
GPO

Contract Terms

Solicitation Provisions,
Supplemental Specifications,
and
Contract Clauses

Prospective suppliers should carefully
read this publication as the
applicable terms within
become an integral
part of contracts with the
U.S. Government Printing Office.
This copy should be retained
for reference.



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Solicitation Provisions

1. Preparation of Bids.¹

(a) Bidders are expected to examine the specifications and all instructions. Failure to do so is at the bidder's risk.

(b) Each bidder shall furnish the information required by the Invitation for Bid (IFB). The bid must be signed by a duly authorized official of the firm, otherwise it will not be considered. Erasures or other changes shall be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that authority from an official of the firm, unless such evidence has previously been furnished to the Government Printing Office (GPO).

(c) Bidders shall include anticipated items of cost for production and normal waste, spoilage, etc., in their bids.

(d) In case of discrepancy between a unit price and 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.

2. Information Furnished to Bidders.

Any information given to a prospective bidder concerning a solicitation will be furnished to all prospective bidders as an amendment to the solicitation, if such information is necessary to bidders in submitting bids, or if the lack of such information would be prejudicial to other prospective bidders. Oral explanations or instructions given before the opening of bids will not be binding.

3. Amendments to Solicitations.

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

(b) Bidders and offerors shall acknowledge receipt of any amendment material to a 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 a bid or offer, (3) letter or telegram, or (4) by facsimile if facsimile bids or offers are authorized in the solicitation. The Government must receive the acknowledgment by the time specified for opening of bids or receipt of offers.

4. Submission of Bids.

(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 solicitation number, and the name and address of the bidder.

(b) Bidders using commercial carrier services shall ensure that the bid is addressed and marked on the outermost envelope or wrapper as prescribed in subparagraphs (a)(1) and (2) of this provision when delivered to the office specified in the solicitation.

(c) Telegraphic bids will not be considered unless authorized by the solicitation; however, bids may be modified or withdrawn by written or telegraphic notice.

(d) Facsimile bids, modifications, or withdrawals, will not be considered unless authorized by the solicitation.

(e) Bidders are invited to be present at the opening of bids.

(f) Bids that reject any of the representations, certifications, terms, conditions, or provisions of the solicitation, may be excluded from consideration.

5. Telegraphic Bids.

(a) Telegraphic bids must arrive at the place, and by the time, specified in the solicitation.

(b) Telegraphic bids shall refer to the solicitation and include the items or subitems, quantities, unit prices, time and place of delivery, all representations and other information required by the solicitation, and a statement of agreement with all the terms, conditions, and provisions of the IFB.

(c) Bidders must promptly sign and submit complete copies of the bids in confirmation of their telegraphic bid.

(d) The term telegraphic bids, as used in this provision, includes mailgrams.

6. Facsimile Bids.

(a) *Definition.* Facsimile bid, 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) Facsimile bids must arrive at the place and by the time, specified in the solicitation.

(c) Facsimile bids must contain the required signatures.

(d) 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 copy.

(e) Telephone number and compatibility characteristics of receiving facsimile equipment (e.g. make and model number, receiving speed, communications protocol) will be furnished in the solicitation.

(f) 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.

7. Late Submissions, Modifications, and Withdrawals of Bids.

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it was 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 telegram or facsimile, if authorized) or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation; or

(3) was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 P.M. at the place of mailing two workdays prior to the date specified for receipt of bids. The term "workdays" 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 date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. 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 machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. 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.

¹The sealed bidding terminology as used throughout these provisions, specifications, and clauses is synonymous with their negotiated procurement counterparts unless specifically stated otherwise.

(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. 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.

8. Late Submissions, Modifications, and Withdrawals of Proposals.

(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 telegram or facsimile, if authorized) or hand carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling 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 P.M. at the place of mailing two workdays prior to the date specified for receipt of proposals. The term “workdays” excludes weekends and U.S. Federal holidays; or

(4) 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. Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. 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. 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 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. 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.

9. Failure to Submit Bid.

Recipients of solicitations who do not respond with a bid should not return the solicitation, unless it specifies otherwise. Instead, they should advise the issuing office by letter or postcard 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.

