the time specified in this contract, or any extension, the Contractor shall, in place of actual damages, pay to the Government as fixed, agreed, and liquidated damages, for each calendar day of delay the sum of \_\_\_\_\_ [*Contracting Officer insert amount*].

(b) Alternatively, if delivery or performance is so delayed, the Government may terminate this contract in whole or in part under the Default—Fixed-Price Supply and Service clause in this contract and in that event, the Contractor shall be liable for fixed, agreed, and liquidated damages accruing until the time the Government may reasonably obtain delivery or performance of similar supplies or services. The liquidated damages shall be in addition to excess costs under the Termination clause.

(c) The Contractor shall not be charged with liquidated damages when the delay in delivery or performance arises out of causes beyond the control and without the fault or negligence of the Contractor as defined in the Default—Fixed-Price Supply and Service clause in this contract.

(End of clause)

#### 52.211-12 Liquidated Damages—Construction.

As prescribed in 11.504(b), the contracting officer may insert the following clause in solicitations and contracts for construction, except contracts on a cost-plus-fixed-fee basis (see 11.502(b)):

##### LIQUIDATED DAMAGES—CONSTRUCTION (APR 1984)

(a) If the Contractor fails to complete the work within the time specified in the contract, or any extension, the Contractor shall pay to the Government as liquidated damages, the sum of \_\_\_\_\_ [*Contracting Officer insert amount*] for each day of delay.

(b) If the Government terminates the Contractor’s right to proceed, the resulting damage will consist of liquidated damages until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the Government in completing the work.

(c) If the Government does not terminate the Contractor’s right to proceed, the resulting damage will consist of liquidated damages until the work is completed or accepted.

(End of clause)

*Alternate I* (APR 1984). If different completion dates are specified in the contract for separate parts or stages of the work, revise paragraph (a) of the clause to state the amount of liquidated damages for delay of each separate part or stage of the work.



**52.211-13 Time Extensions.**

As prescribed in 11.504(c), insert the following clause in solicitations and contracts for construction in which the clause at 52.212-5, Liquidated Damages—Construction, is used with its Alternate I:

**TIME EXTENSIONS (APR 1984)**

Notwithstanding any other provisions of this contract, it is mutually understood that the time extensions for changes in the work will depend upon the extent, if any, by which the changes cause delay in the completion of the various elements of construction. The change order granting the time extension may provide that the contract completion date will be extended only for those specific elements so delayed and that the remaining contract completion dates for all other portions of the work will not be altered and may further provide for an equitable readjustment of liquidated damages under the new completion schedule.

(End of clause)

**52.211-14 Notice of Priority Rating for National Defense Use.**

As prescribed in 11.604(a), insert the following provision:

**NOTICE OF PRIORITY RATING FOR NATIONAL DEFENSE USE (SEP 1990)**

Any contract awarded as a result of this solicitation will be ☐ DX rated order; ☐ DO rated order certified for national defense use under the Defense Priorities and Allocations System (DPAS) (15 CFR 700), and the Contractor will be required to follow all of the requirements of this regulation. [*Contracting Officer check appropriate box.*]

(End of provision)

**52.211-15 Defense Priority and Allocation Requirements.**

As prescribed in 11.604(b), insert the following clause:

**DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (SEP 1990)**

This is a rated order certified for national defense use, and the Contractor shall follow all the requirements of the Defense Priorities and Allocations System regulation (15 CFR 700).

(End of clause)

**52.211-16 Variation in Quantity.**

As prescribed in 11.703(a), insert the following clause in solicitations and contracts when a fixed-price contract is contemplated for supplies, and for services that involve the furnishing of supplies:

**VARIATION IN QUANTITY (APR 1984)**

(a) A variation in the quantity of any item called for by this contract will not be accepted unless the variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to

the extent, if any, specified in paragraph (b) below.

(b) The permissible variation shall be limited to:

\_\_\_\_\_ Percent increase [*Contracting Officer insert percentage*]

\_\_\_\_\_ Percent decrease [*Contracting Officer insert percentage*]

This increase or decrease shall apply to \_\_\_\_\_.\*

(End of clause)

\*Contracting Officer shall insert in the blank the designation(s) to which the percentages apply, such as (1) the total contract quantity, (2) item 1 only, (3) each quantity specified in the delivery schedule, (4) the total item quantity for each destination, or (5) the total quantity of each item without regard to destination.

**52.211-17 Delivery of Excess Quantities.**

As prescribed in 11.703(b), insert the following clause:

**DELIVERY OF EXCESS QUANTITIES (SEP 1989)**

The Contractor is responsible for the delivery of each item quantity within allowable variations, if any. If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), such excess quantities will be treated as being delivered for the convenience of the Contractor. The Government may retain such excess quantities up to \$250 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of \$250 will, at the option of the Government, either be returned at the Contractor's expense or retained and paid for by the Government at the contract unit price.

(End of clause)

**52.211-18 Variation in Estimated Quantity.**

As prescribed in 11.703(c), insert the following clause in solicitations and contracts when a fixed-price construction contract is contemplated that authorizes a variation in the estimated quantity of unit-priced items:

**VARIATION IN ESTIMATED QUANTITY (APR 1984)**

If the quantity of a unit-priced item in this contract is an estimated quantity and the actual quantity of the unit-priced item varies more than 15 percent above or below the estimated quantity, an equitable adjustment in the contract price shall be made upon demand of either party. The equitable adjustment shall be based upon any increase or decrease in costs due solely to the variation above 115 percent or below 85 percent of the estimated quantity. If the quantity variation is such as to cause an increase in the time necessary for completion, the Contractor may request, in writing, an extension of time, to be received by the Contracting Officer within 10 days from the beginning of the delay, or within such further period as may be granted by the Contracting Officer before the date

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of final settlement of the contract. Upon the receipt of a written request for an extension, the Contracting Officer shall ascertain the facts and make an adjustment for extending the completion date as, in the judgement of the Contracting Officer, is justified.

(End of clause)

**52.212-1 Instructions to Offerors—Commercial Items.**

As prescribed in 12.301(b)(1), insert the following provision:

**INSTRUCTIONS TO OFFERORS—COMMERCIAL  
ITEMS (OCT 1995)**

(a) *Standard industrial classification (SIC) code and small business size standard.* The SIC code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) *Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show—

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (5) Terms of any express warranty;
- (6) Price and any discount terms;
- (7) "Remit to" address, if different than mailing address;
- (8) A completed copy of the representations and certifications at FAR 52.212-3;
- (9) Acknowledgment of Solicitation Amendments;
- (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and

(11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from

the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) *Product samples.* When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

(e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) *Late offers.* Offers or modifications of offers received at the address specified for the receipt of offers after the exact time specified for receipt of offers will not be considered.

(g) *Contract award (not applicable to Invitation for Bids).* The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) *Multiple awards.* The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) *Availability of requirements documents cited in the solicitation.* (1) The Index of Federal Specifications, Standards and Commercial Item Descriptions and the documents listed in it may be obtained from the General Services Administration, Federal Supply Service Bureau, Specifications Section, Suite 8100, 470 L'Enfant Plaza, SW, Washington, DC 20407 ((202) 755-0325/0326).

(2) The DOD Index of Specifications and Standards (DODISS) and documents listed in it may be obtained from the Standardization Documents Desk, Building 4D, 700 Robbins Avenue, Philadelphia, PA 19111-5094 (telephone (215) 697-2569).

(i) Automatic distribution may be obtained on a subscription basis.

(ii) Individual documents may be ordered from the Telespecs ordering system by touch-tone telephone. A customer number is required to use this service and can be obtained from the Standardization

Documents Order Desk or the Special Assistance Desk (telephone (610) 607-2667/2179).

(3) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication or maintenance.

(End of provision)

#### 52.212-2 Evaluation—Commercial Items

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

##### EVALUATION—COMMERCIAL ITEMS (OCT 1995)

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

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*[Contracting Officer shall insert the significant evaluation factors, such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.605) and include them in the relative order of importance of the evaluation factors, such as in descending order of importance.]*

Technical and past performance, when combined, are \_\_\_\_\_ *[Contracting Officer state, in accordance with FAR 15.605, the relative importance of all other evaluation factors, when combined, when compared to price.]*

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

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

(End of Provision)

#### 52.212-3 Offeror Representations and Certifications—Commercial Items.

As prescribed in 12.301(b)(2), insert the following provision:

##### OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (OCT 1995)

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

“Emerging small business” means a small business

concern whose size is no greater than 50 percent of the numerical size standard for the standard industrial classification code designated.

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

“Small disadvantaged business concern” means a small business concern that—

(1) Is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business, having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and

(2) Has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian organization and which meets the requirements of 13 CFR Part 124.

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

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

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

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

(b) Taxpayer identification number (TIN) (26 U.S.C. 6050M). (1) *Taxpayer Identification Number (TIN).*

☐ TIN: \_\_\_\_\_.

☐ TIN has been applied for.

☐ TIN is not required because:

☐ Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the U.S. and does not have an office or place of business or a fiscal paying agent in the U.S.;

☐ Offeror is an agency or instrumentality of a foreign government;

☐ Offeror is an agency or instrumentality of a

Federal, state, or local government;

☐ Other. State basis. \_\_\_\_\_

(2) *Corporate Status.*

☐ Corporation providing medical and health care services, or engaged in the billing and collecting of payments for such services;

☐ Other corporate entity;

☐ Not a corporate entity:

☐ Sole proprietorship

☐ Partnership

☐ Hospital or extended care facility described in 26 CFR 501(c)(3) that is exempt from taxation under 26 CFR 501(a).

(3) *Common Parent.*

☐ Offeror is not owned or controlled by a common parent:

☐ Name and TIN of common parent:

Name \_\_\_\_\_

TIN \_\_\_\_\_

(c) Offerors must complete the following representations when the resulting 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. Check all that apply.

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

(2) *Small disadvantaged business concern.* The offeror represents and certifies that it ☐ is, ☐ is not a small disadvantaged business concern.

(3) *Women-owned small business concern.* The offeror represents that it ☐ is, ☐ is not a women-owned small business concern.

*Note: Complete paragraphs (c)(4) and (c)(5) only if this solicitation is expected to exceed the simplified acquisition threshold.*

(4) *Women-owned business concern.* The offeror represents that it ☐ is, ☐ is not, a women-owned business concern.

(5) *Tie bid priority for labor surplus area concerns.* If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:

(6) *Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.* [Complete only if the offeror has certified itself to be a small business concern under the size standards for this solicitation.]

(i) (Complete only for solicitations indicated in an addendum as being set-aside for emerging small businesses in one of the four designated industry

groups (DIGs).) The offeror represents as part of its offer that it ☐ is, ☐ is not an emerging small business.

(ii) (Complete only for solicitations indicated in an addendum as being for one of the targeted industry categories (TICs) or four designated industry groups (DIGs).) Offeror represents and certifies as follows:

(A) Offeror's number of employees for the past 12 months (check the Employees column if size standard stated in the solicitation is expressed in terms of number of employees); or

(B) Offeror's average annual gross revenue for the last 3 fiscal years (check the Average Annual Gross Number of Revenues column if size standard stated in the solicitation is expressed in terms of annual receipts).

(Check one of the following):

<u>Number of Employees</u>	<u>Average Annual Gross Revenues</u>
<input type="checkbox"/> 50 or fewer	<input type="checkbox"/> \$1 million or less
<input type="checkbox"/> 51 - 100	<input type="checkbox"/> \$1,000,001 - \$2 million
<input type="checkbox"/> 101 - 250	<input type="checkbox"/> \$2,000,001 - \$3.5 million
<input type="checkbox"/> 251 - 500	<input type="checkbox"/> \$3,500,001 - \$5 million
<input type="checkbox"/> 501 - 750	<input type="checkbox"/> \$5,000,001 - \$10 million
<input type="checkbox"/> 751 - 1,000	<input type="checkbox"/> \$10,000,001 - \$17 million
<input type="checkbox"/> Over 1,000	<input type="checkbox"/> Over \$17 million

(d) *Certifications and representations required to implement provisions of Executive Order 11246—*

(1) *Certification of non-segregated facilities.* (Applies only if the contract amount is expected to exceed \$10,000)—

By submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees, any facilities that are segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise and that it does not and will not permit its employees to perform their services at any location where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

(2) *Previous Contracts and Compliance.* The offeror represents that—

(i) It ☐ has, ☐ has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order 10925, or the clause contained in Section 201 of Executive Order 11114; and

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

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

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

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

(e) *Certification Regarding Payments to Influence Federal Transactions* (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract.

(f) *Buy American Act—Trade Agreements—Balance of Payments Program Certificate*. (Applies only if FAR clause 52.225-9, *Buy American Act - Trade Agreement - Balance of Payments Program*, is included in this solicitation.)

(1) The offeror hereby certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product (as defined in the clause entitled “Buy American Act - Trade Agreements—Balance of Payments Program”) and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, a North American Free Trade Agreement (NAFTA) country, or a Caribbean Basin country, as defined in section 25.401 of the Federal Acquisition Regulation.

(2) Excluded End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____

(List as necessary)

(3) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (f)(2) of this provision, offerors must identify and certify below those excluded end products that are designated or NAFTA country end products, or Caribbean Basin country end products. Products that are not identified and certified below will not be deemed designated country end products, NAFTA country end products, or Caribbean Basin country end products. Offerors must certify by inserting the applicable line item numbers in the following:

(i) The offeror certifies that the following supplies qualify as “designated or NAFTA country end prod-

ucts” as those terms are defined in the clause entitled “Buy American Act - Trade Agreements - Balance of Payments Program:”

(Insert line item numbers)

(ii) The offeror certifies that the following supplies qualify as “Caribbean Basin country end products” as that term is defined in the clause entitled “Buy American Act - Trade Agreements - Balance of Payments Program:”

(Insert line item numbers)

(4) Offers will be evaluated in accordance with FAR Part 25.

(g) *Buy American Act - North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program Certificate*. (Applies only if FAR clause 52.225-21, *Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program*, is included in this solicitation.)

(1) The offeror hereby certifies that each end product, except those listed in paragraph (g)(2) of this provision, is a domestic end product (as defined in the clause entitled “Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program”) and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

(2) Excluded End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____

(List as necessary)

(3) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (g)(2) of this provision, offerors must identify and certify below those excluded end products that are NAFTA country end products. Products that are not identified and certified below will not be deemed NAFTA country end products. Offerors must certify by inserting the applicable line item numbers in the following:

The offeror certifies that the following supplies qualify as “NAFTA country end products” as that term is defined in the clause entitled “Buy American Act - North American Free Trade Agreement Implementation

## 52.212-4

## FEDERAL ACQUISITION REGULATION (FAR)

Act - Balance of Payments Program:"

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(Insert line item numbers)

(4) Offers will be evaluated in accordance with FAR Part 25.

(h) Certification Regarding Debarment, Suspension or Ineligibility for Award (Executive Order 12549). The offeror certifies, to the best of its knowledge and belief, that—

(1) The offeror and/or any of its principals ☐ are, ☐ are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency, and

(2) ☐ Have, ☐ have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and ☐ are, ☐ are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses.

(i) Procurement Integrity Certification (41 U.S.C. 423). (*Applies only if the contract is expected to exceed \$100,000.*)

I, the undersigned, am the officer or employee responsible for the preparation of this offer. I certify, to the best of my knowledge and belief, that either—

☐ I have no information, or

☐ I have disclosed information to the Contracting Officer concerning a violation or possible violation of subsection (a), (b), (d) or (f) of 41 U.S.C. 423, Procurement Integrity, or its implementing regulations that may have occurred during the conduct of this procurement.

*[Signature of the officer or employee responsible for the offer and date]*

(End of Provision)

#### 52.212-4 Contract Terms and Conditions — Commercial Items.

As prescribed in 12.301(b)(3), insert the following clause:

##### CONTRACT TERMS AND CONDITIONS— COMMERCIAL ITEMS (OCT 1995)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance 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 post-acceptance rights (1) within a reasonable 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.

(b) *Assignment.* The Contractor or its assignee's rights to be paid amounts due as a result of performance of this contract, may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727).

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613). Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.

(f) *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.

(g) *Invoice.* The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized,) to the address designated in the contract to receive invoices. An invoice must include—

- (1) Name and address of the Contractor;
- (2) Invoice date;
- (3) Contract number, contract line item number and, if applicable, the order number;
- (4) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (5) Shipping number and date of shipment including

the bill of lading number and weight of shipment if shipped on Government bill of lading;

(6) Terms of any prompt payment discount offered;

(7) Name and address of official to whom payment is to be sent; and

(8) Name, title, and phone number of person to be notified in event of defective invoice.

Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment.

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

(i) *Payment.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) Circular A-125, Prompt Payment. Payments under this contract may be made by the Government either by check, electronic funds transfer, or the Automated Clearing House, at the option of the Government. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the date on which an electronic funds transfer was made.

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

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

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

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

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record

keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

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

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

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

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

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

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. 327, *et seq.*, Contract Work Hours and Safety Standards Act; 41 U.S.C. 51-58, Anti-Kickback Act of 1986; 41 U.S.C. 251 related to whistle blower protections; and 49 U.S.C. 40118, Fly American.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) the Assignments, Disputes, Payments, Invoice, Other Compliances, and Compliance with Laws Unique to Government Contracts paragraphs of this clause; (3) the clause at 52.212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and

## 52.212-5

attachments; and (9) the specification.  
(End of clause)

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

As prescribed in 12.301(b)(4), insert the following clause:  
CONTRACT TERMS AND CONDITIONS REQUIRED  
TO IMPLEMENT STATUTES OR EXECUTIVE  
ORDERS—COMMERCIAL ITEMS  
(OCT 1995)

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

(1) 52.222-3, Convict Labor (E.O. 11755); and

(2) 52.233-3, Protest After Award (31 U.S.C. 3553 and 40 U.S.C. 759).

(b) The Contractor agrees to comply with the FAR and FIRM clauses in this paragraph (b) which the contracting officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

*(Contracting Officer shall check as appropriate.)*

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

\_\_\_\_ (2) 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity (41 U.S.C. 423).

\_\_\_\_ (3) 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (15 U.S.C. 637 (d)(2) and (3)).

\_\_\_\_ (4) 52.219-9, Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan (15 U.S.C. 637 (d)(4)).

\_\_\_\_ (5) 52.219-14, Limitation on Subcontracting (15 U.S.C. 637(a)(14)).

\_\_\_\_ (6) 52.222-26, Equal Opportunity (E.O. 11246).

\_\_\_\_ (7) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212).

\_\_\_\_ (8) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).

\_\_\_\_ (9) 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).

\_\_\_\_ (10) 52.225-3, Buy American Act - Supplies (41 U.S.C. 10).

\_\_\_\_ (11) 52.225-9, Buy American Act - Trade Agreements Act - Balance of Payments Program (41 U.S.C. 10, 19 U.S.C. 2501-2582).

\_\_\_\_ (12) 52.225-17, Buy American Act - Supplies Under European Community Sanctions for End Products (E.O. 12849).

\_\_\_\_ (13) 52.225-18, European Community Sanctions for

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End Products (E.O. 12849).

\_\_\_\_ (14) 52.225-19, European Community Sanctions for Services (E.O. 12849).

\_\_\_\_ (15) 52.225-21, Buy American Act - North American Free Trade Agreement Implementation Act - Balance of Payments Program (41 U.S.C. 10, Pub. L. 103-187).

\_\_\_\_ (16) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (46 U.S.C. 1241).

\_\_\_\_ (17) 201-39.5202-3, Procurement Authority (FIRM). (This acquisition is being conducted under \_\_\_\_\_ delegation of GSA's exclusive procurement authority for FIP resources. The specific GSA DPA case number is \_\_\_\_\_).

(c) The Contractor agrees to comply with the FAR clauses in this paragraph (c), applicable to commercial services, which the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

*(Contracting Officer check as appropriate.)*

\_\_\_\_ (1) 52.222-41, Service Contract Act of 1965, As amended (41 U.S.C. 351, et seq.).

\_\_\_\_ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

\_\_\_\_ (3) 52.222-43, Fair Labor Standards Act and Service Contract Act - Price Adjustment (Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

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

\_\_\_\_ (5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351, et seq.).

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

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

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the



records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

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

(e) 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 13.305, insert the following clause:

##### FAST PAYMENT PROCEDURE (AUG 1988)

(a) *General.* Invoices will be paid on the basis of the Contractor's delivery to a post office or common carrier (or, in shipment by other means, to the point of first receipt by the Government).

(b) *Responsibility for supplies.* Title to the supplies shall vest in the Government upon delivery to a post office or common carrier for shipment to the specific destination. If shipment is by means other than Postal Service or common carrier, title to the supplies shall vest in the Government upon delivery to the point of first receipt by

the Government. Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall assume all responsibility and risk of loss for supplies (1) not received at destination, (2) damaged in transit, or (3) not conforming to purchase requirements. The Contractor shall either replace, repair, or correct those supplies promptly at the Contractor's expense, but only if instructions to do so are furnished 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 of supplies to a post office or common carrier, (or, in shipments by other means, the point of first receipt by the Government) the Contractor shall prepare an invoice as provided in this contract, order, or blanket purchase agreement. In addition, the invoice shall be prominently marked "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 cost of parcel post insurance will not be paid by the Government. If transportation charges are separately stated on the invoice, the Contractor agrees to retain related paid freight bills or other transportation billings paid separately for a period of 3 years and to furnish the bills to the Government when requested for audit purposes.

(3) If this contract, order, or blanket purchase agreement requires the preparation of a receiving report on a prescribed form, the Contractor has the option of either preparing the receiving report on the prescribed form or including the following information on the invoice, in addition to that required in subparagraph (c)(1) above:

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

(ii) Shipment number.

(iii) Mode of shipment.

(iv) At line item level, (A) national stock number and/or manufacturer's part number, (B) unit of measure, (C) Ship-To Point, (D) Mark-For Point if in contract, and (E) FEDSTRIP/MILSTRIP document number if in contract.

(4) If this contract, order or blanket purchase agreement does not require preparation of a receiving report on a prescribed form, the invoice will include at the line



item level information at the line item level in addition to that required in subparagraph (c)(1) above:

(i) Ship-To-Point.

(ii) Mark-For-Point.

(iii) FEDSTRIP/MILSTRIP document number if in contract, in addition to that required in subparagraph (c)(1) above.

(5) Where a receiving report is not required, a copy of the invoice will be included in each shipment.

(d) *Certification of invoice.* The Contractor agrees that the submission of an invoice to the Government for payment is a certification that the supplies for which the Government is being billed 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.* All outer shipping containers shall be marked “FAST PAY.”

(End of clause)

#### 52.213-2 Invoices.

As prescribed in 13.507(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)

(AV 7-2003.45 1974 APR)

#### 52.213-3 Notice to Supplier.

As prescribed in 13.507(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)

#### 52.214-1 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 ☐ a corporation incorporated under the laws of the State of \_\_\_\_\_, ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, or ☐ a joint venture; or

(b) If the bidder is a foreign entity, it operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a joint venture, or ☐ a corporation, registered for business in \_\_\_\_\_.

(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)

(R 2-201(b)(xiii))

(R 1-2.201(a)(11))

#### 52.214-5 Submission of Bids.

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

##### SUBMISSION OF BIDS (JUL 1995)

(a) Bids and bid modifications shall be submitted in sealed envelopes or packages (unless submitted by electronic means) (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the

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solicitation number, and the name and address of the bidder.

(b) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice.

(c) Facsimile bids, modifications, or withdrawals, will not be considered unless authorized by the solicitation.

(d) Bids submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

(End of provision)

#### 52.214-6 Explanation to Prospective Bidders.

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

##### EXPLANATION TO PROSPECTIVE BIDDERS

(APR 1984)

Any prospective bidder desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective bidders before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective bidder concerning a solicitation will be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders.

(End of provision)

(R SF 33A, Para 3, 1978 JAN)

#### 52.214-7 Late Submissions, Modifications, and Withdrawals of Bids.

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

##### LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (JUL 1995)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation;

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office To Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of bids. The term “working days” excludes weekends and U.S. Federal

holidays; or

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m., one working day prior to the date specified for receipt of bids.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the bid, modification, or withdrawal shall be processed as if mailed late. “Postmark” means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(e) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the “Express Mail Next Day Service-Post Office to Addressee” label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. “Postmark” has the same meaning as defined in paragraph (c) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(f) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(g) Bids may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipt of bids. If the solicitation authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision entitled “Facsimile Bids.” A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

(End of provision)

**52.214-8 [Reserved]****52.214-9 Failure to Submit Bid.**

As prescribed in 14.201-6(e)(1), insert the following provision in invitations for bids:

**FAILURE TO SUBMIT BID (JUL 1995)**

Recipients of this solicitation not responding with a bid should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter, postcard, or established electronic commerce methods, whether they want to receive future solicitations for similar requirements. If a recipient does not submit a bid and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

(End of provision)

**52.214-10 Contract Award—Sealed Bidding.**

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

**CONTRACT AWARD—SEALED BIDDING  
(JUL 1990)**

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may (1) reject any or all bids, (2) accept other than the lowest bid, and (3) waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or group of items of a bid, unless the bidder qualifies the bid by specific limitations. *Unless otherwise provided in the Schedule, bids may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the bidder specifies otherwise in the bid.*

(d) A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the bid shall result in a binding contract without further action by either party.

(e) The Government may reject a bid as nonresponsive if the prices bid are materially unbalanced between line items or subline items. A bid is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the bid will result in the lowest overall cost to the Government even though it may be the low evaluated bid, or if it is so unbalanced as to be tantamount to allowing an advance payment.

(End of provision)

**52.214-11 [Reserved]****52.214-12 Preparation of Bids.**

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

**PREPARATION OF BIDS (APR 1984)**

(a) Bidders are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the bidder's risk.

(b) Each bidder shall furnish the information required by the solicitation. The bidder shall sign the bid and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(c) For each item offered, bidders shall (1) show the unit price, including, unless otherwise specified, packaging, packing, and preservation and (2) enter the extended price for the quantity of each item offered in the "Amount" column of the Schedule. In case of discrepancy between a unit price and an extended price, the unit price will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Bids for supplies or services other than those specified will not be considered unless authorized by the solicitation.

(e) Bidders must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.

(f) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays

(End of provision)

(R SF 33A, Para 2, 1978 JAN)

**52.214-13 Telegraphic Bids.**

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

**TELEGRAPHIC BIDS (APR 1984)**

(a) Bidders may submit telegraphic bids as responses to this solicitation. These responses must arrive at the place, and by the time, specified in the solicitation.

(b) Telegraphic bids shall refer to this solicitation and include the items or subitems, quantities, unit prices, time and place of delivery, all representations and other information required by this solicitation, and a statement of agreement with all the terms, conditions, and provisions of the invitation for bids.

(c) Telegraphic bids that fail to furnish required representations or information, or that reject any of the terms, conditions, and provisions of the solicitation, may be excluded from consideration.

(d) Bidders must promptly sign and submit complete copies of the bids in confirmation of their telegraphic bids.

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(e) The term “telegraphic bids,” as used in this provision, includes mailgrams.

(End of provision)

(R 7-2003.29 1964 MAR)

*Alternate I* (NOV 1988). As prescribed in 14.201-6(g)(2), substitute the following for paragraph (d) of the basic clause:

(d) Written confirmation of telegraphic bids is not required.

**52.214-14 Place of Performance—Sealed Bidding.**

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

PLACE OF PERFORMANCE—

SEALED BIDDING (APR 1985)

(a) The bidder, in the performance of any contract resulting from this solicitation, ☐ intends, ☐ does not intend [*check applicable box*] to use one or more plants or facilities located at a different address from the address of the bidder as indicated in this bid.

(b) If the bidder checks “intends” in paragraph (a) above, it shall insert in the spaces provided below the required information:

Place of Performance (Street, Address, City, County, State, Zip Code)	Name and Address of Owner and Operator of the Plant or Facility if Other than Bidder
---	--

.....	.....
.....	.....

(End of provision)

**52.214-15 Period for Acceptance of Bids.**

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

PERIOD FOR ACCEPTANCE OF BIDS (APR 1984)

In compliance with the solicitation, the bidder agrees, if this bid is accepted within . . . . . calendar days (60 calendar days unless a different period is inserted by the bidder) from the date specified in the solicitation for receipt of bids, to furnish any or all items upon which prices are bid at the price set opposite each item, delivered at the designated point(s), within the time specified in the Schedule.

(End of provision)

(R SF 33 1977 MAR)

**52.214-16 Minimum Bid Acceptance Period.**

As prescribed in 14.201-6(j), insert the following provision in invitations for bids, except for construction, if the contracting officer determines that a minimum acceptance period must be specified:

MINIMUM BID ACCEPTANCE PERIOD (APR 1984)

(a) “Acceptance period,” as used in this provision,

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means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of bids.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of . . . . . calendar days [*the Contracting Officer shall insert the number of days*].

(d) In the space provided immediately below, bidders may specify a longer acceptance period than the Government’s minimum requirement. The bidder allows the following acceptance period:

. . . . . calendar days.

(e) A bid allowing less than the Government’s minimum acceptance period will be rejected.

(f) The bidder agrees to execute all that it has undertaken to do, in compliance with its bid, if that bid is accepted in writing within (1) the acceptance period stated in paragraph (c) of this clause or (2) any longer acceptance period stated in paragraph (d) of this clause.

(End of provision)

(R 2-201(a) Sec. L(xvii) (A) and (B) 1975 MAR)

(R 2-201(b)(xii)(B) 1975 MAR)

(R 1-2.201(a)(15))

**52.214-17 Affiliated Bidders.**

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

AFFILIATED BIDDERS (APR 1984)

(a) Business concerns are affiliates of each other when, either directly or indirectly, (1) one concern controls or has the power to control the other, or (2) a third party controls or has the power to control both.

(b) Each bidder shall submit with its bid an affidavit stating that it has no affiliates, or containing the following information:

(1) The names and addresses of all affiliates of the bidder.

(2) The names and addresses of all persons and concerns exercising control or ownership of the bidder and any or all of its affiliates, and whether they exercise such control or ownership as common officers, directors, stockholders holding controlling interest, or otherwise.

(End of provision)

(R 7-2003.12 1974 APR)

**52.214-18 Preparation of Bids—Construction.**

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

## PREPARATION OF BIDS—CONSTRUCTION

(APR 1984)

(a) Bids must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing a bid must initial each erasure or change appearing on any bid form.

(b) The bid form may require bidders to submit bid prices for one or more items on various bases, including—

- (1) Lump sum bidding;
- (2) Alternate prices;
- (3) Units of construction; or
- (4) Any combination of subparagraphs (1) through (3) above.

(c) If the solicitation requires bidding on all items, failure to do so will disqualify the bid. If bidding on all items is not required, bidders should insert the words “no bid” in the space provided for any item on which no price is submitted.

(d) Alternate bids will not be considered unless this solicitation authorizes their submission.

(End of provision)

(R SF 22, Para 5, 1978 FEB)

**52.214-19 Contract Award—Sealed Bidding—Construction.**

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

## CONTRACT AWARD—SEALED BIDDING—

CONSTRUCTION (FEB 1986)

(a) The Government will evaluate bids in response to this solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price-related factors specified elsewhere in the solicitation.

(b) The Government may reject any or all bids, and waive informalities or minor irregularities in bids received.

(c) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or the bid.

(End of provision)

**52.214-20 Bid Samples.**

As prescribed in 14.201-6(o)(1), insert the following provision in invitations for bids if bid samples are required:

BID SAMPLES (APR 1984)

(a) “Bid samples” are item sample submissions required of bidders to show those characteristics of the offered products that cannot adequately be described by specifications or purchase descriptions (e.g., balance, facility of use, or pattern).

(b) Bid samples, required elsewhere in this solicitation,

must be furnished as part of the bid and must be received by the time specified for receipt of bids. Failure to furnish samples on time will require rejection of the bid, except that a late sample sent by mail may be considered under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(c) Bid samples will be tested or evaluated to determine compliance with all the characteristics listed for examination in this solicitation. Failure of these samples to conform to the required characteristics will require rejection of the bid. Products delivered under any resulting contract must conform to (1) the approved sample for the characteristics listed for test or evaluation and (2) the specifications for all other characteristics.

(d) Unless otherwise specified in the solicitation, bid samples shall be (1) submitted at no expense to the Government, and (2) returned at the bidder’s request and expense, unless they are destroyed during preaward testing.

(End of provision)

(R 7-2003.30(a) 1974 APR)

(R 1-2.202-4)

(R 2-202.4 1980 OCT)

(R SF 33A 1978 JAN)

*Alternate I* (APR 1984). If it appears that the conditions in 14.202-4(f)(1) will apply and the contracting officer anticipates granting waivers thereunder, and if the nature of the required product *does not* necessitate limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, add the following paragraph (e) to the basic provision:

(e) At the discretion of the Contracting Officer, the requirement for furnishing bid samples may be waived for a bidder if (1) the bid states that the offered product is the same as a product offered by the bidder to the . . . . . [as appropriate, the Contracting Officer shall designate the contracting office or an alternate activity or office], and (2) the Contracting Officer determines that the previously offered product was accepted or tested and found to comply with specification and other requirements for technical acceptability conforming in every material respect with those in this solicitation.

(R 7-2003.30(b) 1974 APR)

(R 1-2.202-4)

*Alternate II* (APR 1984). If it appears that the conditions in 14.202-4(f)(1) will apply and the contracting officer anticipates granting waivers thereunder, and if the nature of the required product necessitates limiting the grant of a waiver to a product produced at the same plant in which the product previously acquired or tested was produced, add the following paragraph (e) to the basic provision:

(e) At the discretion of the Contracting Officer, the requirements for furnishing bid samples may be waived for a bidder if (1) the bid states that the offered product is the

same as a product offered by the bidder to the . . . . . [as appropriate, the Contracting Officer shall designate the contracting office or an alternate activity or office] on a previous acquisition, (2) the Contracting Officer determines that the previously offered product was accepted or tested and found to comply with specification and other requirements for technical acceptability conforming in every material respect with those of this solicitation, and (3) the product offered under this solicitation will be produced under a resulting contract at the same plant in which the previously acquired or tested product was produced.

(R 7-2003.30(b) 1974 APR)

#### 52.214-21 Descriptive Literature.

As prescribed in 14.201-6(p)(1), insert the following provision in invitations for bids if (a) descriptive literature is required to evaluate the technical acceptability of an offered product and (b) the required information will not be readily available unless it is submitted by bidders:

##### DESCRIPTIVE LITERATURE (APR 1984)

(a) "Descriptive literature" means information (e.g., cuts, illustrations, drawings, and brochures) that is submitted as part of a bid. Descriptive literature is required to establish, for the purpose of evaluation and award, details of the product offered that are specified elsewhere in the solicitation and pertain to significant elements such as (1) design; (2) materials; (3) components; (4) performance characteristics; and (5) methods of manufacture, assembly, construction, or operation. The term includes only information required to determine the technical acceptability of the offered product. It does not include other information such as that used in determining the responsibility of a prospective Contractor or for operating or maintaining equipment.

(b) Descriptive literature, required elsewhere in this solicitation, must be (1) identified to show the item(s) of the offer to which it applies and (2) received by the time specified in this solicitation for receipt of bids. Failure to submit descriptive literature on time will require rejection of the bid, except that late descriptive literature sent by mail may be considered under the Late Submissions, Modifications, and Withdrawals of Bids provision of this solicitation.

(c) The failure of descriptive literature to show that the product offered conforms to the requirements of this solicitation will require rejection of the bid.

(End of provision)

(R 7-2003.31(a) UNDATED)

(R 1-2.202-5(d))

*Alternate I* (APR 1984). If the possibility exists that the contracting officer may waive the requirement for furnishing descriptive literature for a bidder offering a previously supplied product that meets specification requirements of the current solicitation, add the following paragraphs (d) and (e).

(d) At the discretion of the Contracting Officer, the requirement for furnishing descriptive literature under this 52-44 (FAC 90-29)

solicitation may be waived for any bidder that makes an affirmative representation in subparagraph (d)(1) below, if the Contracting Officer determines that the product supplied by the bidder under a prior contract meets the requirements of this solicitation.

(1) The bidder represents that it ☐ has, ☐ has not [check applicable box] supplied a product to the . . . . . [as appropriate, the Contracting Officer shall designate the contracting office or an alternate activity or office] under a prior contract that is the same as the product offered under this solicitation for which descriptive literature is required.

(2) If the bidder checked "has" in paragraph (d)(1) above, and seeks a waiver of the requirement for submitting descriptive literature, the bidder must fill in the following information:

Prior contract number .....  
Date of prior contract .....  
Contract line item number of product supplied.....  
Name and address of government activity to which delivery was made.....  
Date of final delivery of product supplied.....

(e) Bidders must submit bids on the basis of required descriptive literature or on the basis of a previously supplied product under paragraph (d) above. A bidder submitting a bid on one of these two bases may not elect to have its bid considered on the alternative basis after the time specified for receipt of bids. A bidder's request for a waiver under paragraph (d) above will be disregarded if that bidder has submitted the descriptive literature required under this solicitation.

(R 1-2003.31(b) UNDATED)

(R 2.202-5(e))

#### 52.214-22 Evaluation of Bids for Multiple Awards.

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

##### EVALUATION OF BIDS FOR MULTIPLE AWARDS (MAR 1990)

In addition to other factors, bids will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating bids, that \$500 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation, and individual awards will be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(End of provision)

#### 52.214-23 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding.

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



**LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (JUL 1995)**

(a) Any technical proposal under step one of two-step sealed bidding received at the office designated in this solicitation after the exact time specified for receipt will not be considered unless it is received before the invitation for bids in step two is issued and it—

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of technical proposals (e.g., technical proposal submitted in response to a solicitation requiring receipt of technical proposals by the 20th of the month must have been mailed by the 15th);

(2) Was sent (i) by mail, or (ii) if authorized, by telegram (including mailgram) or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation;

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office To Addressee, not later than 5:00 p.m. at the place of mailing 2 working days prior to the date specified for receipt of technical proposals. The term “working days” excludes weekends and U.S. Federal holidays;

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of technical proposals; or

(5) Is the only technical proposal received.

(b) Any modification of a technical proposal is subject to the same conditions as in paragraph (a) of this provision, except that (1) the use of a telegram (or mailgram) is authorized, and (2) if the solicitation authorizes facsimile bids, technical proposals may be modified via facsimile received at any time before the exact time set for receipt of bids under step two, subject to the conditions specified in the provision entitled “Facsimile Bids.”

(c) Technical proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipt of bids under step two. If the solicitation authorizes facsimile bids, technical proposals may be withdrawn via facsimile received at any time before the exact time set for receipt of bids under step two, subject to the conditions specified in the provision entitled “Facsimile Bids.” Technical proposals may be withdrawn in person by the submitter or the submitter's authorized representative if, before the exact time set for receipt of bids in step two, the identity of the person requesting withdrawal is established and that person signs a receipt for the technical proposal.

(d) The only acceptable evidence to establish the date of mailing of a late technical proposal, modification, or withdrawal of a technical proposal sent either by registered or

certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date, or the technical proposal, modification, or withdrawal of technical proposal shall be processed as if mailed late. “Postmark” means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, submitters of technical proposals should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(f) The only acceptable evidence to establish the date of mailing of a late technical proposal, modification, or withdrawal sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the “Express Mail Next Day Service-Post Office to Addressee” label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. “Postmark” has the same meaning as defined in paragraph (d) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, submitters of technical proposals should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(End of provision)

**52.214-24 Multiple Technical Proposals.**

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

**MULTIPLE TECHNICAL PROPOSALS (APR 1984)**

In the first step of this two-step acquisition, solicited sources are encouraged to submit multiple technical proposals presenting different basic approaches. Each technical proposal submitted will be separately evaluated and the submitter will be notified as to its acceptability.

(End of provision)

**52.214-25 Step Two of Two-Step Sealed Bidding.**

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

**STEP TWO OF TWO-STEP SEALED BIDDING (APR 1985)**

(a) This invitation for bids is issued to initiate step two of two-step sealed bidding under Subpart 14.5 of the Federal Acquisition Regulation.

(b) The only bids that the Contracting Officer may consider for award of a contract are those received from bidders that have submitted acceptable technical proposals in step

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one of this acquisition under \_\_\_\_\_[*the Contracting Officer shall insert the identification of the step-one request for technical proposals*].

(c) Any bidder that has submitted multiple technical proposals in step one of this acquisition may submit a separate bid on each technical proposal that was determined to be acceptable to the Government.

(End of provision)

**52.214-26 Audit and Records—Sealed Bidding.**

As prescribed in 14.201-7(a), insert the following clause:

**AUDIT AND RECORDS—SEALED BIDDING**  
(OCT 1995)

(a) As used in this clause, “records” 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.

(b) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with the pricing of any modification to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

- (1) The proposal for the modification;
- (2) The discussions conducted on the proposal(s), including those related to negotiating;
- (3) Pricing of the modification; or
- (4) Performance of the modification.

(c) *Comptroller General.* In the case of pricing any modification, the Comptroller General of the United States, or an authorized representative, shall have the same rights as specified in paragraph (b) of this clause.

(d) *Availability.* The Contractor shall make available at its office at all reasonable times the materials described in paragraph (b) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR). FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) 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.

(2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(e) The Contractor shall insert a clause containing all the

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provisions of this clause, including this paragraph (e), in all subcontracts expected to exceed the threshold in FAR 15.804-2(a)(1) for submission of cost or pricing data.

(End of clause)

**52.214-27 Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.**

As prescribed in 14.201-7(b), insert the following clause:

**PRICE REDUCTION FOR DEFECTIVE COST OR**  
**PRICING DATA—MODIFICATIONS—SEALED**  
**BIDDING (OCT 1995)**

(a) This clause shall become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for the submission of cost or pricing data at FAR 15.804-2(a)(1), except that this clause does not apply to a modification if an exception under FAR 15.804-1 applies.

(b) If any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.

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

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

(ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the Contractor or subcontractor took no

affirmative action to bring the character of the data to the attention of the Contracting Officer.

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

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

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

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

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

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

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

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

(End of clause)

#### 52.214-28 Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.

As prescribed in 14.201-7(c), insert the following clause in solicitations and contracts:

##### SUBCONTRACTOR COST OR PRICING DATA—MODIFICATIONS—SEALED BIDDING (OCT 1995)

(a) The requirements of paragraphs (b) and (c) of this

clause shall (1) become operative only for any modification to this contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modifications involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.804-1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in subsection FAR 15.804-4 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that, when entered into, exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1).

(End of clause)

#### 52.214-29 Order of Precedence—Sealed Bidding.

As prescribed in 14.201-7(d), insert the following clause:

##### ORDER OF PRECEDENCE—SEALED BIDDING

(JAN 1986)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) contract clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

(End of clause)

#### 52.214-30 Annual Representations and Certifications—Sealed Bidding.

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

##### ANNUAL REPRESENTATIONS AND CERTIFICATIONS—SEALED BIDDING (DEC 1989)

The bidder certifies that annual representations and certifications (check the appropriate block):

☐ (a) Dated \_\_\_\_\_ (*insert date of signature of submission*), which are incorporated herein by reference, have been submitted to the contracting office issuing this solicitation and that the submittal is current, accurate, and complete as of the date of this bid, except as follows (*insert changes that affect only this solicitation; if "none," so state*):

☐ (b) Are enclosed.

(End of provision)

**52.214-31 Facsimile Bids.**

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

**FACSIMILE BIDS (DEC 1989)**

(a) Definition. "Facsimile bid," as used in this solicitation, means a bid, modification of a bid, or withdrawal of a bid that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.

(b) Bidders may submit facsimile bids as responses to this solicitation. These responses must arrive at the place and by the time, specified in the solicitation.

(c) Facsimile bids that fail to furnish required representations or information or that reject any of the terms, conditions, and provisions of the solicitation may be excluded from consideration.

(d) Facsimile bids must contain the required signatures.

(e) The Government reserves the right to make award solely on the facsimile bid. However, if requested to do so by the Contracting Officer, the apparently successful bidder agrees to promptly submit the complete original signed bid.

(f) Facsimile receiving data and compatibility characteristics are as follows:

(1) Telephone number of receiving facsimile equipment:

(2) Compatibility characteristics of receiving facsimile equipment (e.g., make and model number, receiving speed, communications protocol):

(g) If the bidder chooses to transmit a facsimile bid, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile bid including, but not limited to, the following:

(1) Receipt of garbled or incomplete bid.

(2) Availability or condition of the receiving facsimile equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of bid.

(5) Failure of the bidder to properly identify the bid.

(6) Illegibility of bid.

(7) Security of bid data.

(End of provision)

**52.214-32 Late Submissions, Modifications, and Withdrawals of Bids (Overseas).**

As prescribed in 14.201-6(c)(4), insert the following provision:

**LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS (OVERSEAS)**

(JUL 1995)

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation; or

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of bids. The term "working day" excludes weekends and U.S. Federal holidays.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.

(c) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(d) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(e) Bids may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipt of bids. If the solicitation authorizes facsimile bids, bids may be withdrawn via facsimile received at any time before the exact time set for receipt of bids, subject to the conditions specified in the provision entitled "Facsimile Bids." A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid.

(End of provision)

**52.214-33 Late Submissions, Modifications, and Withdrawals of Technical Proposals under Two-Step Sealed Bidding (Overseas).**

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

**LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF TECHNICAL PROPOSALS UNDER TWO-STEP SEALED BIDDING (OVERSEAS)**

(JUL 1995)

(a) Any technical proposal under step one of two-step sealed bidding received at the office designated in this solicitation after the exact time specified for receipt will not be considered unless it is received before the invitation for bids in step two is issued and it—

(1) Was sent (i) by mail, or (ii) if authorized by the solicitation, was sent by telegram (including mailgram) or

via facsimile, and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation;

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of technical proposals. The term "working day" excludes weekends and U.S. Federal holidays; or

(3) Is the only technical proposal received.

(b) Any modification of a technical proposal is subject to the same conditions as in paragraph (a) of this provision, except that (1) the use of a telegram (or mailgram) is authorized, and (2) if the solicitation authorizes facsimile bids, technical proposals may be modified via facsimile received at any time before the exact time set for receipt of bids under step two, subject to the conditions specified in the provision entitled "Facsimile Bids."

(c) Technical proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before the exact time set for receipt of bids under step two. If the solicitation authorizes facsimile bids, technical proposals may be withdrawn via facsimile received at any time before the exact time set for receipt of bids under step two, subject to the conditions specified in the provision entitled "Facsimile Bids." Technical proposals may be withdrawn in person by the submitter or the submitter's authorized representative if, before the exact time set for receipt of bids in step two, the identity of the person requesting withdrawal is established and that person signs a receipt for the technical proposal.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(End of provision)

#### 52.214-34 Submission of Offers in the English Language.

As prescribed in 14.201-6(x), 15.407(l), and 25.408(d), insert the following provision:

##### SUBMISSION OF OFFERS IN THE ENGLISH LANGUAGE (APR 1991)

Offers submitted in response to this solicitation shall be in the English language. Offers received in other than English shall be rejected.

(End of provision)

#### 52.214-35 Submission of Offers in U.S. Currency.

As prescribed in 14.201-6(y), 15.407(m), and 25.408(d), insert the following provision:

##### SUBMISSION OF OFFERS IN U.S. CURRENCY (APR 1991)

Offers submitted in response to this solicitation shall be in terms of U.S. dollars. Offers received in other than U.S.

dollars shall be rejected.

(End of provision)

#### 52.215-1 [Reserved]

#### 52.215-2 Audit and Records—Negotiation.

As prescribed in 15.106-1(b), insert the following clause:

##### AUDIT AND RECORDS—NEGOTIATION (OCT 1995)

(a) As used in this clause, "records" 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.

(b) *Examination of costs.* If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable contract, or any combination of these, the Contractor shall maintain and the Contracting Officer, or an authorized representative of the Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this contract. This right of examination shall include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the contract.

(c) *Cost or pricing data.* If the Contractor has been required to submit cost or pricing data in connection with any pricing action relating to this contract, the Contracting Officer, or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Contractor's records, including computations and projections, related to—

(1) The proposal for the contract, subcontract, or modification;

(2) The discussions conducted on the proposal(s), including those related to negotiating;

(3) Pricing of the contract, subcontract, or modification; or

(4) Performance of the contract, subcontract or modification.

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

(2) This paragraph may not be construed to require the Contractor or subcontractor to create or maintain any record that the Contractor or subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) *Reports.* If the Contractor is required to furnish cost, funding, or performance reports, the Contracting Officer or an authorized representative of the Contracting Officer shall have the right to examine and audit the supporting

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records and materials, for the purpose of evaluating (1) the effectiveness of the Contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.

(f) *Availability.* The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in Subpart 4.7, Contractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this contract. In addition—

(1) 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; and

(2) 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.

(g) The Contractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all subcontracts under this contract that exceed the simplified acquisition threshold in FAR Part 13, and—

(1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;

(2) For which cost or pricing data are required; or

(3) That require the subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

(End of clause)

*Alternate I* (OCT 1995). As prescribed in 15.106-1(c), in facilities contracts, add the following sentence at the end of paragraph (b) of the basic clause:

The obligations and rights specified in this paragraph shall extend to the use of, and charges for the use of, the facilities under this contract.

*Alternate II* (OCT 1995). As prescribed in 15.106-1(c), in cost-reimbursement contracts with educational and other non-profit institutions, add the following paragraph (h) to the basic clause:

(h) The provisions of OMB Circular No. A-133, "Audits of Institutions of Higher Learning and Other Nonprofit Institutions," apply to this contract.

*Alternate III* (OCT 1995). As prescribed in 15.106-1(c), delete paragraph (d) of the basic clause and redesignate the remaining paragraphs accordingly.

### 52.215-3 Solicitation for Information or Planning Purposes.

As prescribed in 15.405-2, insert the following provi-

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sion on the face of each solicitation (other than those excluded by 15.401) issued for information or planning purposes:

#### SOLICITATION FOR INFORMATION OR PLANNING PURPOSES (APR 1984)

(a) The Government does not intend to award a contract on the basis of this solicitation or to otherwise pay for the information solicited except as provided in subsection 31.205-18, Bid and proposal (B&P) costs, of the Federal Acquisition Regulation.

(b) This solicitation is issued for the purpose of: [*state purpose*].

(End of provision)

(R 1-309)

### 52.215-4 Notice of Possible Standardization.

As prescribed in 15.407(b), insert the following provision:

#### NOTICE OF POSSIBLE STANDARDIZATION (APR 1985)

If the supplies for which this solicitation has been issued are established as standard, future contracts for the required supplies may be awarded without providing for full and open competition under section 6.302-1 of the Federal Acquisition Regulation.

(End of provision)

### 52.215-5 Solicitation Definitions.

As prescribed 15.407(c)(1), insert the following provision:

#### SOLICITATION DEFINITIONS (JUL 1987)

"Government" means United States Government.

"Offer" means "proposal" in negotiation.

"Solicitation" means a request for proposals (RFP) or a request for quotations (RFQ) in negotiation.

(End of provision)

### 52.215-6 Type of Business Organization.

As prescribed in 15.407(c)(2), insert the following provision:

#### TYPE OF BUSINESS ORGANIZATION (JUL 1987)

The offeror or quoter, by checking the applicable box, represents that—

(a) It operates as ☐ a corporation incorporated under the laws of the State of \_\_\_\_\_, ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, or ☐ a joint venture.

(b) If the offeror or quoter is a foreign entity, it operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a joint venture, or ☐ a corporation, registered for business in \_\_\_\_\_.

(country)

(End of provision)

**52.215-7 Unnecessarily Elaborate Proposals or Quotations.**

As prescribed in 15.407(c)(3), insert the following provision in requests for proposals and requests for quotations:

UNNECESSARILY ELABORATE PROPOSALS  
OR QUOTATIONS  
(APR 1984)

Unnecessarily elaborate brochures or other presentations beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the offeror's or quoter's lack of cost consciousness. Elaborate art work, expensive paper and bindings, and expensive visual and other presentation aids are neither necessary nor wanted.

(End of provision)  
(AV 7-2003.40 1969 OCT)

**52.215-8 Amendments to Solicitations.**

As prescribed in 15.407(c)(4), insert the following provision :

AMENDMENTS TO SOLICITATIONS (DEC 1989)

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

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

(End of provision)

**52.215-9 Submission of Offers.**

As prescribed in 15.407(c)(5), insert the following provision:

SUBMISSION OF OFFERS (JUL 1995)

(a) Offers and modifications thereof shall be submitted in sealed envelopes or packages (1) addressed to the office specified in the solicitation, and (2) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(b) Telegraphic offers will not be considered unless authorized by the solicitation; however, offers may be modified by written or telegraphic notice.

(c) Facsimile offers, modifications or withdrawals will not be considered unless authorized by the solicitation.

(d) Offers submitted by electronic commerce shall be considered only if the electronic commerce method was specifically stipulated or permitted by the solicitation.

(e) Item samples, if required, must be submitted within the time specified for receipt of offers. Unless otherwise specified in the solicitation, these samples shall be (1) submitted at no expense to the Government, and (2) returned at the sender's request and expense, unless they are destroyed during preaward testing.

(End of provision)

**52.215-10 Late Submissions, Modifications, and Withdrawals of Proposals.**

As prescribed in 15.407(c)(6), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND  
WITHDRAWALS OF PROPOSALS (JUL 1995)

(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);

(2) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile and it is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at the Government installation;

(3) Was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5:00 p.m. at the place of mailing two working days prior to the date specified for receipt of proposals. The term "working days" excludes weekends and U.S. Federal holidays;

(4) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(5) Is the only proposal received.

(b) Any modification of a proposal or quotation, except a modification resulting from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.

(c) A modification resulting from the Contracting Officer's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation.

(d) The only acceptable evidence to establish the date of mailing of a late proposal or modification sent either by U.S. Postal Service registered or certified mail is the U.S. or Canadian Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. or Canadian Postal Service. Both postmarks must show a legible date or the proposal, quotation, or modification shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors or quoters should request the postal clerk to place a legible hand cancellation bull's eye postmark on both the receipt and the envelope or wrapper.

(e) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date

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stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service-Post Office to Addressee is the date entered by the post office receiving clerk on the “Express Mail Next Day Service-Post Office to Addressee” label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. “Postmark” has the same meaning as defined in paragraph (d) of this provision, excluding postmarks of the Canadian Postal Service. Therefore, offerors or quoters should request the postal clerk to place a legible hand cancellation bull’s eye postmark on both the receipt and the envelope or wrapper.