10. False Statements in Bids. (May 1999)

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

11. Postponement of Bid Opening. (May 1999)

If an emergency or unanticipated event interrupts normal Government processes so as to cause postponement of the scheduled bid opening, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the opening date, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first workday on which normal Government processes resume.

12. Discounts.

Prompt payment discounts offered by bidders will be applied by the Government as follows:

(a) Evaluation.

(1) Unless otherwise provided in the specifications, prompt payment discounts offered for payment in less than 20 calendar days will not be considered in evaluating bids for award.

(2) When prices are offered in response to an IFB, any prompt payment discount which is eligible for consideration in the evaluation of bids (i.e. for a period of 20 days or more) will be applied directly to the prices offered.

(3) When the IFB contains basic prices and the bid consists of the basic prices plus a percentage or the basic prices minus a percentage, such percentage will be applied first to determine the evaluated price offered. An eligible prompt payment discount will be applied directly to the evaluated price offered.

(b) Payment.

(1) When the prompt payment discount is earned by reason of payment within the offered prompt payment period, the full discount will be deducted whether or not it was eligible for consideration in the evaluation of bids.

(2) When payment is made after the expiration of the prompt payment discount period and the offered prompt payment discount exceeds 5 percent, any percentage in excess of 5 percent will be considered by the Government to be a special discount which the bidder or offeror agrees that the Government will be entitled to regardless of when payment is made, and the special discount will be deducted from the payment.

(3) For the purpose of earning the discount, time will be computed from the date a correct invoice is received by the GPO to the date indicated on the Government check.

13. Contract Award—Sealed Bid.

(a) The Government will evaluate bids in response to the 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) 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.

(d) 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 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 advanced payment.

14. Contract Award—Competitive Negotiation.

(a) The Government may accept within the time specified therein, any offer, whether or not there are negotiations subsequent to its receipt, unless the offer is withdrawn by written notice received by the Government prior to award. If subsequent negotiations are conducted, they shall not constitute a rejection or counter offer on the part of the Government.

(b) The right is reserved to accept other than the lowest offer, to reject any or all offers, or waive informalities or minor irregularities.

(c) The Government may award a contract, based on initial offers received, without discussion of such offers. Accordingly, each initial offer should be submitted on the most favorable terms from a price and technical standpoint which the offeror can submit to the Government.

(d) Any financial data submitted with any offer hereunder or any representation concerning facilities or financing will not form a part of any resulting contract; provided, however, that 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 hereunder is incomplete, inaccurate, or not current.

(e) The contract will be awarded to that responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, cost or price and other factors (specified elsewhere in the solicitation) considered.

15. Certification of Independent Price Determination.

(a) The certification, on the reverse of the "bid" form, is not applicable to a foreign bidder submitting a bid for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.

(b) A bid will not be considered for award where paragraphs C-4 (a), (c), or (d) of the certification has been deleted or modified. Where paragraph C-4(b) of the certification has been deleted or modified, the bid will not be considered for award unless the bidder furnishes with the bid a signed statement which sets forth in detail the circumstances of the disclosure and the Director, Procurement Services, or designee, determines that such disclosure was not made for the purpose of restricting competition.

16. Government Furnished Property.

No material, labor or facilities will be furnished by the Government unless otherwise provided in IFB.

17. Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns. (May 1999)

(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 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 or may be necessary to determine the extent of the contractor's compliance with this provision.

(c) As used in the 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 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, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities, or any other individual found to be disadvantaged 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—

(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.

(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 disadvantaged individuals or a small business concern owned and controlled by women.

18. Service of Protest. (May 1999)

(a) Protests (as defined in section 3 of GPO Instruction 305.7) that are filed directly with the Government Printing Office (GPO), and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer at the procurement office from which the solicitation was issued by obtaining written and dated acknowledgement of receipt from the official or location designated by the Contracting Officer, where a protest may be served on the Contracting Officer.

(b) The copy of any protest shall be received by the official or in the office designated above within 1 day of filing a protest with the GAO.

19. Recovered Materials Program. (May 1999)

(a) The Government Printing Office is promoting the use of recovered materials to the maximum extent practicable in its contracts, provided all specification requirements are met. Offerors are encouraged to supply paper and paper products that contain recovered materials even in the absence of a specific solicitation provision or contract clause requiring such materials.

(b) Recovered materials shall mean "recovered fiber" or "postconsumer recovered fiber." However, when used in conjunction with the cotton/linen content of paper, "recovered fiber" means a postconsumer fiber and "recovered material" means a preconsumer fiber.

(c) By submission of a bid or offer, or by substantial performance on a small purchase, the offeror certifies that the paper to be supplied contains at least the minimum percentage of recovered materials in paper products as specified. This certifi-

cation 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. The Government reserves the right to require proof of such certification prior to first delivery and thereafter as may be otherwise provided for under the provisions of the contract.

(d) When the use of recovered materials is specified, the contractor shall maintain manufacturer/mill accounting and record summaries on the fiber weight content used as feedstock, for purposes of Government audit, that will verify (1) the contractor's certification of the minimum percentage of re-

covered materials used in performance of the contract, (2) that the paper and paper products are in compliance with the specification requirements, and (3) the paper is manufactured in accordance with the Environmental Protection Agency (EPA) Paper Products Recovered Materials Advisory Notice (61 FR 26985, May 29, 1996) whether the products are manufactured by the contractor or another paper mill. The contractor, if not the manufacturer, shall obtain this information from the paper manufacturer. The contractor shall maintain and make available to the Government, these documents for 1 year after expiration of the contract. Nothing in this provision shall excuse the contractor from furnishing the specified paper.

Representations, Certifications, Bid Acceptance Period

REPRESENTATIONS.

R-1. Small Business. By submission of a bid, the bidder represents that the bidder is a small business concern, unless the bid contains an affirmative representation that the bidder is not a small business concern.

R-2. Small Disadvantaged Business Concern. By submission of a bid, the bidder represents that the bidder is not a small disadvantaged business concern, unless the bid itself contains an affirmative representation that the bidder is a small disadvantaged business concern.

R-3. Women-Owned Small Business Concern. By submission of a bid, the bidder represents that the bidder is not a women-owned small business concern, unless the bid itself contains an affirmative representation that the bidder is a women-owned small business concern.

CERTIFICATIONS.

C-1. Covenant Against Contingent Fees. Submission of a bid without statement of exception shall constitute certification.

(a) The contractor warrants that no person or agency has been employed or retained to solicit or obtain a 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 the 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" 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" 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" 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" 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.

C-2. Buy American Certification. Except as may be listed with the bid itself, the bidder certifies with the submission of a bid that each end product is a domestic end product (as defined in clause 37 "Buy American Act" in Contract Clauses), and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States. Any exception listed with the bid itself must list both the excluded end products and the country of origin of each.

C-3. Clean Air and Water. Submission of a bid without statement of exception shall constitute certification.

(Applicable if the bid or offer exceeds \$100,000, or the Contracting Officer has determined that orders under an indefinite quantity contract in any year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 7413 (C)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or is not otherwise exempt.)

(a) Any facility to be utilized in the performance of the proposed contract has not been listed on the Environmental Protection Agency List of Violating Facilities.

(b) The Contracting Officer will be promptly notified, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that any facility which he/she proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities.

(c) Bidder will include substantially this certification, including this paragraph (c), in every nonexempt subcontract.

C-4. Certificate of Independent Price Determination. Submission of a bid without statement of exception shall constitute certification.

(a) The offeror certifies that—

(1) The prices in the 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 the 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 the 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 the 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.

C-5. Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters (Jan. 1999). By submission of a bid—

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

(B) Have not, within a 3-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, tax evasion, or receiving stolen property; and

(C) 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 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 busi-

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ness 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 the 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 non-responsible.

(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 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 the solicitation for default.

C-6. Certification of Nonsegregated Facilities (Jan. 1999). Submission of a bid without statement of exception shall constitute certification.

(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 submission of an 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 CERTIFICATION OF NONSEGREGATED 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.

BID ACCEPTANCE PERIOD

The bidder agrees, if their bid is accepted within 60 calendar days (unless a different period is submitted with the bid) from the date for receipt of bids, to furnish the specified items at the price set opposite each item, delivered at the designated point(s), in exact accordance with specifications.