(g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(h) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile received at any time before award, subject to the conditions specified in the provision entitled “Facsimile Proposals.” Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative’s identity is made known and the representative signs a receipt for the proposal before award.

(End of provision)

**52.215-11 Authorized Negotiators.**

As prescribed in 15.407(c)(7), insert the following provision in all requests for proposals and requests for quotations:

**AUTHORIZED NEGOTIATORS (APR 1984)**

The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations: *[list names, titles, and telephone numbers of the authorized negotiators]*.

(End of provision)

(R 3-501(b) Sec K (iv))

**52.215-12 Restriction on Disclosure and Use of Data.**

As prescribed in 15.407(c)(8), insert the following provision in requests for proposals and requests for quotations

**RESTRICTION ON DISCLOSURE AND USE OF DATA (APR 1984)**

Offerors or quoters who include in their proposals or quotations data that they do not want disclosed to the public for any purpose or used by the Government except for evaluation purposes, shall—

(a) Mark the title page with the following legend:

“This proposal or quotation includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose

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other than to evaluate this proposal or quotation. If, however, a contract is awarded to this offeror or quoter as a result of—or in connection with—the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government’s right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets *[insert numbers or other identification of sheets]*,” and

(b) Mark each sheet of data it wishes to restrict with the following legend:

“Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal or quotation.”

(End of provision)

(R 3-501(b) Sec L (xxiv))

**52.215-13 Preparation of Offers.**

As prescribed in 15.407(d)(1), insert the following provision in requests for proposals other than those excluded by 15.401:

**PREPARATION OF OFFERS (APR 1984)**

(a) Offerors are expected to examine the drawings, specifications, Schedule, and all instructions. Failure to do so will be at the offeror’s risk.

(b) Each offeror shall furnish the information required by the solicitation. The offeror shall sign the offer and print or type its name on the Schedule and each continuation sheet on which it makes an entry. Erasures or other changes must be initialed by the person signing the offer. Offers signed by an agent shall be accompanied by evidence of that agent’s authority, unless that evidence has been previously furnished to the issuing office.

(c) For each item offered, offerors shall (1) show the unit price/cost, including, unless otherwise specified, packaging, packing, and preservation and (2) enter the extended price/cost for the quantity of each item offered in the “Amount” column of the Schedule. In case of discrepancy between a unit price/cost and an extended price/cost, the unit price/cost will be presumed to be correct, subject, however, to correction to the same extent and in the same manner as any other mistake.

(d) Offers for supplies or services other than those specified will not be considered unless authorized by the solicitation.

(e) Offerors must state a definite time for delivery of supplies or for performance of services, unless otherwise specified in the solicitation.

(f) Time, if stated as a number of days, will include Saturdays, Sundays, and holidays.

(End of provision)

(R SF 33A, Para 2, 1978 JAN)

**52.215-14 Explanation to Prospective Offerors.**

As prescribed in 15.407(d)(2), insert the following provision in requests for proposals other than those excluded by 15.401:



EXPLANATION TO PROSPECTIVE OFFERORS  
(APR 1984)

Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their offers. Oral explanations or instructions given before the award of the contract will not be binding. Any information given to a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment of the solicitation, if that information is necessary in submitting offers or if the lack of it would be prejudicial to any other prospective offerors.

(End of provision)

(R SF 33A, Para 3, 1978 JAN)

**52.215-15 Failure to Submit Offer**

As prescribed in 15.407(d)(3), insert the following provision:

FAILURE TO SUBMIT OFFER (JUL 1995)

Recipients of this solicitation not responding with an offer should not return this solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter, postcard, or established electronic commerce methods, whether they want to receive future solicitations for similar requirements. If a recipient does not submit an offer and does not notify the issuing office that future solicitations are desired, the recipient's name may be removed from the applicable mailing list.

(End of provision)

**52.215-16 Contract Award.**

As prescribed in 15.407(d)(4), insert the following provision:

CONTRACT AWARD (OCT 1995)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, cost or price and other factors, specified elsewhere in this solicitation, considered.

(b) The Government may (1) reject any or all offers if such action is in the public interest, (2) accept other than the lowest offer, and (3) waive informalities and minor irregularities in offers received.

(c) The Government intends to evaluate proposals and award a contract after conducting written or oral discussions with all responsible offerors whose proposals have been determined to be within the competitive range. However, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint.

(d) The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. *Unless otherwise provided in the Schedule, offers may be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the*

*quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the offer.*

(e) A written award or acceptance of offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer, as provided in paragraph (d) above), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. Negotiations conducted after receipt of an offer do not constitute a rejection or counteroffer by the Government.

(f) Neither financial data submitted with an offer, nor representations concerning facilities or financing, will form a part of the resulting contract. However, if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished is incomplete, inaccurate, or not current.

(g) The Government may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items or subline items. An offer is materially unbalanced when it is based on prices significantly less than cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the offer will result in the lowest overall cost to the Government, even though it may be the low evaluated offer, or it is so unbalanced as to be tantamount to allowing an advance payment.

(h) The Government may disclose the following information in post-award debriefings to other offerors: (1) the overall evaluated cost or price and technical rating of the successful offeror; (2) the overall ranking of all offerors, when any ranking was developed by the agency during source selection; (3) a summary of the rationale for award; and (4) for acquisitions of commercial end items, the make and model of the item to be delivered by the successful offeror.

(End of provision)

*Alternate I* (OCT 1995). As prescribed in 15.407(d)(4)(i), substitute the following paragraph (d) for paragraph (d) of the basic provision:

(d) The Government may accept any item or combination of items, unless doing so is precluded by a restrictive limitation in the solicitation or offer.

*Alternate II* (OCT 1995). As prescribed in 15.407(d)(4)(ii), substitute the following paragraph (c) for paragraph (c) of the basic provision:

(c) The Government intends to evaluate proposals and award a contract without discussions with offerors (except communications conducted for the purpose of minor clarification). Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary.

**52.215-17 Telegraphic Proposals.**

As prescribed in 15.407(e)(1), insert the following provision:

**TELEGRAPHIC PROPOSALS (JUL 1987)**

(a) Offerors or quoters may submit telegraphic responses to this solicitation. These responses must arrive at the place, and by the time, specified in the solicitation.

(b) Telegraphic responses shall refer to this solicitation and include the item or subitems, quantities, unit prices, time and place of delivery, all representations and other information required by this solicitation, and a statement specifying the extent of agreement with all the terms, conditions, and provisions of the solicitation.

(c) Telegraphic responses that fail to furnish required representations or information, or that reject any of the terms, conditions and provisions of the solicitation, may be excluded from consideration.

(d) Offerors must promptly sign and submit complete copies of the proposals in confirmation of their telegraphic responses.

(e) The term "telegraphic responses," as used in the provision, includes mailgrams.

(End of provision)

*Alternate I* (NOV 1988). As prescribed in 15.407(e)(2), substitute the following for paragraph (d) of the basic provision:

(d) Written confirmation of telegraphic proposals is not required.

**52.215-18 Facsimile Proposals.**

As prescribed in 15.407(j), insert the following provision:

**FACSIMILE PROPOSALS (DEC 1989)**

(a) *Definition.* "Facsimile proposal," as used in this solicitation, means a proposal, modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.

(b) Offerors may submit facsimile proposals as responses to this solicitation. These responses must arrive at the place, and by the time, specified in the solicitation.

(c) Facsimile proposals that fail to furnish required representations or information, or that reject any of the terms, conditions, and provisions of the solicitation, may be excluded from consideration.

(d) Facsimile proposals must contain the required signatures.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror agrees to promptly submit the complete original signed proposal.

(f) Facsimile receiving data and compatibility characteristics are as follows:

(1) Telephone number of receiving facsimile equipment:

(2) Compatibility characteristics of receiving facsimile equipment (e.g., make and model number, receiving speed, communications protocol):

(g) If the offeror chooses to transmit a facsimile proposal, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile proposal including, but not limited to, the following:

(1) Receipt of garbled or incomplete proposal.

(2) Availability or condition of the receiving facsimile equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of proposal.

(5) Failure of the offeror to properly identify the proposal.

(6) Illegibility of proposal.

(7) Security of proposal data.

(End of provision)

**52.215-19 Period for Acceptance of Offer.**

As prescribed in 15.407(f), insert the following provision:

**PERIOD FOR ACCEPTANCE OF OFFER (APR 1984)**

In compliance with the solicitation, the offeror agrees, if this offer is accepted within \_\_\_\_\_ calendar days (60 calendar days unless a different period is inserted by the offeror) from the date specified in the solicitation for receipt of offers, to furnish any or all items on which prices are offered at the price set opposite each item, delivered at the designated point(s), within the time specified in the Schedule.

(End of provision)

(R SF 33 1977 MAR)

**52.215-20 Place of Performance.**

As prescribed in 15.407(g), insert the following provision:

**PLACE OF PERFORMANCE (APR 1984)**

(a) The offeror or quoter, in the performance of any contract resulting from this solicitation, ☐ intends, ☐ does not intend (check applicable block) to use one or more plants or facilities located at a different address from the address of the offeror or quoter as indicated in this proposal or quotation.

(b) If the offeror or quoter checks "intends" in paragraph (a) above, it shall insert in the spaces provided below the required information:

Place of Performance (Street, Address, City, County, State, Zip Code)	Name and Address of Owner and Operator of the Plant or Facility if Other than Offeror or Quoter
---	--

\_\_\_\_\_.  
\_\_\_\_\_.

(End of provision)

(R 3-501(b) Sec K (viii))

**52.215-21 Changes or Additions to Make-or-Buy Program.**

As prescribed in 15.708, insert the following clause in solicitations and contracts when it is contemplated that a make-or-buy program will be incorporated in the contract:

**CHANGES OR ADDITIONS TO MAKE-OR-BUY PROGRAM (APR 1984)**

(a) The Contractor shall perform in accordance with the make-or-buy program incorporated in this contract. If the Contractor proposes to change the program, the Contractor shall, reasonably in advance of the proposed change, (1) notify the Contracting Officer in writing and (2) submit justification in sufficient detail to permit evaluation. Changes in the place of performance of any “make” items in the program are subject to this requirement.

(b) For items deferred at the time of negotiation of this contract for later addition to the program, the Contractor shall, at the earliest possible time, (1) notify the Contracting Officer of each proposed addition and (2) provide justification in sufficient detail to permit evaluation.

(c) Modification of the make-or-buy program to incorporate proposed changes or additions shall be effective upon the Contractor’s receipt of the Contracting Officer’s written approval.

(End of clause)

*Alternate I* (APR 1984). If a less economical “make” or “buy” categorization is selected for one or more items of significant value when a fixed-price incentive contract is contemplated, add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of “make” or “buy” for any item or items designated in the contract as subject to this paragraph, it shall (1) support its proposal with cost or pricing data to permit evaluation and (2), after approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract price in accordance with paragraph (k) of the Incentive Price Revision—Firm Target clause or paragraph (m) of the Incentive Price Revision—Successive Targets clause of this contract.

*Alternate II* (APR 1984). If a less economical “make” or “buy” categorization is selected for one or more items of significant value when a cost-plus-incentive-fee contract is contemplated, add the following paragraph (d) to the basic clause:

(d) If the Contractor desires to reverse the categorization of “make” or “buy” for any item or items designated in the contract as subject to this paragraph, it shall (1) support its proposal with cost or pricing data to permit evaluation and (2), after approval is granted, promptly negotiate with the Contracting Officer an equitable reduction in the contract’s total estimated cost and fee in accordance with paragraph (e) of the Incentive Fee clause.

**52.215-22 Price Reduction for Defective Cost or Pricing Data.**

As prescribed in 15.804-8(a), insert the following clause:

**PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1995)**

(a) If any price, including profit or fee, negotiated in connection with this contract, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor’s Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction.

(b) Any reduction in the contract price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; *provided*, that the actual subcontract price was not itself affected by defective cost or pricing data.

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

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

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

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

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

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

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

(B) The Contractor proves that the cost or price

ing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

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

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

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

(End of clause)

#### **52.215-23 Price Reduction for Defective Cost or Pricing Data—Modifications.**

As prescribed in 15.804-8(b), insert the following clause:  
**PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA—MODIFICATIONS (OCT 1995)**

(a) This clause shall become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), except that this clause does not apply to any modification if an exception under FAR 15.804-1 applies.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this contract, was increased by any significant amount because (1) the Contractor or a subcontractor furnished cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data, (2) a subcontractor or prospective subcontractor furnished the Contractor cost or pricing data that were not complete, accurate, and current as certified in the Contractor's Certificate of Current Cost or Pricing Data, or (3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to

modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Contractor, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Contractor; *provided*, that the actual subcontract price was not itself affected by defective cost or pricing data.

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

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

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

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

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

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

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

(B) The Contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.

(ii) An offset shall not be allowed if—

(A) The understated data was known by the Contractor to be understated when the Certificate of Current Cost or Pricing Data was signed; or

(B) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

(e) If any reduction in the contract price under this

clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—

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

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

(End of clause)

#### **52.215-24 Subcontractor Cost or Pricing Data.**

As prescribed in 15.804-8(c), insert the following clause:

##### **SUBCONTRACTOR COST OR PRICING DATA (OCT 1995)**

(a) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.804-1 applies.

(b) The Contractor shall require the subcontractor to certify in substantially the form prescribed in subsection 15.804-4 of the Federal Acquisition Regulation (FAR) that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), when entered into, the Contractor shall insert either—

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

(2) The substance of the clause at FAR 52.215-25, Subcontractor Cost or Pricing Data—Modifications.  
(End of clause)

#### **52.215-25 Subcontractor Cost or Pricing Data—Modifications.**

As prescribed in 15.804-8(d), insert the following clause:  
**SUBCONTRACTOR COST OR PRICING DATA—**

##### **MODIFICATIONS (OCT 1995)**

(a) The requirements of paragraphs (b) and (c) of this clause shall (1) become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1); and (2) be limited to such modifications.

(b) Before awarding any subcontract expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1), the Contractor shall require the subcontractor to submit cost or pricing data (actually or by specific identification in writing), unless an exception under FAR 15.804-1 applies.

(c) The Contractor shall require the subcontractor to certify in substantially the form prescribed in FAR 15.804-4 that, to the best of its knowledge and belief, the data submitted under paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of cost or pricing data at FAR 15.804-2(a)(1) on the date of agreement on price or the date of award, whichever is later.

(End of clause)

#### **52.215-26 Integrity of Unit Prices.**

As prescribed in 15.812-2, insert the following clause:

##### **INTEGRITY OF UNIT PRICES (OCT 1995)**

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

(b) The requirement in paragraph (a) of this clause does not apply to any contract or subcontract item of supply for which the unit price is, or is based on, an established catalog or market price for a commercial item sold in substantial quantities to the general public or to an item qualifying for a commercial item exception to cost or pricing data. A price is based on an established catalog or market price only if the item being purchased is sufficiently similar to the catalog or market priced commercial item to ensure that any difference in prices can be identified and justified without resort to cost analysis.

(c) The Offeror/Contractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value when requested by the Contracting Officer. The information shall not be required for commercial items sold in substantial quantities to the general public when the price is, or is based on, established catalog or market prices.

(d) The Contractor shall insert the substance of this clause, less paragraph (c), in all subcontracts.

(End of clause)

*Alternate I (APR 1991).* As prescribed in 15.812-2(b), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The Offeror/Contractor shall also identify those supplies which it will not manufacture or to which it will not contribute significant value. This information is not required for commercial items sold in substantial quantities to the general public when the price is, or is based on, established catalog or market prices.

#### **52.215-27 Termination of Defined Benefit Pension Plans.**

As prescribed in 15.804-8(e), insert the following clause:  
TERMINATION OF DEFINED BENEFIT  
PENSION PLANS (SEP 1989)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(j)(4). The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirement of FAR 15.804-8(e).

(End of clause)

#### **52.215-28—52.215-29 [Reserved]**

#### **52.215-30 Facilities Capital Cost of Money.**

As prescribed in 15.904(a), insert the following provision:

FACILITIES CAPITAL COST OF MONEY (SEP 1987)

(a) Facilities capital cost of money will be an allowable cost under the contemplated contract, if the criteria for allowability in subparagraph 31.205-10(a)(2) of the Federal Acquisition Regulation are met. One of the allowability criteria requires the prospective contractor to propose facilities capital cost of money in its offer.

(b) If the prospective Contractor does not propose this cost, the resulting contract will include the clause Waiver of Facilities Capital Cost of Money.

(End of provision)

#### **52.215-31 Waiver of Facilities Capital Cost of Money.**

As prescribed in 15.904(b), insert the following clause:  
WAIVER OF FACILITIES CAPITAL COST  
OF MONEY (SEP 1987)

The Contractor did not include facilities capital cost of money as a proposed cost of this contract. Therefore, it is an unallowable cost under this contract.

(End of clause)

#### **52.215-32 [Reserved]**

#### **52.215-33 Order of Precedence.**

As prescribed in 15.406-3(b), insert the following clause:

52-50 (FAC 90-32)

#### **ORDER OF PRECEDENCE (JAN 1986)**

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) the Schedule (excluding the specifications); (b) representations and other instructions; (c) contract clauses; (d) other documents, exhibits, and attachments; and (e) the specifications.

(End of clause)

#### **52.215-34 Evaluation of Offers for Multiple Awards.**

As prescribed in 15.407(h), insert the following provision:

EVALUATION OF OFFERS FOR MULTIPLE AWARDS  
(MAR 1990)

In addition to other factors, offers will be evaluated on the basis of advantages and disadvantages to the Government that might result from making more than one award (multiple awards). It is assumed, for the purpose of evaluating proposals, that \$500 would be the administrative cost to the Government for issuing and administering each contract awarded under this solicitation and individual awards shall be for the items or combinations of items that result in the lowest aggregate cost to the Government, including the assumed administrative costs.

(End of provision)

#### **52.215-35 Annual Representations and Certifications—Negotiation.**

As prescribed in 15.407(i), insert the following provision:

ANNUAL REPRESENTATIONS AND  
CERTIFICATIONS—NEGOTIATION (DEC 1989)

The offeror certifies that annual representations and certifications (check the appropriate block):

☐ (a) Dated \_\_\_\_\_ (*insert date of signature on submission*) which are incorporated herein by reference, have been submitted to the contracting office issuing this solicitation and that the submittal is current, accurate, and complete as of the date of this bid, except as follows (*insert changes that affect only this solicitation; if "none," so state*):

☐ (b) Are enclosed.

(End of provision)

#### **52.215-36 Late Submissions, Modifications, and Withdrawals of Proposals (Overseas).**

As prescribed in 15.407(c)(9), insert the following provision:

LATE SUBMISSIONS, MODIFICATIONS, AND  
WITHDRAWALS OF PROPOSALS (OVERSEAS)  
(JUL 1995)

(a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—

(1) Was sent by mail or, if authorized by the solicitation, was sent by telegram or via facsimile, and it is

determined by the Government the late receipt was due solely to mishandling by the Government after receipt at the Government installation;

(2) Was transmitted through an electronic commerce method authorized by the solicitation and was received by the Government not later than 5:00 p.m. one working day prior to the date specified for receipt of proposals; or

(3) Is the only proposal received.

(b) Any modification of a proposal or quotation, except a modification resulting from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in subparagraph (a)(1) of this provision.

(c) A modification resulting from the Contracting Officer's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt was due solely to mishandling by the Government after receipt at the installation.

(d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of the installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.

(e) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(f) Proposals may be withdrawn by written notice or telegram (including mailgram) received at any time before award. If the solicitation authorizes facsimile proposals, proposals may be withdrawn via facsimile at any time before award, subject to the conditions specified in the provision entitled "Facsimile Proposals." Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.

(End of provision)

#### 52.215-37 [Reserved]

#### 52.215-38 Preparation of Offers—Construction.

As prescribed in 15.407(k), insert the following provision:

##### PREPARATION OF OFFERS—CONSTRUCTION (JAN 1991)

(a) Offers must be (1) submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing an offer must initial each erasure or change appearing on any offer form.

(b) The offer form may require Offerors to submit offer prices for one or more items on various bases, including—

(1) Lump sum offer;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of subparagraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires an offer on all items, failure

to do so will disqualify the offer. If an offer on all items is not required, Offerors should insert the words "no offer" in the space provided for any item on which no price is submitted.

(d) Alternate offers will not be considered unless this solicitation authorizes their submission.

(End of provision)

#### 52.215-39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).

As prescribed in 15.804-8(f), insert the following clause:

##### REVERSION OR ADJUSTMENT OF PLANS FOR POSTRETIREMENT BENEFITS (PRB) OTHER THAN PENSIONS (FEB 1995)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share as required by FAR 31.205-6(o)(6). The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirements of FAR 15.804-8(f). The resulting adjustment to prior years' PRB costs will be determined and applied in accordance with FAR 31.205-6(o).

(End of clause)

#### 52.215-40 Notification of Ownership Changes.

As prescribed in 15.804-8(g), insert the following clause:

##### NOTIFICATION OF OWNERSHIP CHANGES (FEB 1995)

(a) The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, which could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.

(2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall: (1) maintain current, accurate, and complete inventory records of assets and their costs; (2) provide the ACO or designated representative ready access to the records upon request; (3) ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and (4) retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirement of FAR 15.804-8(g).

(End of clause)

**52.215-41 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.**

As prescribed in 15.804-8(h), insert the following provision:

**REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA (OCT 1995)**

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) Information relative to an exception granted for prior or repetitive acquisitions.

(ii) Catalog price information as follows:

(A) Attach a copy of or identify the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which this proposal is being made.

(B) Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, and reseller.

(C) Additionally, for each catalog item that exceeds \* (extended value not unit price), provide evidence of substantial sales to the general public. This may include sales order, contract, shipment, invoice, actual recorded sales or other records that are verifiable. In addition, if the basis of the price proposal is sales of essentially the same commercial item by affiliates, other manufacturers or vendors, those sales may be included. The offeror shall explain the basis of each offered price and its relationship to the established catalog price. When substantial general public sales have also been made at prices other than catalog or price list prices, the offeror shall indicate how the proposed price relates to the price of such recent sales in quantities similar to the proposed quantities.

(iii) *Market price information.* Include the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. The nature of the market should be described. The supply or service being purchased should be the same as or similar to the market price supply or service. Data supporting substantial sales to the general public is also required.

(iv) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(v) For a commercial item exception, information on prices at which the same item or similar items have been sold in the commercial market.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for cost or pricing data.* If the offeror is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The offeror shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15-2 of FAR 15.804-6(b)(2).

(2) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.804-4.

(c) By submitting information to qualify for an exception, an offeror is not representing that this is the only exception that may apply.

(End of provision)

\* Insert dollar amount for sampling (see 15.804-1(c)(1))

*Alternate I* (OCT 1995). As prescribed in 15.804-8(h), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)(1) The offeror shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in the following format:

*Alternate II* (OCT 1995). As prescribed in 15.804-8(h), add the following paragraph (d) to the basic provision:

(d) When the proposal is submitted, also submit one copy each, including the SF 1411 and supporting attachments, to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

*Alternate III* (OCT 1995). As prescribed in 15.804-8(h), add the following paragraph (d) to the basic provision (if Alternate II is also used, redesignate as paragraph (e)).

(c) Submit the cost portion of the proposal via the following electronic media: (*Insert media format, e.g., electronic spreadsheet format, electronic mail, etc.*).

*Alternate IV* (OCT 1995). As prescribed in 15.804-8(h), replace the text of the basic provision with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: (*Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accor-*



*dance with 15.804-6(a)(5). Standard Form 1448, Proposal Cover Sheet (Cost or Pricing Data Not Required), may be used for information other than cost or pricing data.)*

**52.215-42 Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications.**

As prescribed in 15.804-8(i), insert the following clause:  
**REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA—MODIFICATIONS (OCT 1995)**

(a) *Exceptions from cost or pricing data.* (1) In lieu of submitting cost or pricing data for modifications under this contract, for price adjustments expected to exceed the threshold set forth at FAR 15.804-2(a)(1) on the date of the agreement on price or the date of the award, whichever is later, the Contractor may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable—

(i) Information relative to an exception granted for prior or repetitive acquisitions.

(ii) Catalog price information as follows:

(A) Attach a copy of or identify the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which this proposal is being made.

(B) Provide a copy or describe current discount policies and price lists (published or unpublished), e.g., wholesale, original equipment manufacturer, and reseller.

(C) Additionally, for each catalog item that exceeds    \* (extended value not unit price), provide evidence of substantial sales to the general public. This may include sales order, contract, shipment, invoice, actual recorded sales or other records that are verifiable. In addition, if the basis of the price proposal is sales of essentially the same commercial item by affiliates, other manufacturers or vendors, those sales may be included. The offeror shall explain the basis of each offered price and its relationship to the established catalog price. When substantial general public sales have also been made at prices other than catalog or price list prices, the offeror shall indicate how the proposed price relates to the price of such recent sales in quantities similar to the proposed quantities.

(iii) *Market price information.* Include the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. The nature of the market should be described. The supply or service being purchased should be the same as or similar to the market price supply or service. Data supporting substantial sales

to the general public is also required.

(iv) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(v) Information on modifications of contracts or subcontracts for commercial items.

(A) If (1) the original contract or subcontract was granted an exception from cost or pricing data requirements because the price agreed upon was based on adequate price competition, catalog or market prices of commercial items, or prices set by law or regulation; and (2) The modification (to the contract or subcontract) is not exempted based on one of these exceptions, then the Contractor may provide information to establish that the modification would not change the contract or subcontract from a contract or subcontract for the acquisition of a commercial item to a contract or subcontract for the acquisition of an item other than a commercial item.

(B) For a commercial item exception, the Contractor may provide information on prices at which the same item or similar items have been sold in the commercial market.

(2) The Contractor grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. Access does not extend to cost or profit information or other data relevant solely to the Contractor's determination of the prices to be offered in the catalog or marketplace.

(3) By submitting information to qualify for an exception, an offeror is not representing that this is the only exception that may apply.

(b) *Requirements for cost or pricing data.* If the Contractor is not granted an exception from the requirement to submit cost or pricing data, the following applies:

(1) The Contractor shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in accordance with Table 15-2 of FAR 15.804-6(b)(2).

(2) As soon as practicable after agreement on price, but before award (except for unpriced actions), the Contractor shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.804-4.

(End of clause)

\* *Insert dollar amount for sampling (see 15.804-1(c)(1))*

*Alternate 1 (OCT 1995).* As prescribed in 15.804-8(i), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic clause.

## 52.215-43

(b)(1) The Contractor shall submit cost or pricing data on Standard Form (SF) 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), with supporting attachments prepared in the following format:

*Alternate II* (OCT 1995). As prescribed in 15.804-8(i), add the following paragraph (c) to the basic clause:

(c) When the proposal is submitted, also submit one copy each, including the SF 1411 and supporting attachments, to: (1) the Administrative Contracting Officer, and (2) the Contract Auditor.

*Alternate III* (OCT 1995). As prescribed in 15.804-8(i), add the following paragraph (c) to the basic clause (if Alternate II is also used, redesignate as paragraph (d)):

(c) Submit the cost portion of the proposal via the following electronic media: *(Insert media format)*.

*Alternate IV* (OCT 1995). As prescribed in 15.804-8(i), replace the text of the basic clause with the following:

(a) Submission of cost or pricing data is not required.