Referenced Documents

All referenced documents, including any amendments, are incorporated by reference and become an integral part of the contract. A referenced document is that version which is in effect at time of award. Copies of these documents may be obtained as indicated below.

Government Paper Specifications Standards is for sale, on a subscription basis, by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Standard samples may be obtained with cost information by addressing (1) Chief, Paper and Materials Control Section, Production Planning Division, Room C-838, Stop POL, Washington, DC 20401; (2) Chief, Paper and Physical Testing Division, Stop QC; or (3) your contracting officer.

Copies of DMS Reg. 1 may be obtained from U.S. Department of Commerce, Business and Defense Service Administration, Washington, DC 20230.

The U.S. Government Printing Office Style Manual is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Copies of Federal specifications are available by calling 202-619-8925.

Domestic Mail Manual (DMM) and International Mail Manual (IMM) are for sale by the Superintendent of Documents, GPO, Washington, DC 20402.

ANSI Standards are for sale by the American National Standards Institute, 1430 Broadway, New York, NY 10018.

Free Government Printing Office forms are available to bidders at the Government Printing Office, Printing Procurement Department, Bid Section, Room B104, Washington, D.C. 20401 or at any of the Regional Printing Procurement Offices.

General printing procurement information and electronic posting of central and regional office solicitations are available via the internet at <http://www.gpo.gov/procurement>.

Supplemental Specifications

GENERAL

1. Ink.

(a) If lithographic ink is used in the performance of the contract, the ink shall contain not less than the following percentages of vegetable oil:

- (1) News ink, 40 percent,
- (2) Sheet-fed and forms ink, 20 percent, and
- (3) Heat-set ink, 10 percent.

(b) High quality color process printing on high speed heat-set presses is excepted when slow drying time significantly increases production costs.

2. Quality.

(a) The quality requirements indicated in the specifications represent the minimum acceptable level.

(b) Notwithstanding the minimum acceptable level, the following shall also apply:

(1) Printing and binding shall be held to a high standard of imposition; makeready; press running; clear, sharp printing; binding; and good quality in every respect.

(2) Marginally punched continuous forms shall be manufactured for satisfactory performance and must reflect good quality imaging and registration between parts, as applicable.

(3) Microfilming shall be manufactured in such manner, within specifications, to provide the user with products capable of good legibility when read directly on reader screens and when used on printers to reproduce paper copies.

(c) Contractors must have a quality control system that will assure product quality acceptable to the Government. See article 14 "Inspection and Tests" of Contract Clauses.

(d) Specific quality requirements are further defined in GPO Publication 310.1, Quality Assurance Through Attributes Program, as revised.

3. Packing.

The method of packing indicated in the specifications must be accomplished in accordance with the following interpretations. The method and manner of packaging for preservation and required storage and/or transportation shall be in accordance with either the National Motor Freight Classification (NMFC) or the Uniform Freight Classification (UFC) tariff. The material used in packing must be of such quality as to insure arrival of the printed matter at its destination in a satisfactory and usable condition. Each packing unit must be uniform in size and quantity contained therein. Unless otherwise indicated, each shipping container must not exceed 20.4 kg (45 pounds) when fully packed. Quantities which fill less than one-half a shipping container may be wrapped in shipping bundles.

(a) *Numbered products.* Numbered products must be packaged in numerical sequence. Inner packages must be placed in shipping containers and shipping containers placed on pallets or skids (if pallets or skids are used) in numerical sequence. The low numbers must be on top unless otherwise ordered. The label(s) placed on each package and shipping bundle or container must also carry the first and last number contained therein.

(b) *Kraft paper wrapping.* Wrap in packages not to exceed 254 mm (10 inches) in height or in quantities as ordered. Place a piece of lightweight chipboard or newsboard, cut to the same size as the printed work, on top and bottom of the printed work, tight-wrap with kraft paper, and seal.

(c) *Shrink-film wrapping.* Wrap in packages not to exceed 254 mm (10 inches) in height or in quantities as ordered. Place a piece of lightweight chipboard or newsboard, cut to the same size as the printed work, on the bottom of the printed work, and wrap with heat-shrink film of suitable thickness and quality. The label may be placed inside the wrap, on the top or on the end.