(b) Provide information described below: *(Insert description of the information and the format that are required, including access to records necessary to permit an adequate evaluation of the proposed price in accordance with 15.804-6(a)(5). Standard Form 1418, Proposal Cover Sheet (Cost or Pricing Data Not Required), may be used for information other than cost or pricing data.)*

#### 52.215-43 Audit—Commercial Items.

As prescribed at 15.106-2, insert the following clause:

##### AUDIT—COMMERCIAL ITEMS (OCT 1995)

(a) As used in this clause, records include 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 any other form.

(b) This paragraph applies to solicitations and contracts or subcontracts for commercial items that may be or have been granted an exception from submittal of cost or pricing data only under FAR 15.804-1(a)(2). In order to determine the accuracy of the information on prices at which the same or similar items have been sold in the commercial market, the Contracting Officer and authorized representatives have a right to examine such information provided by the offeror, Contractor, or subcontractor, and all records that directly relate to such information. Access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the marketplace. This right shall expire two years after the date of award of the contract, or two years after the date of any modification to the contract, with respect to which this information is provided.

(c) If the prime Contractor and each higher-tier subcontractor were required to submit cost or pricing data, the Contractor and each subcontractor shall insert the substance of this clause, including this paragraph (c), in each subcontract for which submission of cost or pricing data was required or for which an exception was granted under FAR 15.804-1(a)(2).

(End of clause)

## FEDERAL ACQUISITION REGULATION (FAR)

#### 52.216-1 Type of Contract.

As prescribed in 16.105, complete and insert the following provision:

##### TYPE OF CONTRACT (APR 1984)

The Government contemplates award of a \_\_\_\_\_  
[Contracting Officer insert specific type of contract] contract resulting from this solicitation.

(End of provision)

#### 52.216-2 Economic Price Adjustment—Standard Supplies.

As prescribed in 16.203-4(a), when contracting by negotiation, insert the following clause in solicitations and contracts when the conditions specified in 16.203-4(a)(1)(i) through (iii) apply (but see 16.203-4(a)(2)). The clause may be modified by increasing the 10-percent limit on aggregate increases specified in subparagraph (c)(1), upon approval by the chief of the contracting office.

##### ECONOMIC PRICE ADJUSTMENT—STANDARD SUPPLIES (OCT 1995)

(a) The Contractor warrants that the unit price stated in the Schedule for \_\_\_\_\_ [offeror insert Schedule line item number] is not in excess of the Contractor's applicable established price in effect on the contract date for like quantities of the same item. The term "unit price" excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term "established price" means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, (2) meets the criteria of subsection 15.804-1 of the Federal Acquisition Regulation (FAR), and (3) is the net price after applying any standard trade discounts offered by the Contractor.

(b) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly. The Contractor shall certify (1) on each invoice that each unit price stated in it reflects all decreases required by this clause or (2) on the final invoice that all required price decreases have been applied as required by this clause.

(c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price shall be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the original contract unit price.

(2) The increased contract unit price shall be effective

(i) on the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter or (ii) if the written request is received later, on the date the Contracting Officer receives the request.

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.

(4) No modification increasing a contract unit price shall be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.

(5) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

(d) During the time allowed for the cancellation provided for in subparagraph (c)(5) of this clause, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) of this clause.

(End of clause)

### 52.216-3 Economic Price Adjustment—Semistandard Supplies.

As prescribed in 16.203-4(b), when contracting by negotiation, insert the following clause in solicitations and contracts when the conditions specified in 16.203-4(b)(1)(i) through (iii) apply (but see 16.203-4(b)(2)). The clause may be modified by increasing the 10-percent limit on aggregate increases specified in subparagraph (c)(1) of this section, upon approval by the chief of the contracting office.

#### ECONOMIC PRICE ADJUSTMENT—

#### SEMISTANDARD SUPPLIES (OCT 1995)

(a) The Contractor warrants that the supplies identified as line items \_\_\_\_\_ [*offeror insert Schedule line item number*] in the Schedule are, except for modifications required by the contract specifications, supplies for which it has an established price. The term "established price" means a price that (1) is an established catalog or market price for a commercial item sold in substantial quantities to the general public, (2) meets the criteria of subsection 15.804-1 of the Federal Acquisition Regulation (FAR), and (3) is the net price applying any standard trade discounts offered by the Contractor. The Contractor further warrants that, as of the date of this contract, any difference between the unit prices stated in the contract for these line items and the Contractor's established prices for like quantities of the nearest commercial equivalents are due to compliance with contract specifications and with any contract requirements for preservation, packaging, and packing beyond standard

commercial practice.

(b) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price (exclusive of any part of the unit price that reflects modifications resulting from compliance with specifications or with requirements for preservation, packaging, and packing beyond standard commercial practice) shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly. The Contractor shall certify (1) on each invoice that each unit price stated in it reflects all decreases required by this clause or (2) in the final invoice that all required price decreases have been applied as required by this clause.

(c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price (exclusive of any part of the unit price resulting from compliance with specifications or with requirements for preservation, packaging, and packing beyond standard commercial practice) shall be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:

(1) The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the original contract unit price.

(2) The increased contract unit price shall be effective (i) on the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter or (ii) if the written request is received later, on the date the Contracting Officer receives the request.

(3) The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.

(4) No modification increasing a contract unit price shall be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.

(5) Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.

(d) During the time allowed for the cancellation provided for in subparagraph (c)(5) of this clause, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit

## 52.216-4

## FEDERAL ACQUISITION REGULATION (FAR)

price, increased to the extent provided by paragraph (c) of this clause.

(End of clause)

#### 52.216-4 Economic Price Adjustment—Labor and Material.

As prescribed in 16.203-4(c), when contracting by negotiation, insert a clause that is substantially the same as the following clause in solicitations and contracts when the conditions specified in 16.203-4(c)(1)(i) through (iv) apply (but see 16.203-4(c)(2)). The clause may be modified by increasing the 10-percent limit on aggregate increases specified in subparagraph (c)(4), upon approval by the chief of the contracting office.

##### ECONOMIC PRICE ADJUSTMENT—LABOR AND MATERIAL (APR 1984)

(a) The Contractor shall notify the Contracting Officer if, at any time during contract performance, the rate of pay for labor (including fringe benefits) or the unit prices for material shown in the Schedule either increase or decrease. The Contractor shall furnish this notice within 60 days after the increase or decrease, or within any additional period that the Contracting Officer may approve in writing, but not later than the date of final payment under this contract. The notice shall include the Contractor's proposal for an adjustment in the contract unit prices to be negotiated under paragraph (b) of this clause, and shall include, in the form required by the Contracting Officer, supporting data explaining the cause, effective date, and amount of the increase or decrease and the amount of the Contractor's adjustment proposal.

(b) Promptly after the Contracting Officer receives the notice and data under paragraph (a) of this clause, the Contracting Officer and the Contractor shall negotiate a price adjustment in the contract unit prices and its effective date. However, the Contracting Officer may postpone the negotiations until an accumulation of increases and decreases in the labor rates (including fringe benefits) and unit prices of material shown in the Schedule results in an adjustment allowable under subparagraph (c)(3) of this clause. The Contracting Officer shall modify this contract (1) to include the price adjustment and its effective date and (2) to revise the labor rates (including fringe benefits) or unit prices of material as shown in the Schedule to reflect the increases or decreases resulting from the adjustment. The Contractor shall continue performance pending agreement on, or determination of, any adjustment and its effective date.

(c) Any price adjustment under this clause is subject to the following limitations:

(1) Any adjustment shall be limited to the effect on unit prices of the increases or decreases in the rates of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule. There shall be no adjustment for (i) supplies or services for which the production cost is not affected by such changes, (ii) changes in rates or unit prices other than those shown in the Schedule, or (iii) changes in the quantities of labor or

material used from those shown in the Schedule for each item.

(2) No upward adjustment shall apply to supplies or services that are required to be delivered or performed before the effective date of the adjustment, unless the Contractor's failure to deliver or perform according to the delivery schedule results from causes beyond the Contractor's control and without its fault or negligence, within the meaning of the Default clause.

(3) There shall be no adjustment for any change in rates of pay for labor (including fringe benefits) or unit prices for material which would not result in a net change of at least 3 percent of the then-current total contract price. This limitation shall not apply, however, if, after final delivery of all contract line items, either party requests an adjustment under paragraph (b) of this clause.

(4) The aggregate of the increases in any contract unit price made under this clause shall not exceed 10 percent of the original unit price. There is no percentage limitation on the amount of decreases that may be made under this clause.

(d) The Contractor shall include with the final invoice a certification that the Contractor either (1) has not experienced a decrease in rates of pay for labor (including fringe benefits) or unit prices for material shown in the Schedule or (2) has given notice of all such decreases in compliance with paragraph (a) of this clause.

(e) The Contracting Officer may examine the Contractor's books, records, and other supporting data relevant to the cost of labor (including fringe benefits) and material during all reasonable times until the end of 3 years after the date of final payment under this contract or the time periods specified in Subpart 4.7 of the Federal Acquisition Regulation (FAR), whichever is earlier.

(End of clause)

#### 52.216-5 Price Redetermination—Prospective.

As prescribed in 16.205-4, when contracting by negotiation, insert the following clause in solicitations and contracts when a fixed-price contract is contemplated and the conditions specified in 16.205-2 and 16.205-3(a) through (d) apply:

##### PRICE REDETERMINATION—PROSPECTIVE (OCT 1995)

(a) *General.* The unit prices and the total price stated in this contract shall be periodically redetermined in accordance with this clause, except that (1) the prices for supplies delivered and services performed before the first effective date of price redetermination (see paragraph (c) of this clause) shall remain fixed and (2) in no event shall the total amount paid under this contract exceed any ceiling price included in the 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.

(c) *Price redetermination periods.* For the purpose of

price redetermination, performance of this contract is divided into successive periods. The first period shall extend from the date of the contract to \_\_\_\_\_. [see Note (1)] and the second and each succeeding period shall extend for \_\_\_\_\_ [insert appropriate number] months from the end of the last preceding period, except that the parties may agree to vary the length of the final period. The first day of the second and each succeeding period shall be the effective date of price redetermination for that period.

(d) *Data submission.* (1) Not more than \_\_\_\_\_ nor less than \_\_\_\_\_ [see Note (2)] days before the end of each redetermination period, except the last, the Contractor shall submit—

(i) Proposed prices for supplies that may be delivered or services that may be performed in the next succeeding period, and—

(A) An estimate and breakdown of the costs of these supplies or services on Standard Form 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), or in any other form on which the parties may agree;

(B) Sufficient data to support the accuracy and reliability of this estimate; and

(C) An explanation of the differences between this estimate and the original (or last preceding) estimate for the same supplies or services; and

(ii) A statement of all costs incurred in performing this contract through the end of the \_\_\_\_\_ month [see Note (3)] before the submission of proposed prices, on Standard Form 1411, Contract Pricing Proposal Cover Sheet (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(2) The Contractor shall also submit, to the extent that it becomes available before negotiations on redetermined prices are concluded—

(i) Supplemental statements of costs incurred after the date stated in subdivision (d)(1)(ii) of this section for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data that the Contracting Officer may reasonably require.

(3) If the Contractor fails to submit the data required by subparagraphs (1) and (2) of this section, within the time specified, the Contracting Officer may suspend payments under this contract until the data are furnished. If 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.

(e) *Price redetermination.* Upon the Contracting Officer's receipt of the data required by paragraph (d) of this section, the Contracting Officer and the Contractor shall promptly negotiate to redetermine fair and reasonable prices for supplies that may be delivered or services that may be performed in the period following the effective date of price redetermination.

(f) *Contract modifications.* Each negotiated redetermination of prices shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer, stating the redetermined prices that apply during the redetermination period.

(g) *Adjusting billing prices.* Pending execution of the contract modification (see paragraph (f) of this section), the Contractor shall submit invoices or vouchers in accordance with the billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined price will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment shall be reflected in a contract modification and shall not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, and any requested additional payments, refunds, or credits shall be made promptly.

(h) *Quarterly limitation on payments statement.* This paragraph (h) applies only during periods for which firm prices have not been established.

(1) Within 45 days after the end of the 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 interim profit (used in establishing the initial contract price or agreed to for

the purpose of this paragraph (h)) 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; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) The statement required by subparagraph (1) of this section need not be submitted for any quarter for which either no costs are to be reported under subdivision (1)(ii) of this section, or revised billing prices have been established in accordance with paragraph (g) of this section, and do not exceed the existing contract price, the Contractor's price-redetermination proposal, or a price based on the most recent quarterly statement, whichever is least.

(3) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) of this section exceeds the sum due the Contractor, as computed in accordance with subdivisions (1)(i), (ii), and (iii) of this section, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits affected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account, consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions in refunds.

(4) 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.

(i) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis. The Contractor shall—

(1) Insert in each price redetermination or incentive price revision subcontract the substance of paragraph (h) of this section, and of this paragraph (i), modified to omit mention of the Government and to reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that part of subparagraph (h)(3) of this section relating to tax credits; and

(2) Include in each cost-reimbursement subcontract a requirement that each lower-tier price redetermination or incentive price revision subcontract contain the sub-

stance of paragraph (h) of this section, and this paragraph (i), modified as required by subparagraph (1) of this section.

(j) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon redetermined prices for any price redetermination period within 60 days (or within such other period as the parties agree) after the date on which the data required by paragraph (d) 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 (f), (g), and (h) 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. Pending final settlement, price redetermination for subsequent periods, if any, shall continue to be negotiated as provided in this clause.

(k) *Termination.* If this contract is terminated, prices shall continue to be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(End of clause)

#### NOTES:

(1) Express in terms of units delivered, or as a date; but in either case the period should end on the last day of a month.

(2) Insert the numbers of days chosen so that the Contractor's submission will be late enough to reflect recent cost experience (taking into account the Contractor's accounting system), but early enough to permit review, audit (if necessary), and negotiation before the start of the prospective period.

(3) Insert "first," except that "second" may be inserted if necessary to achieve compatibility with the Contractor's accounting system.

#### 52.216-6 Price Redetermination—Retroactive.

As prescribed in 16.206-4, insert the following clause:

##### PRICE REDETERMINATION—RETROACTIVE (OCT 1995)

(a) *General.* The unit price and the total price stated in this contract shall be redetermined in accordance with this clause, but in no event shall the total amount paid under this contract exceed \_\_\_\_\_ [insert dollar amount of ceiling price].

(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.

(c) *Data submission.* (1) Within \_\_\_\_\_ [Contracting Officer insert number of days] days after delivery of all supplies to be delivered and completion of all services to be performed under this contract, the Contractor shall submit—

(i) Proposed prices;

(ii) A statement on Standard Form 1411, Contract Pricing Proposal Cover Sheet (Cost or Pricing Data Required), or in any other form on which the parties may agree, of all costs incurred in performing the contract; and

(iii) Any other relevant data that the Contracting Officer may reasonably require.

(2) If the Contractor fails to submit the data required by subparagraph (1) of this section within the time specified, the Contracting Officer may suspend payments under this contract until the data are furnished. If it is later determined that the Government has overpaid the Contractor, the excess shall be repaid 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 determination.* Upon the Contracting Officer's receipt of the data required by paragraph (c) of this section, the Contracting Officer and the Contractor shall promptly negotiate to redetermine fair and reasonable prices for supplies delivered and services performed by the Contractor under this contract.

(e) *Contract modification.* The negotiated redetermination of price shall be evidenced by a modification to this contract, signed by the Contractor and the Contracting Officer.

(f) *Adjusting billing prices.* Pending execution of the contract modification (see paragraph (e) of this section), the Contractor shall submit invoices or vouchers in accordance with billing prices stated in this contract. If at any time it appears that the then-current billing prices will be substantially greater than the estimated final prices, or if the Contractor submits data showing that the redetermined prices will be substantially greater than the current billing prices, the parties shall negotiate an appropriate decrease or increase in billing prices. Any billing price adjustment shall be reflected in a contract modification and shall not affect the redetermination of prices under this clause. After the contract modification for price redetermination is executed, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the agreed-upon prices, 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 redetermination under this contract has been completed.

(1) Within 45 days after the end of the 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 interim 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; and

(iv) The total amount of all invoices or vouchers for supplies delivered (or services performed) and accepted by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) of this section exceeds the sum due the Contractor, as computed in accordance with subdivisions (i), (ii), and (iii) of this section, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, 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. The Contractor shall—

(1) Insert in each price redetermination or incentive price revision subcontract the substance of paragraph (g) of this section, and of this paragraph (h), modified to omit mention of the Government and to reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that part of subparagraph (g)(2) of this section relating to tax credits; and

(2) Include in each cost-reimbursement subcontract a requirement that each lower-tier price redetermination or incentive price revision subcontract contain the substance of paragraph (g) of this section, and of this paragraph (h) modified as required by subparagraph (1) of this section.

(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 (JUL 1991)

(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 (2) below, 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 payments that have been paid 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) below, allowable indirect costs under this contract shall be obtained by applying indirect cost rates established in accordance with paragraph (d) below.

(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 purchased 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) The Contractor shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by the Contracting Officer, submit to the cognizant Contracting Officer responsible for negotiating its final indirect cost rates and, if required by agency procedures, to the cognizant audit activity proposed final indirect cost rates for that period and supporting cost data specifying the contract and/or subcontract to which the rates apply. The proposed rates shall be based on the Contractor's actual cost experience for that period. The appropriate Government representative and 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) 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.* When the Contractor and Contracting Officer agree, the quick-closeout procedures of Subpart 42.7 of the FAR may be used.

(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) The Contractor shall submit a completion invoice or voucher, designated as such, promptly upon completion of the work, but no later than one year (or longer, as the Contracting Officer may approve in writing) from the completion date. Upon approval of that invoice or voucher, 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, excluding, however, any expenses arising from the Contractor's indemnification of the Government against patent liability.

(End of clause)

(R 7-203.4(a) 1978 SEP)

(R 7-203.4(b) 1979 MAR)

(R 7-203.4(c)(4)(iv))

(R 7-402.3(a) and (c)(5)(iii))

(R 7-605.5)

(R 7-1909.4)

(R 1-7.202-4)

(R 1-7.203-9)

(R 1-3.704-1 and -2)

(R 1-7.402-3(a) and (b)(1) and (3))

(R 1-7.403-9)

#### 52.216-8 Fixed Fee.

As prescribed in 16.307(b), insert the following clause in solicitations and contracts when a cost-plus-fixed-fee contract (other than a facilities contract or a construction contract) is contemplated.

FIXED FEE (APR 1984)

(a) The Government shall pay the Contractor for performing this contract the fixed fee specified in the

Schedule.

(b) Payment of the fixed fee shall be made as specified in the Schedule; *provided*, that after payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee 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 15 percent of the total fixed fee or \$100,000, whichever is less.

(End of clause)

(R 7-203.4(a) 1978 SEP)

(R 7-203.4(c)(9))

(R 7-402.3(a) and (c)(7))

(R 7-1909.4)

(R 1-7.202-4)

(R 1-7.402-3(a) and (b)(5))

#### 52.216-9 Fixed Fee—Construction.

As prescribed in 16.307(c), insert the following clause in solicitations and contracts when a cost-plus-fixed-fee construction contract is contemplated:

##### FIXED FEE—CONSTRUCTION (APR 1984)

(a) The Government shall pay to the Contractor for performing this contract the fixed fee specified in the Schedule.

(b) Payment of the fixed fee shall be made in installments based upon the percentage of completion of the work as determined from estimates submitted to and approved by the Contracting Officer, but subject to the withholding provisions of paragraph (c) below.

(c) After the payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee 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 15 percent of the total fixed fee or \$100,000, whichever is less.

(End of clause)

(R 7-203.4(a) 1978 SEP)

(R 7-605.5)

#### 52.216-10 Incentive Fee.

As prescribed in 16.307(d), insert the following clause in solicitations and contracts when a cost-plus-incentive-fee contract (other than a facilities contract) is contemplated:

##### INCENTIVE FEE (APR 1984)

(a) *General.* The Government shall pay the Contractor for performing this contract a fee determined as provided in this contract.

(b) *Target cost and target fee.* The target cost and target fee specified in the Schedule are subject to adjustment if the contract is modified in accordance with paragraph (d) below.

(1) "Target cost," as used in this contract, means the estimated cost of this contract as initially negotiated, adjusted in accordance with paragraph (d) below.

(2) "Target fee," as used in this contract, means the

fee initially negotiated on the assumption that this contract would be performed for a cost equal to the estimated cost initially negotiated, adjusted in accordance with paragraph (d) below.

(c) *Withholding of payment.* Normally, the Government shall pay the fee to the Contractor as specified in the Schedule. However, when the Contracting Officer considers that performance or cost indicates that the Contractor will not achieve target, the Government shall pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, the Government may, at the sole discretion of the Contracting Officer, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the Contracting Officer may withhold further payment of fee 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 15 percent of the applicable fee or \$100,000, whichever is less.

(d) *Equitable adjustments.* When the work under this contract is increased or decreased by a modification to this contract or when any equitable adjustment in the target cost is authorized under any other clause, equitable adjustments in the target cost, target fee, minimum fee, and maximum fee, as appropriate, shall be stated in a supplemental agreement to this contract.

(e) *Fee payable.* (1) The fee payable under this contract shall be the target fee increased by ..... [*Contracting Officer insert Contractor's participation*] cents for every dollar that the total allowable cost is less than the target cost or decreased by ..... [*Contracting Officer insert Contractor's participation*] cents for every dollar that the total allowable cost exceeds the target cost. In no event shall the fee be greater than . . . . . [*Contracting Officer insert percentage*] percent or less than . . . . . [*Contracting Officer insert percentage*] percent of the target cost.

(2) The fee shall be subject to adjustment, to the extent provided in paragraph (d) above, and within the minimum and maximum fee limitations in subparagraph (1) above, when the total allowable cost is increased or decreased as a consequence of (i) payments made under assignments or (ii) claims excepted from the release as required by paragraph (h)(2) of the Allowable Cost and Payment clause.

(3) If this contract is terminated in its entirety, the portion of the target fee payable shall not be subject to an increase or decrease as provided in this paragraph. The termination shall be accomplished in accordance with other applicable clauses of this contract.

(4) For the purpose of fee adjustment, "total allowable cost" shall not include allowable costs arising out of—

(i) Any of the causes covered by the Excusable Delays clause to the extent that they are beyond the control and without the fault or negligence of the Contractor or any subcontractor;

(ii) The taking effect, after negotiating the target cost, of a statute, court decision, written ruling, or regulation that results in the Contractor's being required to pay or bear the burden of any tax or duty or rate increase in a tax or duty;

(iii) Any direct cost attributed to the Contractor's involvement in litigation as required by the Contracting Officer pursuant to a clause of this contract, including furnishing evidence and information requested pursuant to the Notice and Assistance Regarding Patent and Copyright Infringement clause;

(iv) The purchase and maintenance of additional insurance not in the target cost and required by the Contracting Officer, or claims for reimbursement for liabilities to third persons pursuant to the Insurance Liability to Third Persons clause;

(v) Any claim, loss, or damage resulting from a risk for which the Contractor has been relieved of liability by the Government Property clause; or

(vi) Any claim, loss, or damage resulting from a risk defined in the contract as unusually hazardous or as a nuclear risk and against which the Government has expressly agreed to indemnify the Contractor.

(5) All other allowable costs are included in "total allowable cost" for fee adjustment in accordance with this paragraph (e), unless otherwise specifically provided in this contract.

(f) Contract modification. The total allowable cost and the adjusted fee determined as provided in this clause shall be evidenced by a modification to this contract signed by the Contractor and Contracting Officer.

(g) Inconsistencies. In the event of any language inconsistencies between this clause and provisioning documents or Government options under this contract, compensation for spare parts or other supplies and services ordered under such documents shall be determined in accordance with this clause.

(End of clause)  
(R 7-203.4(b) 1979 MAR)  
(R 7-203.4(c)(6) and (9))

#### 52.216-11 Cost Contract—No Fee.

As prescribed in 16.307(e), insert the clause in solicitations and contracts when a cost-reimbursement contract is contemplated that provides no fee and is not a cost-sharing contract or a facilities contract. This clause may be modified by substituting "\$10,000" in lieu of "\$100,000" as the maximum reserve in paragraph (b) if the Contractor is a nonprofit 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)  
(R 7-203.4(a) 1978 SEP)  
(R 7-203.4(c)(4) and (9))  
(R 7-402.3(c)(5)(ii), (iii), and (7))  
(R 7-1909.4)  
(R 1-7.402-3(b))

*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.

(R 7-203.4(a) 1978 SEP)  
(R 7-402.3(c)(8))

#### 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)  
(R 7-203.4(a) 1978 SEP)  
(R 7-203.4(c)(4) and (9))  
(R 7-402.3(c)(5),(6) and (7))  
(R 1-7.402-3)

*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.

(R 7-402.3(c)(8))

#### 52.216-13 Allowable Cost and Payment—Facilities.

As prescribed in 16.307(g), insert the following clause in solicitations and contracts when a consolidated facilities con-

tract or a cost-reimbursement facilities acquisition contract (see 45.302-6) is contemplated:

**ALLOWABLE COST AND PAYMENT—FACILITIES**  
(FEB 1995)

(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 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) below, 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) The Contractor shall, within 90 days after the expiration of each of its fiscal years, or by a later date approved by the Contracting Officer, submit to the Contracting Officer and to the cognizant audit activity proposed final indirect cost rates for that period and supporting cost and data specifying the contract and/or subcontract to which the rates apply. 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) 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.* When the Contractor and Contracting Officer agree, the quick-closeout procedures of Subpart 42.7 of the FAR may be used.

(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)

(R 7-702.10 1978 AUG)

*Alternate I* (APR 1984). 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*. The Contractor shall submit a completion invoice or voucher, designated as such, no later than one year (or longer, as the Contracting Officer may approve in writing) from the completion date. Upon approval of the invoice or voucher, 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.

(R 7-702.10 1978 AUG)

(R 7-703.9)

#### **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 COST AND 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)

(R 7-704.3 1965 JUL)

#### **52.216-15 Predetermined Indirect Cost Rates.**

As prescribed in 16.307(i), insert the following clause in solicitations and contracts when a cost-reimbursement research and development contract with an educational institution is contemplated and predetermined indirect cost rates are to be used. If the contract is a facilities contract, modify paragraph (c) by deleting the words "Subpart 31.3" and substituting for them "section 31.106."

##### **PREDETERMINED INDIRECT COST RATES**

(APR 1984)

(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) Not later than 90 days after the expiration of the Contractor's fiscal year, the Contractor shall submit to the cognizant Contracting Officer under Subpart 42.7 of the Federal Acquisition Regulation (FAR) and, if required by agency procedures, to the cognizant Government audit activity, proposed predetermined indirect cost rates and supporting cost data. The proposed rate shall be based on the Contractor's actual cost experience during that fiscal year. Negotiations of predetermined indirect cost rates shall begin as soon 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 fiscal year (unless the parties agree to a different 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 shall be obtained using the predetermined indirect cost rates and the bases shown in the Schedule.

(End of clause)

(R 7-403.9 1978 AUG)

#### 52.216-16 Incentive Price Revision—Firm Target.

As prescribed in 16.405(a), insert the following clause in solicitations and contracts when a fixed-price incentive (firm target) contract is contemplated. For items to be subject to incentive price revision, show in the contract Schedule the target cost, target profit, and target price for each item.

##### INCENTIVE PRICE REVISION—FIRM TARGET (APR 1984)

(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.

(c) *Data submission.* (1) Within . . . . . [Contracting Officer insert number of days] days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) above, the Contractor shall submit on Standard Form 1411 or in any other form on which the parties agree—

(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 (1) above 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) above, the Contracting Officer and the Contractor shall promptly establish the total final price of the items specified in (a) above 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) above, 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) above 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) above), 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) below 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) above. 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) above, when the amount stated under subdivision (ii), immediately above, 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 by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) above exceeds the sum due the Contractor, as computed in accordance with subdivisions (1)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions 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. The Contractor shall—

(1) Insert in each price redetermination or incentive price revision subcontract the substance of paragraph (g), above, and of this paragraph (h), modified to omit mention of the Government and to reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that part of subparagraph (g)(2) above relating to tax credits; and

(2) Include in each cost-reimbursement subcontract a requirement that each lower-tier price redetermination or incentive price revision subcontract contain the substance of paragraph (g) above and of this paragraph (h), modified as required by subparagraph (1) above.

(i) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon the total final price within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required by paragraph (c) above are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.

(j) *Termination.* If this contract is terminated before the

total final price is established, prices of supplies or services subject to price revision shall be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies and services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(k) *Equitable adjustment under other clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price shall be adjusted.

(l) *Exclusion from target price and total final price.* If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.

(m) *Separate reimbursement.* If any clause of this contract expressly provides that the cost of performance of an obligation shall be at Government expense, that expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(n) *Taxes.* As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term "contract price" includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor's profit or loss on this contract.

(End of clause)

(R 7-108.1 1980 FEB)

*Alternate I* (APR 1984). If the contract calls for supplies or services to be ordered under a provisioning document or

- Government option and the prices are to be subject to the incentive price revision described in the basic clause, add
- the following paragraph (o) to the basic clause:

(o) *Provisioning and options.* Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option shall be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option shall be treated as target prices. Target cost and profit covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

(R 7-108.1 1980 FEB)

## 52.216-17 Incentive Price Revision—Successive Targets.

As prescribed in 16.405(b), insert the following clause in solicitations and contracts when a fixed-price incentive (successive target) contract is contemplated. For items to be subject to incentive price revision, show in the contract Schedule the initial target cost, initial target profit, and initial target price for each item.

### INCENTIVE PRICE REVISION—SUCCESSIVE TARGETS (APR 1984)

(a) *General.* The supplies or services identified in the Schedule as Items . . . . . [Contracting Officer insert 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 (\$ . . . . .). The prices of these items shown in the Schedule are the initial target prices, which include an initial target profit of . . . . . [Contracting Officer insert percent of] percent of the initial target cost. 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 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.

(c) *Submitting data for establishing the firm fixed price or a final profit adjustment formula.* (1) Within . . . . . [Contracting Officer insert number of days] days after the end of the month in which the Contractor has completed . . . . . [see Note 1], the Contractor shall submit the following data:

(i) A proposed firm fixed price or total firm target price for supplies delivered and to be delivered and services performed and to be performed.

(ii) A detailed statement of all costs incurred in the performance of this contract through the end of the month specified above, on Standard Form 1411 (or in any other form on which the parties may agree), with sufficient supporting data to disclose unit costs and cost trends for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary).

(iii) An estimate of costs of all supplies delivered and to be delivered and all services performed and to be performed under this contract, using the statement of costs incurred plus an estimate of costs to complete performance, on Standard Form 1411 (or in any other form on which the parties may agree), together with—

(A) Sufficient data to support the accuracy and reliability of the estimate; and

(B) An explanation of the differences between



this estimate and the original estimate used to establish the initial target prices.

(2) The Contractor shall also submit, to the extent that it becomes available before negotiations establishing the total firm price are concluded—

(i) Supplemental statements of costs incurred after the end of the month specified in subparagraph (1) above for—

(A) Supplies delivered and services performed; and

(B) Inventories of work in process and undelivered contract supplies on hand (estimated to the extent necessary); and

(ii) Any other relevant data that the Contracting Officer may reasonably require.

(3) If the Contractor fails to submit the data required by subparagraphs (1) and (2) above 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) *Establishing firm fixed price or final profit adjustment formula.* Upon the Contracting Officer's receipt of the data required by paragraph (c) above, the Contracting Officer and the Contractor shall promptly establish either a firm fixed price or a profit adjustment formula for determining final profit, as follows:

(1) The parties shall negotiate a total firm target cost, based upon the data submitted under paragraph (c) above.

(2) If the total firm target cost is more than the total initial target cost, the total initial target profit shall be decreased. If the total firm target cost is less than the total initial target cost, the total initial target profit shall be increased. The initial target profit shall be increased or decreased by . . . . percent [see Note 2] of the difference between the total initial target cost and the total firm target cost. The resulting amount shall be the total firm target profit; *provided*, that in no event shall the total firm target profit be less than . . . . . percent or more than . . . . . percent [*Contracting Officer insert percents*] of the total initial cost.

(3) If the total firm target cost plus the total firm target profit represent a reasonable price for performing that part of the contract subject to price revision under this clause, the parties may agree on a firm fixed price, which shall be evidenced by a contract modification signed by the Contractor and the Contracting Officer.

(4) Failure of the parties to agree to a firm fixed price shall not constitute a dispute under the Disputes clause. If agreement is not reached, or if establishment of a firm

fixed price is inappropriate, the Contractor and the Contracting Officer shall establish a profit adjustment formula under which the total final price shall be established by applying to the total final negotiated cost an adjustment for profit or loss, determined as follows:

(i) If the total final negotiated cost is equal to the total firm target cost, the adjustment is the total firm target profit.

(ii) If the total final negotiated cost is greater than the total firm target cost, the adjustment is the total firm target profit, less . . . . . percent of the amount by which the total final negotiated cost exceeds the total firm target cost.

(iii) If the total final negotiated cost is less than the total firm target cost, the adjustment is the total firm target profit, plus . . . . . percent of the amount by which the total final negotiated cost is less than the total firm target cost.

(iv) The total firm target cost, total firm target profit, and the profit adjustment formula for determining final profit shall be evidenced by a modification to this contract signed by the Contractor and the Contracting Officer.

(e) *Submitting data for final price revision.* Unless a firm fixed price has been established in accordance with paragraph (d) above within . . . . . [*Contracting Officer insert number of days*] days after the end of the month in which the Contractor has delivered the last unit of supplies and completed the services specified by item number in paragraph (a) above, the Contractor shall submit on Standard Form 1411 (or in any other form on which the parties agree)—

(1) A detailed statement of all costs incurred up to the end of that month in performing all work under the items;

(2) An estimate of costs of further performance, if any, that may be necessary to complete performance of all work under the items;

(3) A list of all residual inventory and an estimate of its value; and

(4) Any other relevant data that the Contracting Officer may reasonably require.

(f) *Final price revision.* Unless a firm fixed price has been agreed to in accordance with paragraph (d) above, the Contractor and the Contracting Officer shall, promptly after submission of the data required by paragraph (e) above, establish the total final price, as follows:

(1) On the basis of the information required by paragraph (e) above, together with any other pertinent information, the parties shall negotiate the total final cost incurred or to be incurred for the 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

final profit or loss determined as agreed upon under subparagraph (d)(4) above.

(g) *Contract modification.* The total final price of the items specified in paragraph (a) above 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 these elements; and

(2) Adjustments or credits are explicitly permitted or required by this or any other clause in this contract.

(h) *Adjustment of billing prices.* (1) Pending execution of the contract modification (see paragraph (e) above), the Contractor shall submit invoices or vouchers in accordance with billing prices as provided in this paragraph. The billing prices shall be the initial target prices shown in this contract until firm target prices are established under paragraph (d) above. When established, the firm target prices shall be used as the billing prices.

(2) If at any time it appears from information provided by the contractor under subparagraph (i)(1) below 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 the final cost under this contract will be substantially greater than the target cost.

(3) Any adjustment of billing prices shall be reflected in a contract modification and shall not affect the determination of any price under paragraph (d) or (f) above. 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.

(i) *Quarterly limitation on payments statement.* This paragraph (i) shall apply until a firm fixed price or a total final price is established under subparagraph (d)(3) or (f)(2).

(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 cost (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 interim profit (used in establishing the initial contract price or agreed to for the purpose of this paragraph (i)) 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)(4) above when the amount stated under subdivision (ii), immediately above, differs from the aggregate firm 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 by the Government (including amounts applied or to be applied to liquidate progress payments).

(2) Notwithstanding any provision of this contract authorizing greater payments, if on any quarterly statement the amount under subdivision (1)(iv) above exceeds the sum due the Contractor, as computed in accordance with subdivisions (1)(i), (ii), and (iii) above, the Contractor shall immediately refund or credit to the Government the amount of this excess. The Contractor may, when appropriate, reduce this refund or credit by the amount of any applicable tax credits due the Contractor under 26 U.S.C. 1481 and by the amount of previous refunds or credits effected under this clause. If any portion of the excess has been applied to the liquidation of progress payments, then that portion may, instead of being refunded, be added to the unliquidated progress payment account consistent with the Progress Payments clause. The Contractor shall provide complete details to support any claimed reductions 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.

(j) *Subcontracts.* No subcontract placed under this contract may provide for payment on a cost-plus-a-percentage-of-cost basis. The Contractor shall—

(1) Insert in each price redetermination or incentive price revision subcontract the substance of paragraph (i)

above, and of this paragraph (j), modified to omit mention of the Government and to reflect the position of the Contractor as purchaser and of the subcontractor as vendor, and to omit that part of subparagraph (i)(2) of this section relating to tax credits; and

(2) Include in each cost-reimbursement subcontract a requirement that each lower-tier price redetermination or incentive price revision subcontract contain the substance of paragraph (i) of this section, and of this paragraph (j), modified as required by subparagraph (j)(1), immediately above.

(k) *Disagreements.* If the Contractor and the Contracting Officer fail to agree upon (1) a total firm target cost and a final profit adjustment formula or (2) a total final price, within 60 days (or within such other period as the Contracting Officer may specify) after the date on which the data required in paragraphs (c) and (e) of this section are to be submitted, the Contracting Officer shall promptly issue a decision in accordance with the Disputes clause.

(l) *Termination.* If this contract is terminated before the total final price is established, prices of supplies or services subject to price revision shall be established in accordance with this clause for (1) completed supplies and services accepted by the Government and (2) those supplies or services not terminated under a partial termination. All other elements of the termination shall be resolved in accordance with other applicable clauses of this contract.

(m) *Equitable adjustments under other clauses.* If an equitable adjustment in the contract price is made under any other clause of this contract before the total final price is established, the adjustment shall be made in the total target cost and may be made in the maximum dollar limit on the total final price, the total target profit, or both. If the adjustment is made after the total final price is established, only the total final price shall be adjusted.

(n) *Exclusion from target price and total final price.* If any clause of this contract provides that the contract price does not or will not include an amount for a specific purpose, then neither any target price nor the total final price includes or will include any amount for that purpose.

(o) *Separate reimbursement.* If any clause of this contract expressly provides that the cost of performance of an obligation shall be at Government expense, that expense shall not be included in any target price or in the total final price, but shall be reimbursed separately.

(p) *Taxes.* As used in the Federal, State, and Local Taxes clause or in any other clause that provides for certain taxes or duties to be included in, or excluded from, the contract price, the term “contract price” includes the total target price or, if it has been established, the total final price. When any of these clauses requires that the contract price be increased or decreased as a result of changes in the obligation of the Contractor to pay or bear the burden of certain taxes or duties, the increase or decrease shall be made in the total target price or, if it has been established, in the total final price, so that it will not affect the Contractor’s profit or loss on this contract.

(End of clause)

#### NOTES:

(1) The degree of completion may be based on a percentage of contract performance or any other reasonable basis.

(2) The language may be changed to describe a negotiated adjustment pattern under which the extent of adjustment is not the same for all levels of cost variation.

*Alternate I (APR 1984).* If the contract calls for supplies or services to be ordered under a provisioning document or Government option and the prices are to be subject to the incentive price revision described in the basic clause, add the following paragraph (q) to the basic clause:

(q) *Provisioning and options.* Parts, other supplies, or services that are to be furnished under this contract on the basis of a provisioning document or Government option shall be subject to price revision in accordance with this clause. Any prices established for these parts, other supplies, or services under a provisioning document or Government option shall be treated as initial target prices, or target prices as agreed upon and stipulated in the pricing document supporting the provisioning or added items. Initial or firm target costs and profits and final prices covering these parts, other supplies, or services may be established separately, in the aggregate, or in any combination, as the parties may agree.

#### 52.216-18 Ordering.

As prescribed in 16.506(a), insert the following clause:  
ORDERING (OCT 1995)

(a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from \_\_\_\_\_ through \_\_\_\_\_ [insert dates].

(b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.

(c) If mailed, a delivery order or task order is considered “issued” when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of clause)

#### 52.216-19 Order Limitations.

As prescribed in 16.506(b), insert a clause substantially the same as follows:

##### ORDER LIMITATIONS (OCT 1995)

(a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than \_\_\_\_\_ [insert dollar figure or quantity], the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.

(b) *Maximum order.* The Contractor is not obligated to honor—

(1) Any order for a single item in excess of

\_\_\_\_\_ [insert dollar figure or quantity];  
 (2) Any order for a combination of items in excess of  
 \_\_\_\_\_ [insert dollar figure or quantity]; or

(3) A series of orders from the same ordering office within \_\_\_\_\_ days that together call for quantities exceeding the limitation in subparagraph (1) or (2) of this section.

(c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.

(d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within \_\_\_\_\_ days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

#### 52.216-20 Definite Quantity.

As prescribed in 16.506(c), insert the following clause:

##### DEFINITE QUANTITY (OCT 1995)

(a) This is a definite-quantity, indefinite-delivery contract for the supplies or services specified, and effective for the period stated, in the Schedule.

(b) The Government shall order the quantity of supplies or services specified in the Schedule, and the Contractor shall furnish them when ordered. Delivery or performance shall be at locations designated in orders issued in accordance with the Ordering clause and the Schedule.

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that time shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after \_\_\_\_\_ [insert date].

(End of clause)

#### 52.216-21 Requirements.

As prescribed in 16.506(d), insert the following clause:

##### REQUIREMENTS (OCT 1995)

(a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by

this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.

(b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

(d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.

(e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.

(f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after \_\_\_\_\_ [insert date].

(End of clause)

*Alternate I (APR 1984).* If the requirements contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The estimated quantities are not the total requirements of the Government activity specified in the Schedule, but are estimates of requirements in excess of the quantities that the activity may itself furnish within its own capabilities. Except as this contract otherwise provides, the Government shall order from the Contractor all of that activity's requirements for supplies and services specified in the Schedule that exceed the quantities that the activity may furnish within its own capabilities.

*Alternate II (APR 1984).* If the requirements contract includes subsistence for both Government use and resale in the same Schedule, and similar products may be acquired on a brand-name basis, add the following paragraph (g) to the basic clause:

(g) The requirements referred to in this contract are for items to be manufactured according to Government specifications. Notwithstanding anything to the contrary stated in the contract, the Government may acquire similar products by brand name from other sources for resale.

*Alternate III* (OCT 1995). If the requirements contract involves a partial small business set-aside, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The Government's requirements for each item or subitem of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government shall order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.

*Alternate IV* (OCT 1995). If the contract includes subsistence for both Government use and resale in the same Schedule and similar products may be acquired on a brand-name basis and the contract also involves a partial small business set-aside, substitute the following paragraph (c) for paragraph (c) of the basic clause and add the following paragraph (g) to the basic clause:

(c) The Government's requirements for each item or subitem of supplies or services described in the Schedule are being purchased through one non-set-aside contract and one set-aside contract. Therefore, the Government shall order from each Contractor approximately one-half of the total supplies or services specified in the Schedule that are required to be purchased by the specified Government activity or activities. The Government may choose between the set-aside Contractor and the non-set-aside Contractor in placing any particular order. However, the Government shall allocate successive orders, in accordance with its delivery requirements, to maintain as close a ratio as is reasonably practicable between the total quantities ordered from the two Contractors.

(g) The requirements referred to in this contract are for items to be manufactured according to the Government specifications. Notwithstanding anything to the contrary stated in the contract, the Government may acquire similar products by brand name from other sources for resale.

#### **52.216-22 Indefinite Quantity.**

As prescribed in 16.506(e), insert the following clause:  
INDEFINITE QUANTITY (OCT 1995)

(a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.

(b) Delivery or performance shall be made only as

authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

(c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.

(d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; *provided*, that the Contractor shall not be required to make any deliveries under this contract after \_\_\_\_\_ [insert date].

(End of clause)

#### **52.216-23 Execution and Commencement of Work.**

As prescribed in 16.603-4(b)(1), insert the following clause in solicitations and contracts when a letter contract is contemplated, except that it may be omitted from letter contracts awarded on SF 26:

##### **EXECUTION AND COMMENCEMENT OF WORK (APR 1984)**

The Contractor shall indicate acceptance of this letter contract by signing three copies of the contract and returning them to the Contracting Officer not later than \_\_\_\_\_ [insert date]. Upon acceptance by both parties, the Contractor shall proceed with performance of the work, including purchase of necessary materials.

(End of clause)

#### **52.216-24 Limitation of Government Liability.**

As prescribed in 16.603-4(b)(2), insert the following clause in solicitations and contracts when a letter contract is contemplated:

##### **LIMITATION OF GOVERNMENT LIABILITY (APR 1984)**

(a) In performing this contract, the Contractor is not authorized to make expenditures or incur obligations exceeding \_\_\_\_\_ dollars.

(b) The maximum amount for which the Government shall be liable if this contract is terminated is \_\_\_\_\_ dollars.

(End of clause)

#### **52.216-25 Contract Definition.**

As prescribed in 16.603-4(b)(3), insert the following clause:

##### **CONTRACT DEFINITIZATION (APR 1984)**

(a) A \_\_\_\_\_ [insert specific type of contract]

definitive contract is contemplated. The Contractor agrees to begin promptly negotiating with the Contracting Officer the terms of a definitive contract that will include (1) all clauses required by the Federal Acquisition Regulation (FAR) on the date of execution of the letter contract, (2) all clauses required by law on the date of execution of the definitive contract, and (3) any other mutually agreeable clauses, terms, and conditions. The Contractor agrees to submit a \_\_\_\_\_ [insert specific type of proposal; e.g., fixed-price or cost-and-fee] proposal and cost or pricing data supporting its proposal.

(b) The schedule for definitizing this contract is [insert target date for definitization of the contract and dates for submission of proposal, beginning of negotiations, and, if appropriate, submission of make-or-buy and subcontracting plans and cost or pricing data]:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(c) If agreement on a definitive contract to supersede this letter contract is not reached by the target date in paragraph (b) of this section, or within any extension of it granted by the Contracting Officer, the Contracting Officer may, with the approval of the head of the contracting activity, determine a reasonable price or fee in accordance with Subpart 15.8 and Part 31 of the FAR, subject to Contractor appeal as provided in the Disputes clause. In any event, the Contractor shall proceed with completion of the contract, subject only to the Limitation of Government Liability clause.

(1) After the Contracting Officer's determination of price or fee, the contract shall be governed by—

(i) All clauses required by the FAR on the date of execution of this letter contract for either fixed-price or cost-reimbursement contracts, as determined by the Contracting Officer under this paragraph (c);

(ii) All clauses required by law as of the date of the Contracting Officer's determination; and

(iii) Any other clauses, terms, and conditions mutually agreed upon.

(2) To the extent consistent with subparagraph (c)(1) of this section, all clauses, terms, and conditions included in this letter contract shall continue in effect, except those that by their nature apply only to a letter contract.

(End of clause)

*Alternate 1* (APR 1984). In letter contracts awarded on the basis of price competition, add the following paragraph (d) to the basic clause:

(d) The definitive contract resulting from this letter contract will include a negotiated \_\_\_\_\_ [insert "price ceiling" or "firm fixed price"] in no event to exceed \_\_\_\_\_ [insert the proposed price upon which the award was based].

## 52.216-26 Payments of Allowable Costs Before Definitization.

As prescribed in 16.603-4(c), insert the following clause in solicitations and contracts if a cost-reimbursement definitive contract is contemplated, unless the acquisition involves conversion, alteration, or repair of ships:

### PAYMENTS OF ALLOWABLE COSTS BEFORE DEFINITIZATION (APR 1984)

(a) *Reimbursement rate.* Pending the placing of the definitive contract referred to in this letter contract, the Government shall promptly reimburse the Contractor for all allowable costs under this contract at the following rates:

(1) One hundred percent of approved costs representing progress payments to subcontractors under fixed-price subcontracts; *provided*, that the Government's payments to the Contractor shall not exceed 80 percent of the allowable costs of those subcontractors.

(2) One hundred percent of approved costs representing cost-reimbursement subcontracts; *provided*, that the Government's payments to the Contractor shall not exceed 85 percent of the allowable costs of those subcontractors.

(3) Eighty-five percent of all other approved costs.

(b) *Limitation of reimbursement.* To determine the amounts payable to the Contractor under this letter contract, the Contracting Officer shall determine allowable costs in accordance with the applicable cost principles in Part 31 of the Federal Acquisition Regulation (FAR). The total reimbursement made under this paragraph shall not exceed 85 percent of the maximum amount of the Government's liability, as stated in this contract.

(c) *Invoicing.* Payments shall be made promptly to the Contractor when requested as work progresses, but (except for small business concerns) not more often than every 2 weeks, in amounts approved by the Contracting Officer. 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 incurred by the Contractor in the performance of this contract.

(d) *Allowable costs.* For the purpose of determining allowable costs, the term "costs" includes—

(1) Those recorded costs that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract;

(2) When the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(i) Materials issued from the Contractor's stores inventory and placed in the production process for use on the contract;

(ii) Direct labor;

(iii) Direct travel;

(iv) Other direct in-house costs; and

(v) Properly allocable and allowable indirect costs as shown on the records maintained by the

Contractor for purposes of obtaining reimbursement under Government contracts; and

(3) The amount of progress payments that have been paid to the Contractor's subcontractors under similar cost standards.

(e) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks and may invoice and be paid for recorded costs for items or services purchased directly for the contract, even though it has not yet paid for such items or services.

(f) *Audit.* At any time before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of costs audited. Any payment may be (1) reduced by any amounts found by the Contracting Officer not to constitute allowable costs or (2) adjusted for overpayments or underpayments made on preceding invoices or vouchers.

(End of clause)

#### **52.216-27 Single or Multiple Awards.**

As prescribed in 16.506(f), insert the following provision:

##### **SINGLE OR MULTIPLE AWARDS (OCT 1995)**

The Government may elect to award a single delivery order contract or task order contract or to award multiple delivery order contracts or task order contracts for the same or similar supplies or services to two or more sources under this solicitation.

(End of provision)

#### **52.216-28 Multiple Awards for Advisory and Assistance Services.**

As prescribed in 16.506(g), insert the following provision:

##### **MULTIPLE AWARDS FOR ADVISORY AND ASSISTANCE SERVICES (OCT 1995)**

The Government intends to award multiple contracts for the same or similar advisory and assistance services to two or more sources under this solicitation unless the Government determines, after evaluation of offers, that only one offeror is capable of providing the services at the level of quality required.

(End of provision)

#### **52.217-1 Limitation of Price and Contractor Obligations.**

As prescribed in 17.105(a)(1), insert the following clause in solicitations and contracts when a multiyear contract is contemplated.

##### **LIMITATION OF PRICE AND CONTRACTOR OBLIGATIONS (APR 1984)**

(a) Funds available for performance are described in the Schedule. The amount of funds available at award is not considered sufficient for the performance required for any program year other than the first program year. When additional funds are available for the full requirements of the next succeeding program year, the Contracting Officer

shall, not later than the date specified in the Schedule (unless a later date is agreed to), so notify the Contractor in writing. The Contracting Officer shall also modify the amount of funds described in the Schedule as available for contract performance. This procedure shall apply for each successive program year.

(b) The Government is not obligated to the Contractor for any amount over that described in the Schedule as available for contract performance.

(c) The Contractor is not obligated to incur costs for the performance required for any program year after the first unless and until written notification is received from the Contracting Officer of an increase in availability of funds. If so notified, the Contractor's obligation shall increase only to the extent contract performance is required for the additional program year for which funds are made available.

(d) If this contract is terminated under the "Termination for Convenience of the Government" clause, "total contract price" in that clause means the amount available for performance of this contract, as in paragraph (a) of this section, plus the amount established as the cancellation ceiling. "Work under the contract" in that clause means the work under program year requirements for which funds have been made available. If the contract is terminated for default, the Government's rights under this contract shall apply to the entire multiyear requirements.

(e) Notification to the Contractor of an increase or decrease in the funds available for performance of this contract under another clause (e.g., an "Option" or "Changes" clause) shall not constitute the notification contemplated by paragraph (a) of this clause.

(End of clause)

#### **52.217-2 Cancellation of Items.**

As prescribed in 17.105(a)(2), insert the following clause in solicitations and contracts when a multiyear contract is contemplated.

##### **CANCELLATION OF ITEMS (APR 1984)**

(a) "Cancellation," as used in this clause, means that the Government is canceling its requirements for all items in program years subsequent to that in which notice of cancellation is provided. Cancellation shall occur, by the date or within the time period specified in the Schedule, (unless a later date is agreed to) if the Contracting Officer (1) notifies the Contractor that funds are not available for contract performance for any subsequent program year or (2) fails to notify the Contractor that funds are available for performance of the succeeding program year requirement.

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

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

at the time of cancellation.

(d) The cancellation charge will cover only (1) costs (i) incurred by the prime contractor and/or subcontractor, (ii) reasonably necessary for performance of the contract, and (iii) that would have been equitably amortized in the unit prices for the entire multiyear contract period but, because of the cancellation, are not so amortized, and (2) a reasonable profit on the costs.

(e) The cancellation charge shall be computed and the claim made for it as if the claim were being made under the "Termination for Convenience of the Government" clause of this contract. The Contractor shall submit the claim promptly but no later than 1 year from the date (1) of notification of the nonavailability of funds, or (2) specified in the Schedule by which notification of the availability of additional funds for the next succeeding program year is required to be issued, whichever is earlier, unless extensions in writing are granted by the Contracting Officer.

(f) The Contractor's claim may include—

(1) Reasonable nonrecurring costs (see FAR 15.8) which are applicable to and normally would have been amortized in all items to be furnished under the multi-year requirements;

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

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

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

(g) The claim shall not include—

(1) Labor, material, or other expenses incurred by the

Contractor or subcontractors for performance of the canceled work;

(2) Any cost already paid to the Contractor;

(3) Anticipated profit on the canceled work; or

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

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

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

(End of clause)

*Alternate I* (APR 1984). If a multiyear modified requirements contract is awarded for more than 1 program year, substitute the following paragraph (a) for paragraph (a) of the basic clause, delete paragraph (b) of the basic clause, and redesignate the remaining paragraphs accordingly:

(a) As used herein, the term "cancellation" means that the Government is cancelling, pursuant to this clause, its anticipated requirements for items as set forth in the schedule for all program years subsequent to that in which notice of cancellation is provided. Such cancellation shall occur



if, by the date of within the time period specified in the schedule or such further time as may be agreed to, the Contracting Officer (1) notifies the Contractor that funds will not be available for contract performance for any subsequent program year or (2) fails to notify the Contractor that funds will be available for performance of a requirement for the succeeding program year. "Cancellation" shall also be deemed to have occurred if, upon expiration of the final program year, the Government has failed to order the specified items in quantities up to the aggregate Best Estimated Quantity set forth in the Schedule. Following cancellation under this clause of any program year(s), the Government shall not be obligated to issue nor the Contractor to accept any further orders under this contract.