(d) *Boxing.* Solid pack in suitable paperboard boxes, which have closely fitted sides and ends. Tops and bottoms must be securely fastened.

(e) *Tying.* Tie in packages not to exceed 254 mm (10 inches) in height, or in quantities as ordered. Place a piece of lightweight chipboard or newsboard, cut to the same size as the printed work, on top and bottom of the printed work, and tie in one position around both the length and width with substantial cord or twine. The cord or twine must be wrapped at least twice in each direction.

(f) *Banding.* Band with a strip of heavy kraft paper, not less than 51 mm (2 inches) in width, around the short dimension of the form. The ends of the band must overlap and be held together with a suitable adhesive or gummed tape.

(g) *Kraft paper wrapping and tying.* Prepare as indicated under paragraph (b) except tying shall be substituted for sealing.

(h) *Shipping bundles.* The contents of bundles shall first be protected by using a good grade of corrugated mailing board on all sides and ends, then wrapped in 2 or more layers of heavy kraft paper and tied in both directions with heavy twine or rope.

(i) *Individual mailing containers.* Containers may be ordered plain or printed with title and stock number in 18 point caps on the spine, in black ink, positioned so sealing tape will not cover the type. All containers must be packed solidly; in the event the product does not fit snugly, open-cell pads or thicknesses of corrugated board must be added to prevent shifting during transit.

(1) *For domestic use:* Containers are to be one-piece, made of "B" fluted material and have a minimum bursting strength of 1 300 kPa (200 pounds per square inch) or a minimum edge crush test (ECT) of 5 600 Newtons per meter width (32 pounds per inch width). Folders (containers with open corners) may not be used when the thickness of the contents exceeds 2 inches. When the thickness of the contents exceeds 2 inches, containers with closed corners such as mailers or regular slotted cartons (RSC) must be used. Containers must be packed and sealed in a manner that will insure acceptance and safe delivery by the U.S. Postal Service.

(2) *For overseas use:* Containers are to be one-piece, made of "B" fluted material and have a minimum bursting strength of 1 800 kPa (275 pounds per square inch) or a minimum ECT of 7 700 Newtons per meter width (44 pounds per inch width). A flap at one end of the container must not be fastened in order that postal inspection may be accomplished in accordance with international postal regulations. This tuck-in flap must be of sufficient length to hold the product securely, without danger of opening, but permit ready opening and reclosing without damage to the product or the container. Containers must be formed, packed, and sealed (with the exception of one flap) in a manner that will assure acceptance and safe delivery by the carrier. Each container must be marked as to the contents therein. Folders (containers with open corners) are not acceptable for mailing to overseas destinations.

(j) *Shipping containers.* Only new corrugated or solid fiberboard containers may be used. Containers must be made in accordance with ASTM D5118 and any amendments thereto. Unless otherwise provided in the specifications, containers shall have a minimum bursting strength of 1 800 kPa (275 pounds per square inch) or a minimum ECT of 7 700 Newtons per meter width (44 pounds per inch width). Containers must be packed solidly (top and sides) with material laid flat on the bottom of the containers (never stand on end); top and bottom pads of corrugated fiberboard shall be used and be in contact with the top and bottom of the container. In the event the material does not fit snugly on the top or sides, open-cell pads or thicknesses of corrugated board must be added. Top and bottom flaps must be closed and fastened firmly with water-resistant adhesive. Adhesive must be applied over not less than 50 percent of the area of contact between the inner and outer flaps. The bottom flaps may be stapled instead of glued, provided this is done before the container is packed.

(k) At contractor's option, containers may be sealed with tape which must completely cover the butted edges of the flaps and extend at least 2 inches on the ends of the containers. Tapes may be either a minimum 3-inch wide fiberglass rein-

forced nonstripable gummed paper tape that conforms to Commercial Item Description A-A-1671B and any amendments thereto; a minimum 2-inch wide waterproof, pressure-sensitive adhesive tape that conforms to ASTM D5486 and any amendments thereto; or a minimum 1-inch wide Type III, pressure-sensitive, filament tape that conforms to ASTM D5330 and any amendments thereto.