### 52.217-3 Evaluation Exclusive of Options.

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

#### EVALUATION EXCLUSIVE OF OPTIONS (APR 1984)

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

(End of provision)

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

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

#### EVALUATION OF OPTIONS EXERCISED AT TIME OF CONTRACT AWARD (JUN 1988)

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

(End of provision)

### 52.217-5 Evaluation of Options.

As prescribed in 17.208(c)(1), insert a provision substantially the same as the following:

#### EVALUATION OF OPTIONS (JUL 1990)

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

(End of provision)

### 52.217-6 Option for Increased Quantity.

As prescribed in 17.208(d), insert a clause substantially

the same as the following:

#### OPTION FOR INCREASED QUANTITY (MAR 1989)

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

(End of clause)

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

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

#### OPTION FOR INCREASED QUANTITY—

#### SEPARATELY PRICED LINE ITEM (MAR 1989)

The Government may require the delivery of the numbered line item, identified in the Schedule as an option item, in the quantity and at the price stated in the Schedule. The Contracting Officer may exercise the option by written notice to the Contractor within [insert in the clause the period of time in which the Contracting Officer has to exercise the option]. Delivery of added items shall continue at the same rate that like items are called for under the contract, unless the parties otherwise agree.

(End of clause)

### 52.217-8 Option to Extend Services.

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

#### OPTION TO EXTEND SERVICES (AUG 1989)

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

(End of clause)

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

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

#### OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 1989)

(a) The Government may extend the term of this contract by written notice to the Contractor within [insert in the clause the period of time in which the Contracting Officer has to exercise the option]; provided, that the Government shall give the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the

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Government to an extension.

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

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

(End of clause)

## 52.218 [Reserved]

## 52.219-1 Small Business Program Representations.

As prescribed in 19.304(a), insert the following provision:

SMALL BUSINESS PROGRAM REPRESENTATIONS  
(OCT 1995)

(a)(1) The standard industrial classification (SIC) code for this acquisition is \_\_\_\_\_  
(insert SIC code).

(2) The small business size standard is \_\_\_\_\_  
(insert size standard).

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

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

(2) (Complete only if offeror represented itself as a small business concern in block (b)(1) of this section.) The offeror represents as part of its offer that it ☐ is, ☐ is not a small disadvantaged business concern.

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

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

“Small disadvantaged business concern,” as used in this provision, means a small business concern that (1) is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals, and (2) has its management and daily business controlled by one or more such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned

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business having at least 51 percent of its stock unconditionally owned by one or more of these entities, which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR Part 124.

“Woman-owned small business concern,” as used in this provision, means a small business concern—

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

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

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

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

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

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

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(End of provision)

## 52.219-2 Equal Low Bids.

As prescribed in 19.304(b), insert the following provision:

EQUAL LOW BIDS (OCT 1995)

(a) This provision applies to small business concerns only.

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

(c) Failure to identify the labor surplus areas as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consid-

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eration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

(End of provision)

**52.219-3—52.219-5 [Reserved]****52.219-6 Notice of Total Small Business Set-Aside.**

As prescribed in 19.508(c), insert the following clause in solicitations and contracts involving total small business set-asides:

NOTICE OF TOTAL SMALL BUSINESS  
SET-ASIDE (APR 1984)

*(a) Definition.*

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

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

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

*(c) Agreement.* A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

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

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

As prescribed in 19.508(d), insert the following clause:  
NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE  
(OCT 1995)

*(a) Definitions.*

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

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

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

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

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

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

*(c) Agreement.* For the set-aside portion of the acquisition, a manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories and possessions, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, or the District of Columbia. However, this requirement does not apply in connection with construction or service contracts.

(End of clause)

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

**52.219-8 Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.**

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

UTILIZATION OF SMALL, SMALL  
DISADVANTAGED AND WOMEN-OWNED  
SMALL BUSINESS CONCERNS (OCT 1995)

(a) It is the policy of the United States that small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely

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payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern (1) which is at least 51 percent unconditionally owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian Organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian Organization, and which meets the requirements of 13 CFR 124. The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act. The Contractor shall presume that socially and economically disadvantaged entities also include Indian Tribes and Native Hawaiian Organizations.

(d) The term "small business concern owned and controlled by women" shall mean a small business concern (i) which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women, and (ii) whose management and daily business operations are controlled by one or more women; and

(e) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a small business concern owned and controlled by socially and economically disad-

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vantaged individuals or a small business concern owned and controlled by women.

(End of clause)

**52.219-9 Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan.**

As prescribed in 19.708(b), insert the following clause:  
SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (OCT 1995)

(a) This clause does not apply to small business concerns.

(b) "Commercial product," as used in this clause, means a product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product.

"Subcontract," as used in this clause, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, which separately addresses subcontracting with small business concerns, with small disadvantaged business concerns and with women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, small disadvantaged business concerns, and women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns, small disadvantaged business concerns and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of—

(i) Total dollars planned to be subcontracted;

(ii) Total dollars planned to be subcontracted to small business concerns;

(iii) Total dollars planned to be subcontracted to small disadvantaged business concerns; and

(iv) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to (i) small business concerns, (ii) small disadvantaged business concerns and (iii) women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, small disadvantaged and women-owned small business concerns trade associations). A firm may rely on the information contained in PASS as an accurate representation of a concern's size and ownership characteristics for purposes of maintaining a small business source list. A firm may rely on PASS as its small business source list. Use of the PASS as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns, (ii) small disadvantaged business concerns, and (iii) women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small, small disadvantaged and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause in this contract entitled "Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a plan similar to the plan agreed to by the offeror.

(10) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit Standard Form (SF)

294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms, and (iv) ensure that its subcontractors agree to submit Standard Forms 294 and 295.

(11) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of its efforts to locate small, small disadvantaged and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., PASS), guides, and other data that identify small, small disadvantaged and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small, small disadvantaged or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether small disadvantaged business concerns were solicited and if not, why not, (C) whether women-owned small business concerns were solicited and if not, why not, and (D) if applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small, small disadvantaged and women-owned small business sources.

(v) Records of internal guidance and encouragement provided to buyers through (A) workshops, seminars, training, etc., and (B) monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having company or division-wide annual plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small, small disadvantaged and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the contractor's lists of potential small, small disadvantaged and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such

small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small, small disadvantaged and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small, small disadvantaged and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, small disadvantaged or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by (d) above, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided, (1) the master plan has been approved, (2) the offeror provides copies of the approved master plan and evidence of its approval to the Contracting Officer, and (3) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g)(1) If a commercial product is offered, the subcontracting plan required by this clause may relate to the offeror's production generally, for both commercial and non-commercial products, rather than solely to the Government contract. In these cases, the offeror shall, with the concurrence of the Contracting Officer, submit one company-wide or division-wide annual plan.

(2) The annual plan shall be reviewed for approval by the agency awarding the offeror its first prime contract requiring a subcontracting plan during the fiscal year, or by an agency satisfactory to the Contracting Officer.

(3) The approved plan shall remain in effect during the offeror's fiscal year for all of the offeror's commercial products.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small, Small Disadvantaged and Women-Owned Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(End of clause)

*Alternate I* (OCT 1995). When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan,

where applicable, which separately addresses subcontracting with small business concerns, with small disadvantaged business concerns and with women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns, small disadvantaged business concerns and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

#### **52.219-10 Incentive Subcontracting Program.**

As prescribed in 19.708(c)(1), insert the following clause:

##### **INCENTIVE SUBCONTRACTING PROGRAM (OCT 1995)**

(a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award a certain percentage to small business concerns, a certain percentage to small disadvantaged business concerns, and a certain percentage to women-owned small business concerns.

(b) If the Contractor exceeds its subcontracting goals in performing this contract, it will receive \_\_\_\_\_ [insert the appropriate number between 0 and 10] percent of the dollars in excess of each goal in the plan, unless the Contracting Officer determines that the excess was not due to the Contractor's efforts (e.g., a subcontractor cost overrun caused the actual subcontract amount to exceed that estimated in the subcontracting plan, or the award of subcontracts that had been planned but had not been disclosed in the subcontracting plan during contract negotiations). Determinations made under this paragraph are not subject to the Disputes clause.

(c) If this is a cost-plus-fixed-fee contract, the sum of the fixed fee and the incentive fee earned under this contract may not exceed the limitations in Subpart 15.9 of the Federal Acquisition Regulation.

(End of clause)

#### **52.219-11 Special 8(a) Contract Conditions.**

As prescribed in 19.811-3(a), insert the following clause:

##### **SPECIAL 8(a) CONTRACT CONDITIONS (FEB 1990)**

The Small Business Administration (SBA) agrees to the following:

(a) To furnish the supplies or services set forth in this contract according to the specifications and the terms and conditions hereof by subcontracting with an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(b) That in the event SBA does not award a subcontract

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for all or a part of the work hereunder, this contract may be terminated either in whole or in part without cost to either party.

(c) Except for novation agreements and advance payments, delegate to the \_\_\_\_\_ [insert name of contracting agency] the responsibility for administering the subcontract to be awarded hereunder with complete authority to take any action on behalf of the Government under the terms and conditions of the subcontract; provided, however, that the \_\_\_\_\_ [insert name of contracting agency] shall give advance notice to the SBA before it issues a final notice terminating the right of a subcontractor to proceed with further performance, either in whole or in part, under the subcontract for default or for the convenience of the Government.

(d) That payments to be made under any subcontract awarded under this contract will be made directly to the subcontractor by the \_\_\_\_\_ [insert name of contracting agency].

(e) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the Contracting Officer cognizable under the "Disputes" clause of said subcontract.

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

(End of clause)

*Alternate I (FEB 1990).* In accordance with the prescription in 19.811-3(a), substitute the following paragraph (d) for paragraph (d) of the basic clause:

(d) That payments to be made under the contract will be deposited directly by the \_\_\_\_\_ [insert name of contracting activity] to a special bank account established by the subcontractor and that all disbursements will require approval and counter signature by the SBA or a third party approved by SBA.

#### 52.219-12 Special 8(a) Subcontract Conditions.

As prescribed in 19.811-3(b), insert the following clause:

##### SPECIAL 8(a) SUBCONTRACT CONDITIONS (FEB 1990)

(a) The Small Business Administration (SBA) has entered into Contract No. \_\_\_\_\_ [insert number of contract] with the \_\_\_\_\_ [insert name of contracting agency] to furnish the supplies or services as described therein. A copy of the contract is attached hereto and made a part hereof.

(b) The \_\_\_\_\_ [insert name of subcontractor], hereafter referred to as the subcontractor, agrees and acknowledges as follows:

(1) That it will, for and on behalf of the SBA, fulfill and perform all of the requirements of Contract No. \_\_\_\_\_ [insert number of contract] for the consideration stated

therein and that it has read and is familiar with each and every part of the contract.

(2) That the SBA has delegated responsibility, except for novation agreements and advance payments, for the administration of this subcontract to the \_\_\_\_\_ [insert name of contracting agency] with complete authority to take any action on behalf of the Government under the terms and conditions of this subcontract.

(3) That it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the designated Contracting Officer of the \_\_\_\_\_ [insert name of contracting agency].

(4) That it will notify the \_\_\_\_\_ [insert name of contracting agency] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(c) Payments, including any progress payments under this subcontract, will be made directly to the subcontractor by the \_\_\_\_\_ [insert name of contracting agency].

(End of clause)

*Alternate I (FEB 1990).* In accordance with the prescription in 19.811-3(b), delete paragraph (c) of the basic clause and add the following to paragraph (b):

(5) That, in accordance with section 301(b) of Pub. L. 100-656, it will establish a special account, at a bank insured by the Federal Deposit Insurance Corporation, under which (i) all payments under this subcontract will be deposited directly by the \_\_\_\_\_ [insert name of contracting activity] and (ii) all disbursements will be subject to approval and counter signature by the SBA or a third party approved by SBA.

(6) That it will make timely payment to all suppliers of material or labor.

(7) That it will notify all suppliers of material or labor and will obtain written acknowledgment from such suppliers, that the contract is exempt from the Miller Act's bonding requirement and that neither the SBA nor the \_\_\_\_\_ [insert name of contracting activity] are liable for payment to suppliers for materials or labor. Such acknowledgments must be provided to the SBA prior to SBA approval of disbursements to the contractor from the special bank account.

#### 52.219-13 [Reserved]

#### 52.219-14 Limitations on Subcontracting.

As prescribed in 19.508(e), insert the following clause:  
LIMITATIONS ON SUBCONTRACTING (JAN 1991)

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for—

(1) *Services (except construction).* At least 50 per-

cent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

(2) *Supplies (other than procurement from a regular dealer in such supplies).* The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.

(3) *General construction.* The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.

(4) *Construction by special trade contractors.* The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

(End of clause)

#### **52.219-15 Notice of Participation by Organizations for the Handicapped.**

As prescribed in 19.508(f), insert the following clause:  
NOTICE OF PARTICIPATION BY ORGANIZATIONS  
FOR THE HANDICAPPED (APR 1991)

##### **(a) Definitions.**

“Handicapped individual” means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

“Public or private organization for the handicapped” means one (1) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; (2) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and (3) which employs in the production of commodities and in the provision of services handicapped individuals for not less than 75 percent of the direct labor required for the production or provision of the commodities or services.

##### **(b) Certification.**

The Offeror certifies that it is ☐, is not ☐ a public or private organization for the handicapped. An offeror certifying in the affirmative is eligible to participate in any resultant contract as if it were a small business concern.

##### **(c) Agreement.**

An Offeror certifying as a public or private organization for the handicapped agrees that at least 75 percent of the direct labor required in the performance of the contract will be performed by handicapped individuals.

(End of clause)

#### **52.219-16 Liquidated Damages—Subcontracting Plan.**

As prescribed in 19.708(b)(2), insert the following clause:

LIQUIDATED DAMAGES—SUBCONTRACTING

##### **PLAN (OCT 1995)**

(a) “Failure to make a good faith effort to comply with the subcontracting plan”, as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled “Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan,” or willful or intentional action to frustrate the plan.

(b) If, at contract completion, or in the case of a commercial product plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled “Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan,” the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor's failure to comply, shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal or, in the case of a commercial products plan, that portion of the dollar amount allocable to Government contracts by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial product plans; i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of the clause in this contract entitled “Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan,” the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this clause on behalf of all agencies that awarded contracts covered by that commercial product plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

#### **52.219-17 Section 8(a) Award.**



As prescribed in 19.811-3(c), insert the following clause:

**SECTION 8(a) AWARD (FEB 1990)**

(a) By execution of a contract, the Small Business Administration (SBA) agrees to the following:

(1) To furnish the supplies or services set forth in the contract according to the specifications and the terms and conditions by subcontracting with the Offeror who has been determined an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended (15 U.S.C. 637(a)).

(2) Except for novation agreements and advance payments, delegates to the \_\_\_\_\_ (*insert name of contracting activity*) the responsibility for administering the contract with complete authority to take any action on behalf of the Government under the terms and conditions of the contract; *provided*, however that the contracting agency shall give advance notice to the SBA before it issues a final notice terminating the right of the subcontractor to proceed with further performance, either in whole or in part, under the contract.

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

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

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

(End of clause)

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

As prescribed in 19.811-3(d), insert the following clause:

**NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS (FEB 1990)**

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

(1) SIC code \_\_\_\_\_ \* \_\_\_\_\_ is specifically included in the Offeror's approved business plan;

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

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

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

(c) Any award resulting from this solicitation will be

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

(d)(1) *Agreement.* A manufacturer or regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced by small business concerns inside the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Trust Territory of the Pacific Islands. However, this requirement does not apply in connection with construction or service contracts.

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

(End of clause)

(\*Insert SIC code assigned to the acquisition by the contracting activity.)

*Alternate I* (NOV 1989). If the competition is to be limited to 8(a) concerns within one or more specific SBA regions or districts, add the following subparagraph (a)(4) to paragraph (a) of the clause:

(4) The offeror's approved business plan is on the file and serviced by \_\_\_\_\_ (\**Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by the SBA.*)

*Alternate II* (NOV 1989). If the competition is to be limited to 8(a) concerns within a particular program participation stage, add the following subparagraph (a)(4) to paragraph (a) of the clause. When used in conjunction with Alternate I, this subparagraph should be renumbered (a)(5).

(4) The offeror is in the \_\_\_\_\_ \* \_\_\_\_\_ stage of 8(a) program participation. (\**Contracting Officer completes by inserting the appropriate stage of participation as identified by SBA (i.e., developmental or transitional).*)

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

**52.219-19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.**

As prescribed in 19.1007(a), insert the following provision:  
**SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (JUL 1991)**

(a) *Definition.*

"Emerging small business" as used in this solicitation, means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a

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contracting opportunity.

(b) (Complete only if the Offeror has certified itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.)

The Offeror represents and certifies as part of its offer that it ☐ is, ☐ is not an emerging small business.

(c) (Complete only if the Offeror is a small business or an emerging small business, indicating its size range.)

Offeror's number of employees for the past 12 months (check this column if size standard stated in solicitation is expressed in terms of number of employees) or Offeror's average annual gross revenue for the last 3 fiscal years (check this column if size standard stated in solicitation is expressed in terms of annual receipts). (Check one of the following.)

<i>No. of Employees</i>	<i>Avg. Annual Gross Revenues</i>
<input type="checkbox"/> 50 or fewer	<input type="checkbox"/> \$1 million or less
<input type="checkbox"/> 51 - 100	<input type="checkbox"/> \$1,000,001 - \$2 million
<input type="checkbox"/> 101 - 250	<input type="checkbox"/> \$2,000,001 - \$3.5 million
<input type="checkbox"/> 251 - 500	<input type="checkbox"/> \$3,500,001 - \$5 million
<input type="checkbox"/> 501 - 750	<input type="checkbox"/> \$5,000,001 - \$10 million
<input type="checkbox"/> 751 - 1,000	<input type="checkbox"/> \$10,000,001 - \$17 million
<input type="checkbox"/> Over 1,000	<input type="checkbox"/> Over \$17 million

(End of provision)

#### 52.219-20 Notice of Emerging Small Business Set-Aside.

As prescribed in 19.1007(b), insert the following provision:

##### NOTICE OF EMERGING SMALL BUSINESS SET- ASIDE (JAN 1991)

Offers or quotations under this acquisition are solicited from emerging small business concerns only. Offers that are not from an emerging small business shall not be considered and shall be rejected.

(End of provision)

#### 52.219-21 Small Business Size Representation for Targeted Industry Categories under the Small Business Competitiveness Demonstration Program.

As prescribed in 19.1007(c), insert the following provision:

##### SMALL BUSINESS SIZE REPRESENTATION FOR TARGETED INDUSTRY CATEGORIES UNDER THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (JUL 1991)

(Complete only if the Offeror has certified itself under the provision at 52.219-1 as a small business concern under the size standards of this solicitation.)

Offeror represents and certifies as follows:

Offeror's number of employees for the past 12 months (check this column if size standard stated in solicitation is expressed in terms of number of employees) or Offeror's average annual gross revenue for the last 3 fiscal years (check this column if size standard stated in solicitation is expressed

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in terms of annual receipts). (Check one of the following.)

<i>No. of Employees</i>	<i>Avg. Annual Gross Revenues</i>
<input type="checkbox"/> 50 or fewer	<input type="checkbox"/> \$1 million or less
<input type="checkbox"/> 51 - 100	<input type="checkbox"/> \$1,000,001 - \$2 million
<input type="checkbox"/> 101 - 250	<input type="checkbox"/> \$2,000,001 - \$3.5 million
<input type="checkbox"/> 251 - 500	<input type="checkbox"/> \$3,500,001 - \$5 million
<input type="checkbox"/> 501 - 750	<input type="checkbox"/> \$5,000,001 - \$10 million
<input type="checkbox"/> 751 - 1,000	<input type="checkbox"/> \$10,000,001 - \$17 million
<input type="checkbox"/> Over 1,000	<input type="checkbox"/> Over \$17 million

(End of provision)

#### 52.220—52.221 [Reserved]

#### 52.222-1 Notice to the Government of Labor Disputes.

As prescribed in 22.103-5(a), insert the following clause in solicitations and contracts that involve programs or requirements that have been designated under 22.101-1(e):

##### NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (APR 1984)

(a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime Contractor, as the case may be, of all relevant information concerning the dispute.

(End of clause)

#### 52.222-2 Payment for Overtime Premiums.

As prescribed in 22.103-5(b), insert the following clause:  
PAYMENT FOR OVERTIME PREMIUMS (JUL 1990)

(a) The use of overtime is authorized under this contract if the overtime premium does not exceed \* \_\_\_\_\_ or the overtime premium is paid for work—

(1) Necessary to cope with emergencies such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(2) By indirect-labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(3) To perform tests, industrial processes, laboratory procedures, loading or unloading of transportation conveyances, and operations in flight or afloat that are continuous in nature and cannot reasonably be interrupted or completed otherwise; or

(4) That will result in lower overall costs to the

Government.

(b) Any request for estimated overtime premiums that exceeds the amount specified above shall include all estimated overtime for contract completion and shall—

(1) Identify the work unit; e.g., department or section in which the requested overtime will be used, together with present workload, staffing, and other data of the affected unit sufficient to permit the Contracting Officer to evaluate the necessity for the overtime;

(2) Demonstrate the effect that denial of the request will have on the contract delivery or performance schedule;

(3) Identify the extent to which approval of overtime would affect the performance or payments in connection with other Government contracts, together with identification of each affected contract; and

(4) Provide reasons why the required work cannot be performed by using multishift operations or by employing additional personnel.

\*Insert either “zero” or the dollar amount agreed to during negotiations.

The inserted figure does not apply to the exceptions in subparagraph (a)(1) through (a)(4) of the clause.

(End of clause)

### 52.222-3 Convict Labor.

As prescribed in 22.202, insert the following clause in solicitations and contracts when the contract is to be performed in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands; unless—

(a) The contract will be subject to the Walsh-Healey Public Contracts Act (see Subpart 22.6), which contains a separate prohibition against the employment of convict labor;

(b) The supplies or services are to be purchased from Federal Prison Industries, Inc. (see Subpart 8.6); or

(c) The acquisition involves the purchase, from any State prison, of finished supplies that may be secured in the open market or from existing stocks, as distinguished from supplies requiring special fabrication.

CONVICT LABOR (APR 1984)

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing this contract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

(End of clause)

### 52.222-4 Contract Work Hours and Safety Standards Act—Overtime Compensation.

As prescribed in 22.305, insert the following clause:

CONTRACT WORK HOURS AND SAFETY  
STANDARDS ACT—OVERTIME COMPENSATION  
(JUL 1995)

(a) *Overtime requirements.* No Contractor or subcontractor contracting for any part of the contract work which

may require or involve the employment of laborers or mechanics (see Federal Acquisition Regulation (FAR) 22.300) shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) *Withholding for unpaid wages and liquidated damages.* The Contracting Officer shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Prime Contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) *Payrolls and basic records.* (1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of contract work and shall preserve them for a period of 3 years from the completion of the contract for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) imple-

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**[The next page is 52-89.]**

menting the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) *Subcontracts.* The Contractor or subcontractor shall insert in any subcontracts exceeding \$100,000 the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

(End of clause)

#### 52.222-5 [Reserved]

#### 52.222-6 Davis-Bacon Act.

As prescribed in 22.407(a), insert the following clause:

##### DAVIS-BACON ACT (FEB 1995)

(a) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (d) of this clause; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period. Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the clause entitled Apprentices and Trainees. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, That the employer's payroll records accurately set forth the time spent in each classification in which

work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (b) of this clause) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(b)(1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefor only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (b)(2) and (b)(3) of this clause shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(c) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(d) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(End of clause)

#### **52.222-7 Withholding of Funds.**

As prescribed in 22.407(a), insert the following clause:

##### **WITHHOLDING OF FUNDS (FEB 1988)**

The Contracting Officer shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same Prime Contractor, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(End of clause)

#### **52.222-8 Payrolls and Basic Records.**

As prescribed in 22.407(a), insert the following clause:

##### **PAYROLLS AND BASIC RECORDS (FEB 1988)**

(a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in

section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b)(1) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Contracting Officer. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify—

(i) That the payroll for the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe

benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(c) The Contractor or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Contracting Officer or authorized representatives of the Contracting Officer or the Department of Labor. The Contractor or subcontractor shall permit the Contracting Officer or representatives of the Contracting Officer or the Department of Labor to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit required records or to make them available, the Contracting Officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(End of clause)

#### 52.222-9 Apprentices and Trainees.

As prescribed in 22.407(a), insert the following clause:

##### APPRENTICES AND TRAINEES (FEB 1988)

(a) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any

apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the

job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) *Equal employment opportunity.* The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(End of clause)

#### **52.222-10 Compliance with Copeland Act Requirements.**

As prescribed in 22.407(a), insert the following clause:

##### **COMPLIANCE WITH COPELAND ACT REQUIREMENTS (FEB 1988)**

The Contractor shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this contract.

(End of clause)

#### **52.222-11 Subcontracts (Labor Standards).**

As prescribed in 22.407(a), insert the following clause:

##### **SUBCONTRACTS (LABOR STANDARDS) (FEB 1988)**

(a) The Contractor or subcontractor shall insert in any subcontracts the clauses entitled *Davis-Bacon Act, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination—Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility*, and such other clauses as the Contracting Officer may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with all the contract clauses cited in this paragraph.

(b)(1) Within 14 days after award of the contract, the Contractor shall deliver to the Contracting Officer a completed Statement and Acknowledgment Form (SF 1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Contractor shall deliver to the Contracting Officer an updated completed SF 1413 for such additional subcontract.

(End of clause)

#### **52.222-12 Contract Termination—Debarment.**

As prescribed in 22.407(a), insert the following clause:

##### **CONTRACT TERMINATION—DEBARMENT (FEB 1988)**

A breach of the contract clauses entitled *Davis-Bacon Act, Contract Work Hours and Safety Standards Act—Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon and Related Act Regulations, or Certification of Eligibility* may be grounds for termination of the contract, and for debarment as a Contractor and subcontractor as provided in 29 CFR 5.12.

(End of clause)

#### **52.222-13 Compliance with Davis-Bacon and Related Act Regulations.**

As prescribed in 22.407(a), insert the following clause:

##### **COMPLIANCE WITH DAVIS-BACON AND RELATED ACT REGULATIONS (FEB 1988)**

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this contract.

(End of clause)

#### **52.222-14 Disputes Concerning Labor Standards.**

As prescribed in 22.407(a), insert the following clause:

##### **DISPUTES CONCERNING LABOR STANDARDS (FEB 1988)**

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(End of clause)

#### **52.222-15 Certification of Eligibility.**

As prescribed in 22.407(a), insert the following clause:

##### **CERTIFICATION OF ELIGIBILITY (FEB 1988)**

(a) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is pre-



scribed in the U.S. Criminal Code, 18 U.S.C. 1001.  
(End of clause)

#### **52.222-16 Approval of Wage Rates.**

As prescribed in 22.407(b), insert the following clause:  
APPROVAL OF WAGE RATES (FEB 1988)

All straight time wage rates, and overtime rates based thereon, for laborers and mechanics engaged in work under this contract must be submitted for approval in writing by the head of the contracting activity or a representative expressly designated for this purpose, if the straight time wages exceed the rates for corresponding classifications contained in the applicable Davis-Bacon Act minimum wage determination included in the contract. Any amount paid by the Contractor to any laborer or mechanic in excess of the agency approved wage rate shall be at the expense of the Contractor and shall not be reimbursed by the Government. If the Government refuses to authorize the use of the overtime, the Contractor is not released from the obligation to pay employees at the required overtime rates for any overtime actually worked.

(End of clause)

#### **52.222-17 Labor Standards for Construction Work—Facilities Contracts.**

As prescribed in 22.407(d), insert the following clause:  
LABOR STANDARDS FOR CONSTRUCTION  
WORK—FACILITIES CONTRACTS (FEB 1988)

(a) In the event that construction, alteration, or repair (including painting and decorating) of public buildings or public works is to be performed hereunder, the Contractor shall comply with the following listed clauses of the Federal Acquisition Regulation in performance of such work:

- (1) Contract Work Hours and Safety Standards Act—Overtime Compensation at 52.222-4.
- (2) Davis-Bacon Act at 52.222-6.
- (3) Withholding of Funds at 52.222-7.
- (4) Payrolls and Basic Records at 52.222-8.
- (5) Apprentices and Trainees at 52.222-9.
- (6) Compliance With Copeland Act Requirements at 52.222-10.
- (7) Subcontracts (Labor Standards) at 52.222-11.
- (8) Contract Termination—Debarment at 52.222-12.
- (9) Compliance with Davis-Bacon and Related Act Regulations at 52.222-13.
- (10) Disputes Concerning Labor Standards at 52.222-14.
- (11) Certification of Eligibility at 52.222-15.

(b) Upon determination by the Contracting Officer that the Davis-Bacon Act is applicable to any item of work to be performed hereunder, a determination of the prevailing wage rates shall be incorporated into the contract by modification.

(c) No construction, alteration, or repair (including painting and decorating) of public buildings or public

works shall be performed under this contract without incorporation of the wage determination unless the Contracting Officer authorizes the start of work because of unusual or emergency situations, in which case the wage determination shall be incorporated as soon as possible and made retroactive to the start of the work.

(End of clause)

#### **52.222-18 [Reserved]**

#### **52.222-19 Walsh-Healey Public Contracts Act Representation.**

As prescribed in 22.610(a), insert the following provision in solicitations that will result in contracts covered by the Act. If the solicitation is a Request for Quotation, the terms “quot-er” and “quote” may be substituted for “offeror” and “offer.”

##### **WALSH-HEALEY PUBLIC CONTRACTS ACT REPRESENTATION (APR 1984)**

The offeror represents as a part of this offer that the offeror is ☐ or is not ☐ a regular dealer in, or is ☐ or is not ☐ a manufacturer of, the supplies offered.

(End of provision)

(41 CFR 50-201.1)

#### **52.222-20 Walsh-Healey Public Contracts Act.**

As prescribed in 22.610(b), insert the following clause in solicitations and contracts covered by the Act:

##### **WALSH-HEALEY PUBLIC CONTRACTS ACT (APR 1984)**

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

(a) All representations and stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These representations and stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.

(b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

(End of clause)

(R 7-103.17 1958 JAN)

(R 1-12.605)

#### **52.222-21 Certification of Nonsegregated Facilities.**

As prescribed in 22.810(a)(1), insert the following provision in solicitations when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the

contract amount is expected to exceed \$10,000:

**CERTIFICATION OF NONSEGREGATED FACILITIES**  
(APR 1984)

(a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(b) By the submission of this offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.

(c) The offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will—

(1) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;

(2) Retain the certifications in the files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NON-SEGREGATED FACILITIES.**

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

(End of provision)

(R 7-2003.14(b)(1)(A) 1970 AUG)

(R 1-12.803-10(d))

**52.222-22 Previous Contracts and Compliance Reports.**

As prescribed in 22.810(a)(2), insert the following provision in solicitations when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity:

**PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (APR 1984)**

The offeror represents that—

(a) It ☐ has, ☐ has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114;

(b) It ☐ has, ☐ has not, filed all required compliance reports; and

(c) Representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained before subcontract awards.

(End of provision)

(R 7-2003.14(b)(1)(B) 1973 APR)

**52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity.**

As prescribed in 22.810(b), insert the following provision in solicitations for construction when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount is expected to be in excess of \$10,000:

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (APR 1984)**

(a) The offeror's attention is called to the Equal Opportunity clause and the Affirmative Action Compliance Requirements for Construction clause of this solicitation.

(b) The goals for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Goals for minority participation for each trade

Goals for female participation for each trade

*[Contracting Officer shall insert goals]*

*[Contracting Officer shall insert goals]*

These goals are applicable to all the Contractor's construction work performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, the Contractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

(c) The Contractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR 60-4

shall be based on (1) its implementation of the Equal Opportunity clause, (2) specific affirmative action obligations required by the clause entitled “Affirmative Action Compliance Requirements for Construction,” and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor, or from project to project, for the sole purpose of meeting the Contractor’s goals shall be a violation of the contract, Executive Order 11246, as amended, and the regulations in 41 CFR 60-4. Compliance with the goals will be measured against the total work hours performed.

(d) The Contractor shall provide written notification to the Director, Office of Federal Contract Compliance Programs, within 10 working days following award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the—

- (1) Name, address, and telephone number of the subcontractor;
- (2) Employer's identification number of the subcontractor;
- (3) Estimated dollar amount of the subcontract;
- (4) Estimated starting and completion dates of the subcontract; and
- (5) Geographical area in which the subcontract is to be performed.

(e) As used in this Notice, and in any contract resulting from this solicitation, the “covered area” is . . . . .  
[Contracting Officer shall insert description of the geographical areas where the contract is to be performed, giving the State, county, and city].

(End of provision)

(R 7-2003.14(d) 1978 SEP)

#### **52.222-24 Preaward On-Site Equal Opportunity Compliance Review.**

As prescribed in 22.810(c), insert the following provision in solicitations, other than those for construction, when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity, and the amount is expected to be for \$1 million or more:

##### **PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW (APR 1984)**

An award in the amount of \$1 million or more will not be made under this solicitation unless the offeror and each of its known first-tier subcontractors (to whom it intends to award a subcontract of \$1 million or more) are found, on the basis of a compliance review, to be able to comply with the provisions of the Equal Opportunity clause of this solicitation.

(End of provision)

(R 7-2003.14(a) 1970 AUG)

(R 1-12.803-9)

#### **52.222-25 Affirmative Action Compliance.**

As prescribed in 22.810(d), insert the following provision in solicitations, other than those for construction, when a contract is contemplated that will include the clause at 52.222-26, Equal Opportunity:

##### **AFFIRMATIVE ACTION COMPLIANCE (APR 1984)**

The offeror represents that (a) it ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by the rules and regulations of the Secretary of Labor (41 CFR 60-1 and 60-2), or (b) it ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(End of provision)

(R 7-2003.14(b) 1979 SEP)

(R 1-12.805-4)

#### **52.222-26 Equal Opportunity.**

As prescribed in 22.810(e), insert the following clause in solicitations and contracts (see 22.802) unless all of the terms of the clause are exempt from the requirements of EO 11246 (see 22.807(a)):

##### **EQUAL OPPORTUNITY (APR 1984)**

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(b) During performing this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective

bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(8) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraph (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

(End of clause)

(R 7-103.18 1978 SEP)

(R 1-12.803-2)

(R 7-607.13 1978 SEP)

*Alternate I* (APR 1984). If one or more, but not all, of the terms of the clause are exempt from the requirements of EO 11246 (see 22.807(a)), the contracting officer shall add the following as a preamble to the clause:

*Notice.* The following terms of this clause are waived for this contract: . . . . . [Contracting Officer shall list terms].

## **52.222-27 Affirmative Action Compliance Requirements for Construction.**

As prescribed in 22.810(f), insert the following clause in solicitations and contracts for construction that will include the clause at 52.222-26, Equal Opportunity, and the amount of the contract is expected to be in excess of \$10,000:

### **AFFIRMATIVE ACTION COMPLIANCE REQUIREMENTS FOR CONSTRUCTION (APR 1984)**

(a) *Definitions.* "Covered area," as used in this clause, means the geographical area described in the solicitation for this contract.

"Director," as used in this clause, means Director, Office of Federal Contract Compliance Programs (OFCCP), United States Department of Labor, or any person to whom the Director delegates authority.

"Employer's identification number," as used in this clause, means the Federal Social Security number used on the employer's quarterly federal tax return, U.S. Treasury Department Form 941.

"Minority," as used in this clause, means—

(1) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(2) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

(3) Black (all persons having origins in any of the black African racial groups not of Hispanic origin); and

(4) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race).

(b) If the Contractor, or a subcontractor at any tier, subcontracts a portion of the work involving any construction trade, each such subcontract in excess of \$10,000 shall include this clause and the Notice containing the goals for minority and female participation stated in the solicitation for this contract.

(c) If the Contractor is participating in a Hometown Plan (41 CFR 60-4) approved by the U.S. Department of Labor in a covered area, either individually or through an association, its affirmative action obligations on all work in the plan area (including goals) shall comply with the plan for those trades that have unions participating in the plan. Contractors must be able to demonstrate participation in, and compliance with, the provisions of the plan. Each

Contractor or subcontractor participating in an approved plan is also required to comply with its obligations under the Equal Opportunity clause, and to make a good faith effort to achieve each goal under the plan in each trade in which it has employees. The overall good-faith performance by other Contractors or subcontractors toward a goal in an approved plan does not excuse any Contractor's or subcontractor's failure to make good-faith efforts to achieve the plan's goals.

(d) The Contractor shall implement the affirmative action procedures in subparagraphs (g)(1) through (16) of this clause. The goals stated in the solicitation for this contract are expressed as percentages of the total hours of employment and training of minority and female utilization that the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for the geographical area where that work is actually performed. The Contractor is expected to make substantially uniform progress toward its goals in each craft.

(e) Neither the terms and conditions of any collective bargaining agreement, nor the failure by a union with which the Contractor has a collective bargaining agreement, to refer minorities or women shall excuse the Contractor's obligations under this clause, Executive Order 11246, as amended, or the regulations thereunder.

(f) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(g) The Contractor shall take affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with this clause shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully and implement affirmative action steps at least as extensive as the following:

(1) Ensure a working environment free of harassment, intimidation, and coercion at all sites and in all facilities where the Contractor's employees are assigned to work. The Contractor, if possible, will assign two or more women to each construction project. The Contractor shall ensure that foremen, superintendents, and other onsite supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at these sites or facilities.

(2) Establish and maintain a current list of sources

for minority and female recruitment. Provide written notification to minority and female recruitment sources and community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Establish and maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant, referrals of minorities or females from unions, recruitment sources, or community organizations, and the action taken with respect to each individual. If an individual was sent to the union hiring hall for referral and not referred back to the Contractor by the union or, if referred back, not employed by the Contractor, this shall be documented in the file, along with whatever additional actions the Contractor may have taken.

(4) Immediately notify the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred back to the Contractor a minority or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area that expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under subparagraph (g)(2) above.

(6) Disseminate the Contractor's equal employment policy by—

(i) Providing notice of the policy to unions and to training, recruitment, and outreach programs, and requesting their cooperation in assisting the Contractor in meeting its contract obligations;

(ii) Including the policy in any policy manual and in collective bargaining agreements;

(iii) Publicizing the policy in the company newspaper, annual report, etc.;

(iv) Reviewing the policy with all management personnel and with all minority and female employees at least once a year; and

(v) Posting the policy on bulletin boards accessible to employees at each location where construction work is performed.

(7) Review, at least annually, the Contractor's equal employment policy and affirmative action obligations with all employees having responsibility for hiring, assignment, layoff, termination, or other employment decisions. Conduct review of this policy with all onsite supervisory personnel before initiating construction work at a job site. A written record shall be made and

maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Contractor's equal employment policy externally by including it in any advertising in the news media, specifically including minority and female news media. Provide written notification to, and discuss this policy with, other Contractors and subcontractors with which the Contractor does or anticipates doing business.

(9) Direct recruitment efforts, both oral and written, to minority, female, and community organizations, to schools with minority and female students, and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than 1 month before the date for acceptance of applications for apprenticeship or training by any recruitment source, send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit minority persons and women. Where reasonable, provide after-school, summer, and vacation employment to minority and female youth both on the site and in other areas of the Contractor's workforce.

(11) Validate all tests and other selection requirements where required under 41 CFR 60-3.

(12) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities. Encourage these employees to seek or to prepare for, through appropriate training, etc., opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments, and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the Contractor's obligations under this contract are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Maintain a record of solicitations for subcontracts for minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's equal employment policy and affirmative action obligations.

(h) The Contractor is encouraged to participate in voluntary associations that may assist in fulfilling one or more of the affirmative action obligations contained in subparagraphs (g)(1) through (16). The efforts of a contractor association, joint contractor-union, contractor-community, or similar group of which the contractor is a member and participant may be asserted as fulfilling one or more of its obligations under subparagraphs (g)(1) through (16), provided the Contractor—

(1) Actively participates in the group;

(2) Makes every effort to ensure that the group has a positive impact on the employment of minorities and women in the industry;

(3) Ensures that concrete benefits of the program are reflected in the Contractor's minority and female workforce participation;

(4) Makes a good-faith effort to meet its individual goals and timetables; and

(5) Can provide access to documentation that demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

(i) A single goal for minorities and a separate single goal for women shall be established. The Contractor is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of Executive Order 11246, as amended, if a particular group is employed in a substantially disparate manner.

(j) The Contractor shall not use goals or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

(k) The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts under Executive Order 11246, as amended.

(l) The Contractor shall carry out such sanctions and penalties for violation of this clause and of the Equal Opportunity clause, including suspension, termination, and cancellation of existing subcontracts, as may be imposed or ordered under Executive Order 11246, as amended, and its implementing regulations, by the OFCCP. Any failure to carry out these sanctions and penalties as ordered shall be a violation of this clause and Executive Order 11246, as amended.

(m) The Contractor in fulfilling its obligations under this clause shall implement affirmative action procedures at least as extensive as those prescribed in paragraph (g) above, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of Executive Order 11246, as amended, the implementing regulations, or this clause, the Director shall take action as prescribed in 41 CFR 60-4.8.

(n) The Contractor shall designate a responsible official to—

(1) Monitor all employment-related activity to ensure that the Contractor's equal employment policy is being

carried out;

(2) Submit reports as may be required by the Government; and

(3) Keep records that shall at least include for each employee the name, address, telephone number, construction trade, union affiliation (if any), employee identification number, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; *however*, to the degree that existing records satisfy this requirement, separate records are not required to be maintained.

(o) Nothing contained herein shall be construed as a limitation upon the application of other laws that establish different standards of compliance or upon the requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(End of clause)

(R 7-603.60 1978 SEP)

#### **52.222-28 Equal Opportunity Preaward Clearance of Subcontracts.**

As prescribed in 22.810(g), insert the following clause:  
EQUAL OPPORTUNITY PREAWARD CLEARANCE OF  
SUBCONTRACTS (APR 1984)

Notwithstanding the clause of this contract entitled “Subcontracts,” the Contractor shall not enter into a first-tier subcontract for an estimated or actual amount of \$1 million or more without obtaining in writing from the Contracting Officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

(End of clause)

(AV 7-104.22 1971 OCT)

#### **52.222-29 Notification of Visa Denial.**

As prescribed in 22.810(h), insert the following clause in contracts that will include the clause at 52.222-26, Equal Opportunity, if the Contractor is required to perform in or on behalf of a foreign country:

NOTIFICATION OF VISA DENIAL (APR 1984)

It is a violation of Executive Order 11246, as amended, for a Contractor to refuse to employ any applicant or not to assign any person hired in the United States, on the basis that the individual’s race, color, religion, sex, or national origin is not compatible with the policies of the country where the work is to be performed or for whom the work will be performed (41 CFR 60-1.10). The Contractor agrees to notify the Department of State, Washington, DC. Attention: Director, Bureau of Politico-Military Affairs, and the Director, Office of Federal Contract Compliance Programs, when it has knowledge of any employee or

potential employee being denied an entry visa to a country in which the Contractor is required to perform this contract, and it believes the denial is attributable to the race, color, religion, sex, or national origin of the employee or potential employee.

(End of clause)

(AV 7-2003.14(c) 1978 SEP)

**52.222-30 [Reserved]**

**52.222-31 [Reserved]**

**52.222-32 [Reserved]**

**52.222-33 [Reserved]**

**52.222-34 [Reserved]**

#### **52.222-35 Affirmative Action for Special Disabled and Vietnam Era Veterans.**

As prescribed in 22.1308, insert the following clause in solicitations and contracts when the contract is for \$10,000 or more or is expected to amount to \$10,000 or more (see 22.1308(a) for exceptions):

AFFIRMATIVE ACTION FOR SPECIAL  
DISABLED AND VIETNAM ERA VETERANS  
(APR 1984)

(a) *Definitions.*

“Appropriate office of the State employment service system,” as used in this clause, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

“Openings that the Contractor proposes to fill from within its own organization,” as used in this clause, means employment openings for which no one outside the Contractor’s organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established “recall” lists.

“Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement,” as used in this clause, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

“Suitable employment openings,” as used in this clause—

(1) Includes, but is not limited to, openings that occur in jobs categorized as—

- (i) Production and nonproduction;
- (ii) Plant and office;
- (iii) Laborers and mechanics;

- (iv) Supervisory and nonsupervisory;
- (v) Technical; and
- (vi) Executive, administrative, and professional positions compensated on a salary basis of less than \$25,000 a year; and

(2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) *General.* (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) *Listing openings.* (1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.

(3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group

of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract clause.

(5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in the Government's interest.

(d) *Applicability.* (1) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The terms of paragraph (c) above of this clause do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) *Postings.* (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.

(f) *Noncompliance.* If the Contractor does not comply with the requirements of this clause, appropriate actions



may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) *Subcontracts*. The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

(End of clause)  
(R 7-103.27 1976 JUL)  
(R FPR Temp. Reg. 39)

*Alternate I* (APR 1984). As prescribed in 22.1308(b), if the agency head waives one or more (but not all) of the terms of the clause in accordance with 22.1303(a) or 22.1303(b), add the following as a preamble to the clause:

*Notice*: The following term(s) of this clause are waived for this contract: [*List term(s)*].

(R 12-1402(d))

#### 52.222-36 Affirmative Action for Handicapped Workers.

As prescribed in 22.1408, insert the following clause in solicitations and contracts that exceed \$2,500 or are expected to exceed \$2,500. See 22.1408(a) for exceptions.

##### AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS (APR 1984)

(a) *General*. (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as—

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation;
- and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) *Postings*. (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous

places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.

(c) *Noncompliance*. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) *Subcontracts*. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

(End of clause)  
(R 7-103.28 1976 MAY)  
(R FPR Temp. Reg. 38)

*Alternate I* (APR 1984). As prescribed in 22.1408(b), when the agency head waives one or more (but not all) of the terms of the clause in accordance with 22.1403(a) or 22.1403(b), add the following as a preamble to the clause:

*Notice*: The following term(s) of this clause are waived for this contract: [*List term(s)*].

(R 12.1302(d))

#### 52.222-37 Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.

As prescribed in 22.1308(b), insert the following clause:

##### EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (JAN 1988)

(a) The contractor shall report at least annually, as required by the Secretary of Labor, on:

(1) The number of special disabled veterans and the number of veterans of the Vietnam era in the workforce of the contractor by job category and hiring location; and

(2) The total number of new employees hired during the period covered by the report, and of that total, the number of special disabled veterans, and the number of veterans of the Vietnam era.

(b) The above items shall be reported by completing the form entitled "Federal Contractor Veterans' Employment Report VETS-100."

(c) Reports shall be submitted no later than March 31 of each year beginning March 31, 1988.

(d) The employment activity report required by para-

graph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date: (1) As of the end of any pay period during the period January through March 1st of the year the report is due, or (2) as of December 31, if the contractor has previous written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(e) The count of veterans reported according to paragraph (a) of this clause shall be based on voluntary disclosure. Each contractor subject to the reporting requirements at 38 U.S.C. 2012(d) shall invite all special disabled veterans and veterans of the Vietnam era who wish to benefit under the affirmative action program at 38 U.S.C. 2012 to identify themselves to the contractor. The invitation shall state that the information is voluntarily provided, that the information will be kept confidential, that disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment and that the information will be used only in accordance with the regulations promulgated under 38 U.S.C. 2012.

(f) *Subcontracts.* The Contractor shall include the terms of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary.

(End of clause)

#### 52.222-38 [Reserved]

#### 52.222-39 [Reserved]

#### 52.222-40 Service Contract Act of 1965, as Amended—Contracts of \$2,500 or Less.

As prescribed in 22.1005, insert the following clause:

SERVICE CONTRACT ACT OF 1965, AS  
AMENDED—CONTRACTS OF \$2,500 OR LESS  
(MAY 1989)

Except to the extent that an exemption, variation, or tolerance would apply if this contract were in excess of \$2,500, the Contractor and any subcontractor shall pay all employees working on the contract not less than the minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-206). Regulations and interpretations of the Service Contract Act of 1965, as amended, are contained in 29 CFR Part 4.

(End of clause)

#### 52.222-41 Service Contract Act of 1965, as Amended.

As prescribed in 22.1006(a), insert the following clause:

SERVICE CONTRACT ACT OF 1965, AS AMENDED  
(MAY 1989)

(a) *Definitions.* “Act,” as used in this clause, means the Service Contract Act of 1965, as amended (41 U.S.C. 351,

et seq.).

“Contractor,” as used in this clause or in any subcontract, shall be deemed to refer to the subcontractor, except in the term “Government Prime Contractor.”

“Service employee,” as used in this clause, means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) *Applicability.* This contract is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 356, as interpreted in Subpart C of 29 CFR Part 4.

(c) *Compensation.* (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees’ authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment

Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work

on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced contract work.

(3) Adjustment of Compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) *Obligation to Furnish Fringe Benefits.* The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) *Minimum Wage.* In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) *Successor Contracts.* If this contract succeeds a contract subject to the Act under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract),

less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) *Notification to Employees.* The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract.

(h) *Safe and Sanitary Working Conditions.* The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service

employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) *Records.* (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Act—

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) *Pay Periods.* The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall

be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(k) *Withholding of Payments and Termination of Contract.* The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) *Subcontracts.* The Contractor agrees to insert this clause in all subcontracts subject to the Act.

(m) *Collective Bargaining Agreements Applicable to Service Employees.* If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) *Seniority List.* Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last

month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) *Rulings and Interpretations.* Rulings and interpretations of the Act are contained in Regulations, 29 CFR Part 4.

(p) *Contractor's Certification.* (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(q) *Variations, Tolerances, and Exemptions Involving Employment.* Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to section 4(b) of the Act prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of the Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regula-

tions in 29 CFR Parts 525 and 528.

(r) *Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) *Tips.* An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act, in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision—

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(t) *Disputes Concerning Labor Standards.* The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

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(End of clause)

#### **52.222-42 Statement of Equivalent Rates for Federal Hires.**

As prescribed in 22.1006(b), insert the following clause:

##### **STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 1989)**

In compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR Part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

**THIS STATEMENT IS FOR INFORMATION ONLY: IT  
IS NOT A WAGE DETERMINATION**

Employee Class	Monetary Wage - Fringe Benefits

(End of clause)

#### **52.222-43 Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts).**

As prescribed in 22.1006(c)(1), insert the following clause:

##### **FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT—PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (MAY 1989)**

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

(d) The contract price or contract unit price labor rates will be adjusted to reflect the Contractor's actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (c) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

(End of clause)

#### **52.222-44 Fair Labor Standards Act and Service Contract Act—Price Adjustment.**

As prescribed in 22.1006(c)(2), insert the following clause:

FAIR LABOR STANDARDS ACT AND SERVICE  
CONTRACT ACT—PRICE ADJUSTMENT  
(MAY 1989)

(a) This clause applies to both contracts subject to area

prevailing wage determinations and contracts subject to Contractor collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages and fringe benefits to the extent that these increases or decreases are made to comply with—

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(d) Any such adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (b) of this clause, and to the accompanying increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profit.

(e) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(f) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

(End of clause)

#### **52.222-45 [Reserved]**

#### **52.222-46 Evaluation of Compensation for Professional Employees.**

As prescribed in 22.1103, insert the following provision:

EVALUATION OF COMPENSATION FOR  
PROFESSIONAL EMPLOYEES (FEB 1993)

(a) Recompetition of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees.

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This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the Government's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As part of their proposals, offerors will submit a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total compensation structure.

(b) The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges must take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, proposals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.

(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of a proposal.

(End of provision)

**52.222-47 SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA).**

As prescribed in 22.1006(d) and 22.1012-3(d)(1), insert the following clause:

52-108

**SERVICE CONTRACT ACT (SCA) MINIMUM WAGES AND FRINGE BENEFITS (MAY 1989)**

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the bidders/offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent Contractor \_\_\_\_\_ and the \_\_\_\_\_ (union). If the economic terms of the collective bargaining agreement or the collective bargaining agreement itself is not attached to the solicitation, copies can be obtained from the Contracting Officer. Pursuant to Department of Labor Regulation, 29 CFR 4.1b and paragraph (g) of the clause at 52.222-41, Service Contract Act of 1965, as amended, the economic terms of that agreement will apply to the contract resulting from this solicitation, notwithstanding the absence of a wage determination reflecting such terms, unless it is determined that the agreement was not the result of arm's length negotiations or that after a hearing pursuant to section 4(c) of the Act, the economic terms of the agreement are substantially at variance with the wages prevailing in the area.

(End of clause)

**52.222-48 Exemption from Application of Service Contract Act Provisions for Contracts for Maintenance, Calibration, and/or Repair of Certain ADP, Scientific and Medical and/or Office and Business Equipment—Contractor Certification.**

As prescribed in 22.1006(e)(1), insert the following clause:

**EXEMPTION FROM APPLICATION OF SERVICE CONTRACT ACT PROVISIONS FOR CONTRACTS FOR MAINTENANCE, CALIBRATION, AND/OR REPAIR OF CERTAIN ADP, SCIENTIFIC AND MEDICAL AND/OR OFFICE AND BUSINESS EQUIPMENT—CONTRACTOR CERTIFICATION (OCT 1995)**

(a) The following certification shall be checked:  
**CERTIFICATION**

The offeror certifies ☐ , does not certify ☐ that: (1) The items of equipment to be serviced under this contract are commercial items which are used regularly for other than Government purposes, and are sold or traded by the Contractor in substantial quantities to the general public in the course of normal business operations; (2) The contract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, and/or repair of certain ADP, scientific and medical and/or office and business equipment. An "established catalog price" is a price (including discount price) recorded in a catalog, price list, schedule, or other verifiable and established record that is regularly maintained by the manufacturer or the Contractor and is either published



or otherwise available for inspection by customers. An "established market price" is a current price, established in the course of ordinary and usual trade between buyers and sellers free to bargain, which can be substantiated by data from sources independent of the manufacturer or Contractor; and (3) The Contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the Contractor uses for equivalent employees servicing the same equipment of commercial customers.

(b) If a negative certification is made and a Service Contract Act wage determination is not attached to the solicitation, the Contractor shall notify the Contracting Officer as soon as possible.