(l) Noncompliance with the packaging specifications may be cause for the Government to reject the shipment, at destination, and return it to the contractor at his expense. After giving notice of the deficiency and affording the contractor an opportunity and a reasonable time to correct, the Government may, at its option, repackage in accordance with the specifications and charge all costs to the contractor.

4. Labeling and Marking.

Shipping and packing labels must be furnished by the contractor in accordance with specifications. Contractors are not permitted to display advertisements on skids, pallets, shipping containers, or boxes. All labels and entries made thereon must conform to and be in accordance with the "Labeling and Marking Specifications" and accurately reflect the contents (including quantity) of all packaged units.

(a) *Inner packages.* Each inner package must be marked or labeled with the following: Department name and requisition number, form number (including revision date, if any), title, and quantity. Boxes and wrapped packages shall be marked or labeled on one end (never top, bottom, or sides), banded packages on the band, and tied packages on the chipboard or newsboard. Shrink film packages must be labeled, not marked, on the top or the end; labels may be placed inside the wrap.

(b) *Shipping containers.* Each shipping container must have a shipping label permanently affixed to one end (never top, bottom, or sides). The label must be reproduced (same size) from the facsimile included with the GFP in black ink on white paper. The label must be filled in accurately and legibly in black, using bold characters at least 6 mm (one-quarter inch) high, except the "From" box which may be smaller. The name and requisition number of the receiving department must be used in the "Dept." box and "Dept. Req. No." box of shipping container labels in lieu of the name and requisition number of the ordering department. Label entries must remain clear and legible for a period of at least 2 years under normal storage and warehouse conditions.

(c) *Bar Code Markings.* When indicated, bar code markings will be required on inner packages and/or shipping containers. Bar code using standard 3 of 9 (Code 39) Bar Code System, for noncontact reading, in accordance with Military Standard 1189. The bar code label must be positioned in accordance with Federal Standard 123.

(d) *Shipping bundles.* The information required on the facsimile label must appear in a convenient location on each shipping bundle.

(e) *Mailed shipments.* A separate mailing label conforming to postal regulations must be used for all shipments by U.S. mail.

(f) Noncompliance with labeling and marking specifications may be cause for the Government to reject the shipment, at destination, and return it to the contractor at his expense. After giving notice of the deficiency and affording the contractor an opportunity and a reasonable time to correct, the Government may, at its option, relabel and/or remark in accordance with the specifications and charge all costs to the contractor.

5. Deliveries.

The contractor shall ship directly to the destinations stated in the specifications. Unless otherwise indicated, truck deliveries must be made at the point of destination between the hours of 8:30 a.m. and 3:30 p.m., on Federal workdays. Shipments must be consigned as specified and the unloading and delivery charges borne by the contractor, and free of all charges for boxing, cartage, and freight, unless otherwise indicated. The maximum weight of any shipping crate, including contents, must not exceed 113.4 kg (250 pounds). When printing is delivered on skids or pallets, the gross weight of the skid and paper must not exceed 907.2 kg (2,000 pounds).

6. Shipping Instructions.

(a) The term "contractor's city" is considered to be the commercial zone (as defined by the Interstate Commerce Commis-

sion) of the municipality in which the contractor's plant is located. If the municipality in which the contractor is located is encompassed in whole, or in part, by the commercial zone of an adjacent larger municipality, the contractor will be deemed to be located in such larger municipality and the commercial zone of the larger municipality will apply. All consignments to destinations within the contractor's city must be delivered by the specified date at the contractor's expense.

(b) In the event the contractor has offered prices f.o.b. destination, the GPO may, at its option, order material shipped (1) f.o.b. contractor's city (and furnish Government bills of lading), (2) by parcel post, or (3) by any premium method. Upon exercise of such option, a deduction of the contractor's documented bid price for shipping or, if documentation is not available, the applicable published commercial freight costs will be made from the voucher. An adjustment will be made for parcel post or any premium shipping costs prepaid by the contractor upon presentation with the voucher of parcel post receipts properly filled out, stamped, and/or receipted by the U.S. Postal Service, commercial carrier airway bill, or freight bill. Parcel post charges and/or freight charges must be included on Standard Form 1034 as a separate item, supported by the paid receipts. Such receipts cannot be returned, as they become a permanent part of the contract file.