(c) Failure to execute the certification in paragraph (a) of this clause or to contact the Contracting Officer as required in paragraph (b) of this clause may render the bid or offer nonresponsive.

(End of clause)

#### **52.222-49 Service Contract Act—Place of Performance Unknown.**

As prescribed in 22.1006(f) and 22.1009-4(c), insert the following clause:

##### **SERVICE CONTRACT ACT—PLACE OF PERFORMANCE UNKNOWN (MAY 1989)**

(a) This contract is subject to the Service Contract Act, and the place of performance was unknown when the solicitation was issued. In addition to places or areas identified in wage determinations, if any, attached to the solicitation, wage determinations have also been requested for the following: \_\_\_\_\_ (*insert places or areas*). The Contracting Officer will request wage determinations for additional places or areas of performance if asked to do so in writing by \_\_\_\_\_ (*insert time and date*).

(b) Offerors who intend to perform in a place or area of performance for which a wage determination has not been attached or requested may nevertheless submit bids or proposals. However, a wage determination shall be requested and incorporated in the resultant contract retroactive to the date of contract award, and there shall be no adjustment in the contract price.

(End of clause)

#### **52.223-1 Clean Air and Water Certification.**

As prescribed in 23.105(a), insert the following provision in solicitations containing the clause at 52.223-2, Clean Air and Water.

##### **CLEAN AIR AND WATER CERTIFICATION (APR 1984)**

The Offeror certifies that—

(a) Any facility to be used in the performance of this proposed contract is ☐, is not ☐ listed on the Environmental Protection Agency (EPA) List of Violating Facilities;

(b) The Offeror will immediately notify the Contracting Officer, before award, of the receipt of any communication from the Administrator, or a designee, of the EPA, indicating that any facility that the Offeror proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities; and

(c) The Offeror will include a certification substantially the same as this certification, including this paragraph (c), in every nonexempt subcontract.

(End of provision)

#### **52.223-2 Clean Air and Water.**

As prescribed in 23.105(b), insert the following clause in solicitations and contracts to which Subpart 23.1 applies (see 23.101) if (a) the contract is expected to exceed \$100,000; (b) the contracting officer believes that orders under an indefinite quantity contract in any year will exceed \$100,000; or (c) a facility to be used has been the subject of a conviction under the applicable portion of the Air Act (42 U.S.C. 7413(c)(1)) or the Water Act (33 U.S.C. 1319(c)) and is listed by the Environmental Protection Agency as a violating facility; and (d) the acquisition is not otherwise exempt under 23.104.

##### **CLEAN AIR AND WATER (APR 1984)**

(a) "Air Act," as used in this clause, means the Clean Air Act (42 U.S.C. 7401, et seq.).

"Clean air standards," as used in this clause, means—

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));

(3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or

(4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the EPA or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this clause, means compliance with—

(1) Clean air or water standards; or

(2) A schedule or plan ordered or approved by a court of competent jurisdiction, the EPA, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

“Facility,” as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the EPA determines that independent facilities are collocated in one geographical area.

“Water Act,” as used in this clause, means Clean Water Act (33 U.S.C. 1251, et seq.).

(b) The Contractor agrees—

(1) To comply with the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the EPA List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

(End of clause)

### 52.223-3 Hazardous Material Identification and Material Safety Data.

As prescribed in 23.303, insert the following clause:

#### HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (NOV 1991)

(a) “Hazardous material”, as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered

under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

Material (If none, insert “None”)	Identification No.
_____	_____
_____	_____
_____	_____

(c) The apparently successful offeror, by acceptance of the contract, certifies that the list in paragraph (b) of this clause is complete. This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause or the certification submitted under paragraph (c) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

(1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to—

(i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

(ii) Obtain medical treatment for those affected by the material; and

(iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

(2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

(3) The Government is not precluded from using similar or identical data acquired from other sources.

(End of clause)

*Alternate I* (JUL 1995). If the contract is awarded by an agency other than the Department of Defense, add the following paragraph (i) to the basic clause:

(i) Except as provided in paragraph (i)(2), the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

(1) For items shipped to consignees, the Contractor shall include a copy of the MSDS's with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

(2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS's must be placed in a weather resistant envelope.

#### **52.223-4 Recovered Material Certification.**

As prescribed in 23.405(a), insert the following provision:

##### **RECOVERED MATERIAL CERTIFICATION**

(MAY 1995)

The offeror certifies, by signing this offer, that recovered materials, as defined in FAR 23.402, will be used as required by the applicable purchase descriptions.

(End of provision)

#### **52.223-5 Certification Regarding A Drug-Free Workplace.**

As prescribed in 23.505, insert the following provision:

##### **CERTIFICATION REGARDING A DRUG-FREE WORKPLACE (JUL 1995)**

(a) Definitions. As used in this provision,

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

“Conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

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

“Employee” means an employee of a Contractor directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) By submission of its offer, the offeror (other than an individual) responding to a solicitation that is expected to exceed the simplified acquisition threshold, certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, it will—no later than 30 calendar days after contract award (unless a longer period is agreed to in writing), for contracts of 30 calendar days or more performance duration; or as soon as possible for contracts of less than 30 calendar days performance duration, but in any case, by a date prior to when performance is expected to be completed—

(1) Publish a statement notifying such employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this provision;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this provision, that as a condition of continued employment on the contract resulting from this solicitation, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;

(5) Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee; and

(6) Within 30 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Take appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this provision.

(c) By submission of its offer, the offeror, if an individual who is making an offer of any dollar value, certifies and agrees that the offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract resulting from this solicitation.

(d) Failure of the offeror to provide the certification required by paragraphs (b) or (c) of this provision, renders the offeror unqualified and ineligible for award. (See FAR 9.104-1(g) and 19.602-1(a)(2)(i).)

(e) In addition to other remedies available to the Government, the certification in paragraphs (b) or (c) of this provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

(End of provision)

#### 52.223-6 Drug-Free Workplace.

As prescribed in 23.505(b), insert the following clause:

##### DRUG-FREE WORKPLACE (JUL 1990)

(a) Definitions. As used in this clause,

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

“Conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

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

“Employee” means an employee of a Contractor directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall—within 30 calendar days after award (unless a longer period is agreed to in writing for contracts of 30 calendar days or more performance duration), or as soon as possible for contracts of less than 30 calendar days performance duration—

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about—

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor's policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement

required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction.

(5) Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 calendar days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of this contract.

(d) In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

(End of clause)

#### 52.223-7 Notice of Radioactive Materials.

As prescribed in 23.602, insert the following clause:

##### NOTICE OF RADIOACTIVE MATERIALS

(NOV 1991)

(a) The Contractor shall notify the Contracting Officer or designee, in writing, \_\_\_\_\_\* days prior to the delivery of, or prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries

per gram or the activity per item equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

\* The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See FAR 23.601(d).

(b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall—

(1) Be submitted in writing;

(2) Contain a certification that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

(3) Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.

(c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.

(d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

(End of clause)

#### 52.223-8 Estimate of Percentage of Recovered Material for Designated Items to be Used in the Performance of the Contract.

As prescribed in 23.405(b)(1), insert the following provision:

##### ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL FOR DESIGNATED ITEMS TO BE USED IN THE PERFORMANCE OF THE CONTRACT

(MAY 1995)

(a) By signing this offer, the offeror estimates that the total percentage(s) of recovered material for EPA Designated Items (see 40 CFR, Chapter 1, Subchapter I) to be used in the products and services to be provided under the terms and specifications set forth in this solicitation shall be as follows:

## 52.225-10

## FEDERAL ACQUISITION REGULATION (FAR)

ITEM	ESTIMATED PERCENTAGE OF RECOVERED MATERIAL *
_____	_____
_____	_____

\*In addition, for paper products, include the percentage of postconsumer material.

(b) Prospective offerors are cautioned that the Government will conclude that the percentage(s) of recovered materials to be used in products and services to be provided under any resulting contract shall be "0%" if the estimate(s) requested in this solicitation provision are left blank.

(c) Prospective offerors are further cautioned that estimate percentage(s) of recovered materials to be used in products and services to be provided under any resulting contract that are less than the requirements set forth in this solicitation may render a prospective offeror's offer nonresponsive.

(End of provision)

*Alternate I* (MAY 1995). As prescribed in 23.405(b)(2), use the basic provision and replace the words "EPA Designated Items" with "Agency Designated Items" in paragraph (a) of the basic provision.

*Alternate II* (MAY 1995). As prescribed in 23.405(b)(3), substitute the following paragraph (a) for paragraph (a) of the basic provision:

(a) By signing this offer, the offeror—

(1) Estimates that the total percentage(s) of recovered material for EPA Designated Items to be used in the products and services to be provided under the terms and specifications set forth in this solicitation shall be as follows:

ITEM	ESTIMATED PERCENTAGE OF RECOVERED MATERIAL *
_____	_____
_____	_____

\*In addition, for paper products, include the percentage of postconsumer material.

(2) Estimates that the total percentage(s) of recovered material for Agency Designated Items to be used in the products and services to be provided under the terms and specifications set forth in this solicitation shall be as follows:

ITEM	ESTIMATED PERCENTAGE OF RECOVERED MATERIAL *
_____	_____
_____	_____

\*In addition, for paper products, include the percentage of postconsumer material.

### 52.223-9 Certification of Percentage of Recovered Material Content for EPA Designated Items Used in Performance of the Contract.

As prescribed in 23.405(c), insert the following clause:  
**CERTIFICATION OF PERCENTAGE OF RECOVERED MATERIAL CONTENT FOR EPA DESIGNATED ITEMS USED IN PERFORMANCE OF THE CONTRACT**  
 (MAY 1995)

(a) As required under Section 6962 of the Solid Waste

Disposal Act, an officer or employee of the Contractor shall execute the following certification annually as required in paragraph (b) of this clause:

#### CERTIFICATION

I, \_\_\_\_\_ (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the following minimum recovered material content for EPA Designated Items was actually used in the performance of this contract during the preceding Government fiscal year (October 1 - September 30, \_\_\_\_\_):

ITEM	PERCENTAGE OF RECOVERED MATERIAL CONTENT UTILIZED *	TOTAL DOLLAR AMOUNT OF ITEM USED
_____	_____	_____
_____	_____	_____
_____	_____	_____

\*In addition, for paper products, include the percentage of postconsumer material content utilized.

\_\_\_\_\_  
*Signature of the Officer or Employee*

\_\_\_\_\_  
*Typed Name of the Officer or Employee*

\_\_\_\_\_  
*Title*

\_\_\_\_\_  
*Name of Company, Firm, or Organization*

\_\_\_\_\_  
*Date*

(End of certification)

(b) The Contractor shall submit this certification annually to \_\_\_\_\_ \* \_\_\_\_\_ by November 1, for the previous Government fiscal year (October 1 through September 30).

\*To be completed in accordance with agency procedures.

(End of clause)

### 52.223-10 Waste Reduction Program.

As prescribed in 23.706, insert the following clause:

#### WASTE REDUCTION PROGRAM (MAY 1995)

(a) *Definition.* "Waste reduction," as used in this clause, means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of Section 701 of Executive Order 12873, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract. Any such program shall comply with applicable Federal, state, and local requirements.

(End of clause)

### 52.223-11 Ozone-Depleting Substances.

As prescribed in 23.804(a), insert the following clause:

#### OZONE-DEPLETING SUBSTANCES (MAY 1995)

(a) *Definitions.*

“Class I substance,” as used in this clause, means any substance designated as class I by the Environmental Protection Agency (EPA) (40 CFR Part 82), including but not limited to chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform.

“Class II substance,” as used in this clause, means any substance designated as class II by EPA (40 CFR Part 82), including but not limited to hydrochlorofluorocarbons.

(b) As required by 42 U.S.C. 7671j(b), (c), and (d) and 40 CFR Part 82, Subpart E, the Contractor shall label products which contain a class I or class II ozone-depleting substance or are manufactured with a process that uses class I or class II ozone-depleting substances, or containers of class I or class II ozone-depleting substances, as follows:

“WARNING: Contains (or manufactured with, if applicable) \_\_\_\_\_\* \_\_\_\_\_, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.”

\*The Contractor shall insert the name of the substance(s).

(End of clause)

## 52.223-12 Refrigeration Equipment and Air Conditioners.

As prescribed in 23.804(b), insert the following clause:

### REFRIGERATION EQUIPMENT AND AIR CONDITIONERS (MAY 1995)

The Contractor shall comply with the applicable requirements of Sections 608 and 609 of the Clean Air Act (42 U.S.C. 7671g and 7671h) as each or both apply to this contract.

(End of clause)

## 52.223-13 Certification of Toxic Chemical Release Reporting.

As prescribed in 23.907(a), insert the following provision:

### CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING (OCT 1995)

(a) The offeror, by signing this offer, certifies that—

(NOTE: The offeror must check the appropriate box(es).)

☐ (1) To the best of its knowledge and belief, it is not subject to the filing and reporting requirements described in Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) sections 313(a) and (g) and Pollution Prevention Act of 1990 (PPA) section 6607 because none of its owned or operated facilities to be used in the performance of this contract currently—

☐ (i) Manufacture, process or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023 (c).

☐ (ii) Have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A).

☐ (iii) Meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA).

☐ (iv) Fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in FAR section 19.102.

☐ (2) If awarded a contract resulting from this solicitation, its owned or operated facilities to be used in the performance of this contract, unless otherwise exempt, will file and continue to file for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in EPCRA sections 313(a) and (g) and PPA section 6607 (42 U.S.C. 13106).

(b) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995 (60 FR 40989-40992).

(End of provision)

## 52.223-14 Toxic Chemical Release Reporting.

As prescribed in 23.907(b), insert the following clause:

### TOXIC CHEMICAL RELEASE REPORTING (OCT 1995)

(a) Unless otherwise exempt, the Contractor owned or operated facilities used in the performance of this contract shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). Such Contractor facilities shall file the annual Form R throughout the life of the contract.

(b) A Contractor is exempt from the requirement to file an annual Form R if none of the Contractor owned or operated facilities used in the performance of this contract—

(1) Manufacture, process or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023 (c);

(2) Have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) Meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA); or

(4) Fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in FAR 19.102.

## 52.224-1

## FEDERAL ACQUISITION REGULATION (FAR)

(c) If the Contractor has certified to be exempt in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any one of its owned or operated facilities used in the performance of this contract is no longer exempt—

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor owned and operated facilities used in the performance of this contract, unless otherwise exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the Contractor becomes eligible; and (ii) continue to file the annual Form R for the life of the contract.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items, as defined in FAR Part 12, the Contractor shall—

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), with subcontractors having SIC designations of major groups 20 through 39 as set forth in FAR 19.102, the substance of this clause, except this paragraph (e).

(End of clause)

#### 52.224-1 Privacy Act Notification.

As prescribed in 24.104, insert the following clause in solicitations and contracts, when the design, development, or operation of a system of records on individuals is required to accomplish an agency function:

##### PRIVACY ACT NOTIFICATION (APR 1984)

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C. 552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

(End of clause)

#### 52.224-2 Privacy Act.

As prescribed in 24.104, insert the following clause in solicitations and contracts, when the design, development, or operation of a system of records on individuals is required to accomplish an agency function:

##### PRIVACY ACT (APR 1984)

(a) The Contractor agrees to—

(1) Comply with the Privacy Act of 1974 (the Act) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the contract specifically identifies—

(i) The systems of records; and

(ii) The design, development, or operation work that the contractor is to perform;

(2) Include the Privacy Act notification contained in this contract in every solicitation and resulting subcontract and in every subcontract awarded without a solicitation, when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and

(3) Include this clause, including this subparagraph (3), in all subcontracts awarded under this contract which requires the design, development, or operation of such a system of records.

(b) In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the contract is for the operation of a system of records on individuals to accomplish an agency function, the Contractor is considered to be an employee of the agency.

(c)(1) “Operation of a system of records,” as used in this clause, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.

(2) “Record,” as used in this clause, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person’s name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.

(3) “System of records on individuals,” as used in this clause, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

(End of clause)



**52.225-1 Buy American Certificate.**

As prescribed in 25.109(a), insert the following provision:

**BUY AMERICAN CERTIFICATE (DEC 1989)**

The offeror certifies that each end product, except those listed below, is a domestic end product (as defined in the clause entitled “Buy American Act—Supplies”), and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

<i>Excluded End Products</i>	<i>Country of Origin</i>
.....	.....
.....	.....
.....	.....

(List as necessary)

Offerors may obtain from the contracting officer lists of articles, materials, and supplies excepted from the Buy American Act.

(End of provision)

**52.225-2 Waiver of Buy American Act for Civil Aircraft and Related Articles.**

As prescribed in 25.109(c), insert the following provision in solicitations for the acquisition of civil aircraft and related articles:

**WAIVER OF BUY AMERICAN ACT FOR CIVIL  
AIRCRAFT AND RELATED ARTICLES  
(APR 1984)**

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

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

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

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

(4) Any ground flight simulators, and parts and components of these simulators, for use with respect to the

aircraft, whether to be used as original or replacement equipment in the manufacture, repair, maintenance, rebuilding, modification, or conversion of the aircraft, and without regard to whether the aircraft or articles receive duty-free treatment under section 601(a)(2) of the Trade Agreements Act of 1979.

(b) The U.S. Trade Representative has waived applying of the Buy American Act to the acquisition of civil aircraft and related articles (as defined in paragraph (a) of this clause) of countries or instrumentalities that are parties to the Agreement on Trade in Civil Aircraft. As of January 1, 1981, those countries and instrumentalities include Austria, Canada, the European Economic Community (Belgium, Denmark, the Federal Republic of Germany, France, Greece, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom), Japan, Norway, Romania, Sweden, and Switzerland.

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

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

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

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

(End of provision)

(R 1-6.601-1)

### 52.225-3 Buy American Act—Supplies.

As prescribed in 25.109(d), insert the following clause:

#### BUY AMERICAN ACT—SUPPLIES (JAN 1994)

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

“Components,” as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

“Domestic end product,” as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“End products,” as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(b) The Contractor shall deliver only domestic end prod-

ucts, except those—

(1) For use outside the United States;

(2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the agency determines that domestic preference would be inconsistent with the public interest; or

(4) For which the agency determines the cost to be unreasonable (see FAR 25.105).

(End of clause)

### 52.225-4 [Reserved]

### 52.225-5 Buy American Act—Construction Materials.

As prescribed in 25.205, insert the following clause in solicitations and contracts for construction inside the United States:

#### BUY AMERICAN ACT—CONSTRUCTION MATERIALS (MAY 1992)

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic construction material.

“Components,” as used in this clause, means those articles, materials, and supplies incorporated directly into construction materials.

“Construction material,” as used in this clause, means an article, material, or supply brought to the construction site for incorporation into the building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, which are discrete systems incorporated into a public building or work and which are produced as a complete system, shall be evaluated as a single and distinct construction material regardless of when or how the individual parts or components of such systems are delivered to the construction site.

“Domestic construction material,” as used in this clause, means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the construction materials determined to be unavailable pursuant to subparagraph 25.202(a)(3) of the Federal Acquisition Regulation (FAR) shall be treated as domestic.

(b) The Contractor agrees that only domestic construction material will be used by the Contractor, subcontractors, materialmen, and suppliers in the performance of this contract, except for foreign construction materials, if any, listed in this contract. (The foregoing requirements are

administered in accordance with Executive Order No. 10582, dated December 17, 1954, as amended, and Subpart 25.2 of the FAR.)

(End of clause)

#### **52.225-6 Balance of Payments Program Certificate.**

As prescribed in 25.305(a), insert the following provision:

##### **BALANCE OF PAYMENTS PROGRAM CERTIFICATE (APR 1985)**

(a) The offeror hereby certifies that each end product or service, except the end products or services listed below, is a domestic end product or service (as defined in the clause entitled “Balance of Payments Program”) and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

##### **Excluded End Products or Services**

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

*(List as necessary)*

(b) For evaluation purposes only, each offer of an end product other than a domestic end product shall be increased by 50 percent. Any domestic end product offer that exceeds such evaluated other end product shall be considered unreasonable in cost or inconsistent with the public interest.

(End of provision)

#### **52.225-7 Balance of Payments Program.**

As prescribed in 25.305(c), insert the following clause in solicitations and contracts for acquiring supplies or services for use outside the United States, unless one or more of the exceptions in 25.302(b) applies or the acquisition is made under the Trade Agreements Act of 1979 (see Subpart 25.4):

##### **BALANCE OF PAYMENTS PROGRAM (APR 1984)**

(a) This clause implements the Balance of Payments Program by providing a preference for domestic end products or services over foreign end products or services.

“Components”, as used in this clause, means those articles, materials, and supplies directly incorporated into the end products.

“Domestic end product”, as used in this clause, means—

(1) An unmanufactured end product mined or pro-

duced in the United States; or

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

“Domestic services”, as used in this clause, means services performed in the United States. If services provided under a single contract are performed both in and outside the United States, they shall be considered domestic if 25 percent or less of their total cost is attributable to services (including incidental supplies used in connection with these services) performed outside the United States.

“End product”, as used in this clause, means an article, material, or supply acquired for public use under this contract.

“Foreign end product”, as used in this clause, means a product other than a domestic end product.

(b) The contractor agrees that there will be delivered under this contract only domestic end products or services unless, in its offer, it specified delivery of foreign end products or services in the provision entitled “Balance of Payments Program Certificate.” An offer based on supplying a foreign end product or service, if accepted, will permit the contractor to supply a product or service without regard to the requirements of this clause.

(c) Offers will be evaluated in accordance with paragraph 25.303(b) of the Federal Acquisition Regulation.

(End of clause)

(R 7-104.3)

#### **52.225-8 Buy American Act—Trade Agreements— Balance of Payments Program Certificate.**

As prescribed in 25.408(a)(1), insert the following provision:

##### **BUY AMERICAN ACT—TRADE AGREEMENTS— BALANCE OF PAYMENTS PROGRAM CERTIFICATE (JAN 1994)**

(a) The offeror hereby certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled “Buy American Act—Trade Agreements—Balance of Payments Program”) and that components of unknown origin have been considered to have been mined, produced, or

manufactured outside the United States, a designated country, a North American Free Trade Agreement (NAFTA) country, or a Caribbean Basin country, as defined in section 25.401 of the Federal Acquisition Regulation.

(b) Excluded End Products:

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

*(List as necessary)*

(c) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are designated or NAFTA country end products, or Caribbean Basin country end products. Products that are not identified and certified below will not be deemed designated country end products, NAFTA country end products, or Caribbean Basin country end products. Offerors must certify by inserting the applicable line item numbers in the following:

(1) The offeror certifies that the following supplies qualify as “designated or NAFTA country end products” as those terms are defined in the clause entitled “Buy American Act—Trade Agreements—Balance of Payments Program.”

*(Insert line item numbers)*

(2) The offeror certifies that the following supplies qualify as “Caribbean Basin country end products” as that term is defined in the clause entitled “Buy American Act—Trade Agreements—Balance of Payments Program”:

*(Insert line item numbers)*

(d) Offers will be evaluated in accordance with Part 25 of the Federal Acquisition Regulation.

(End of provision)

**52.225-9 Buy American Act—Trade Agreements—Balance of Payments Program.**

As prescribed in 25.408(a)(2), insert the following clause:

**BUY AMERICAN ACT—TRADE AGREEMENTS—  
BALANCE OF PAYMENTS PROGRAM  
(JAN 1994)**

(a) This clause implements the Buy American Act (41 U.S.C. 10), the Trade Agreements Act of 1979 (19 U.S.C. 2501-2582), the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103-182, 107 Stat.

2057), and the Balance of Payments Program by providing a preference for domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as designated, NAFTA, or Caribbean Basin country end products.

“Caribbean Basin country end product”, as used in this clause, means an article that: (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country (as defined in section 25.401 of the Federal Acquisition Regulation (FAR) or (2) 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 of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply; *provided* that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such. The term *excludes* products that are excluded from duty free treatment for Caribbean countries under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2703(b)). These exclusions presently consist of (i) textiles and apparel articles that are subject to textile agreements; (ii) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated as eligible articles for the purpose of the Generalized System of Preferences under title V of the Trade Act of 1974; (iii) tuna, prepared or preserved in any manner in airtight containers; (iv) petroleum, or any product derived from petroleum; and (v) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Tariff Schedule of the United States (TSUS) column 2 rates of duty apply.

“Components”, as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

“Designated country end product”, as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of the designated country (as defined at FAR 25.401, or (2) 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 of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

“Domestic end product”, as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, pro-

duced, or manufactured in the United States exceeds 50 percent of the cost of all its components. A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality, or (ii) to which the agency head concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

“End products”, as used in this clause, means those articles, materials, and supplies to be acquired under this contract for public use.

“Foreign end product”, as used in this clause, means an end product other than a domestic end product.

“NAFTA country”, as used in this clause, means Canada or Mexico.

“NAFTA country end product”, as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of a NAFTA country, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

(b) The Contracting Officer has determined that the Trade Agreements Act and NAFTA apply to this acquisition. Unless otherwise specified, the Acts apply to all items in the schedule. The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the provision entitled “Buy American Act—Trade Agreements—Balance of Payments Program Certificate.” An offer certifying that a designated, NAFTA, or Caribbean Basin country end product will be supplied requires the Contractor to supply a designated, NAFTA, or Caribbean Basin country end product or, at the Contractor's option, a domestic end product. Contractors may not supply a foreign end product for line items subject to the Trade Agreements Act unless the foreign end product is a designated, NAFTA, or Caribbean end product (see FAR 25.401), or unless a waiver is granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

(c) Offers will be evaluated in accordance with the policies and procedures of Subpart 25.4 of the FAR.

(End of clause)

#### 52.225-10 Duty-Free Entry.

As prescribed in 25.605(a), insert the following clause 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. As prescribed in 25.605(b), the clause may be used in contracts of \$100,000 or less if such action is consistent with the policy in 25.602. When used in contracts of \$100,000 or less, paragraphs (b)(1) and (i)(2) shall be modified to reduce the dollar figure.

##### DUTY-FREE ENTRY (APR 1984)

(a) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price for any duties on supplies specifically identified in the Schedule to be accorded duty-free entry.

(b) Except for supplies listed in the Schedule to be accorded duty-free entry, and except as provided under any other clause of this contract or in paragraph (c) of this clause, the following procedures apply:

(1) The Contractor shall notify the Contracting Officer in writing of any purchase of foreign supplies (including, without limitation, raw materials, components, and intermediate assemblies) in excess of \$10,000 that are to be imported into the customs territory of the United States for delivery to the Government or for incorporation into end items to be delivered under this contract. The notice shall be furnished to the Contracting Officer at least 20 days before the importation and shall identify (i) the foreign supplies, (ii) the estimated amount of duty, and (iii) the country of origin.

(2) If the Contracting Officer determines that these supplies should be entered duty-free, the Contracting Officer shall notify the Contractor within 10 days.

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

(c) Paragraph (b) of this clause shall not apply to purchases of foreign supplies if (1) they are identical in nature with items purchased by the Contractor or any subcontractor in connection with its commercial business and (2) segregation of these supplies to ensure use only on Government contracts containing duty-free entry provisions is not economical or feasible.

(d) The Contractor warrants that all supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated into the end items to be delivered under this contract, and that duty shall be paid to the extent that these supplies, or any portion of them, are diverted to non-Governmental use, other than as scrap or salvage or as a result of a competitive sale authorized by the Contracting Officer.

(e) The Government agrees to execute any required duty-free entry certificates for items specified in this con-