(c) In the event the contractor has offered prices f.o.b. contractor's city, GBL's will be furnished for all freight and express shipments destined outside the commercial zone of the contractor's bidded f.o.b. point. The method of shipping and instructions for the preparation of GBL's will be furnished with the GBL's. When GBL's are issued, the contractor is required to distribute them immediately after shipment in accordance with the accompanying instructions.

(d) The GPO, at its option, may order the contractor to effect shipment via commercial bill of lading or U.S. Postal Service. If so directed, the contractor must prepay all charges and will be reimbursed for such charges upon presentation, with the voucher, of Postal Service receipts (properly filled out and stamped by the post office) or copies of each paid commercial carrier's airway bill or freight bill as applicable.

(e) Local commercial zone and f.o.b. destination deliveries to the GPO, its warehouses and distribution centers must be complete shipments to each address, received between 8:30 a.m. and 3:30 p.m. local time, on workdays and tailgated by the carrier unless the rear door of the vehicle has a minimum height opening of 2032 mm (80 inches).

7. Drayage and Special Charges.

(a) Whenever shipments are made under bills of lading (Government or commercial), charges made by a carrier for delivery of materials to a contractor's plant when the specifications provide such materials will be delivered "f.o.b. contractor's city," or charges made by a carrier for picking up materials from a contractor's plant for delivery to designated destinations when the specifications provide that delivery is to be made "f.o.b. contractor's city," are not payable by the Government but are payable by the contractor and if paid by the Government such costs will be recovered by deduction from the contractor's voucher. Also, charges made by a carrier for winch or other special services are not payable by the Government but are payable by the contractor and if paid by the Government such costs will be recovered by deduction from the contractor's voucher.

(b) Charges for local drayage, dunnage, labor, blocking, and/or bracing will be allowed when the contractor is ordered to combine less-than-carload shipments for two or more orders so as to take advantage of full carload rates. Rail shipments will be utilized only when full carload rates do not exceed truckload rates and when both the contractor and the consignee have rail facilities and time is not of the essence.

8. Palletizing.

(a) When indicated in specifications, the contractor will be required to furnish pallets for bulk shipments, in shipping containers, when the containers fill two layers or more on the pallet.

(b) Pallets must be type III, size 2, group 2 (or group 3 contractor's option) made in accordance with Federal Specification NN-P-71C and any amendments thereto. Full entry must be on the long dimension. (See page 11.)

(c) Material may be secured on pallet by stretch-wrap plastic, plastic shrink-wrap, steel strapping or plastic or nylon strap-

ping over edge protectors. Fasten with straps over edge protectors when the containers fill more than 2 layers on the pallet. Pallets shall be suitably packed so as to insure acceptance and safe delivery by common carrier. Maximum height allowed including pallet is 1397 mm (55 inches). Maximum gross weight is 907.2 kg (2,000 lbs). Pack flush to corners, top side up, label facing out, without overhang at any edge. Voids must be to the center of the pallet. Pack with care. Loaded pallets may be stored four high at destination.

(d) Noncompliance with the palletizing specifications may be cause for the Government to reject the shipment at destination and return it to the contractor at his expense. After giving notice of deficiency and affording the contractor an opportunity and a reasonable time to correct, the Government, at its option, may repalletize in accordance with the specifications and charge all costs to the contractor.

9. Imprints Unless Otherwise Specified.

The contractor must set a GPO imprint in 6-point sans serif type, consisting of an open star and imprint followed by the current calendar year, an em dash, and the jacket number e.g., ☆ U.S. GOVERNMENT PRINTING OFFICE: 1986-000-000 and in cases of term contracts the print order number shall be included e.g., 1986-000-000/00000. The imprint must appear at the bottom of the last printed page on books and pamphlets; at the bottom of the back on face and back products; at the bottom of face only products (except letterheads, certificates, etc.); or in the stub of multipart sets. There shall be no additional charge to the Government to fulfill this requirement. Commercial identification mark(s) of any kind must not appear on any product ordered.

10. Reproduction Media.

(a) Reproduction media not required to be delivered to the government may, unless otherwise specified, be derived from camera, projection, laser, or other reproduction method, provided that the quality assurance levels and standards are met.

(b) Films required to be delivered to the government must be exactly the same as the printed product and conform to the American Standard Specifications for Safety Photographic Film designated ANSI IT9.6-1991, be suitable for making press plates, and possess a strong, dimensionally stable base. Films must be wrong reading on the emulsion side. Tests will be conducted to determine compliance. If films do not meet the stated requirements the contractor will be required to remake them to conform at no additional cost to the Government.

(1) The screen angle of all halftones appearing on any one page of reprint copy may not be exactly the same. Therefore, each halftone must be reproduced so as to obtain the best possible results without moire. Square halftones by opaquing or by applying a suitable tape that permits no light penetration. The tape must not bleed at the edges which would cause the negatives to stick together during normal handling or storage.

(2) Opaque must be smooth, free from coarse particles, and must not interfere with contact in the printing frame. Opaque must not rub off nor smudge during normal handling and storage of films.

(3) The films delivered to the Government must be the final films used for printing and must be suitable for making press plates for subsequent reprinting without any retouching, opaquing, surprinting, or any other hand or camera work. Films must be one piece for each color with all elements in proper position by compositing or stripping. Strips must be cut clean and joined so that adjoining edges meet but do not overlap, bind, or leave voids. Each film must contain at least three register marks composited (not stripped) for each color; the register marks must be positioned on opposite sides of the image. Films must have a minimum 13 mm (1/2") working margin on all four sides of the image. Register marks, jacket number, "ring" or "circle" folio numbers, etc., appearing on the copy must remain on the films, but must not print on the final product. Films produced by attaching pieces of film on goldenrod, or base films with transparent windows with attached illustration film, will not be accepted.

(4) Films produced in press signatures or films containing 4-color process images, duotones, and multi-color images (type, line, or screen), must be returned to the Government in complete press signatures and must include two untrimmed press sheets for the entire product including color bars and an imposition guide which includes the following:

type of press (sheet-fed or web), size of press sheet used, breakdown of signatures used including page counts, and page layout for each signature.

(5) Films furnished by the Government on flats or masks must be returned to the Government on flats or masks in the same condition as they were received by the contractor.

(6) All other films furnished by the Government must be removed from the masks or flats with all stripping materials cleanly removed, gathered in page sequence (if applicable) and packed flat.

(7) All films returned to the Government must be packed carefully to ensure they are not damaged in transit.

11. Certificate of Conformance.

When "Postage and Fees Paid" mailing labels or indicia are used for mailing by the contractor, the contractor must complete GPO Form 712 "Certificate of Conformance," which will be supplied by the GPO as a three-part carbon-interleaved set. Particular emphasis is directed to the instructions printed on the top of the certificate and to the terms and conditions printed on the back of part 3. Contractors are advised that the Postal Service will require postmasters to validate the certificate.

12. Changes on Multipart Sets.

(a) Changes will be indicated and will be referred to as Marginal (Mar), Minor (Mi), or Major (Maj).

(b) Marginal (Mar) changes are defined as the change or deletion of one line of words, phrases, designating letters or numbers, etc., not affecting the spacing of the base form. Copy designations appearing within 25 mm (1 inch) of the bottom or top of the form will be restricted to three lines or less, all other marginal changes are restricted to one line.

(c) Minor (Mi) changes are defined as (a) two "marginal" changes per part; (b) any deletion(s) without the insertion of new copy except the deletion of line(s) as provided for under "marginal change"; (c) any deletion(s) with the insertion of not more than 25 mm (1 inch) of new copy in one location.

(d) Major (Maj) changes are defined as any change which does not fall into the definitions of marginal or minor changes.

(e) Not more than one change as defined above shall be applied to any one part.

(f) *Alignment.* The printing on each form of each set manufactured must be properly aligned so that the printing will register within 0.8 mm (1/32-inch) when the forms are gathered into sets. Misregister greater than 0.8 mm (1/32-inch) may be cause for rejection.

(g) *Perforations.* Stub and alignment perforations must be such as to guarantee easy separation of all parts in one operation, but sufficient strength must be retained to prevent disengagement of any part under normal handling and shipping conditions. Stub perforations shall be on parts only, unless otherwise ordered.

13. Timework.

Operations which cannot be properly classified under any other measurable item shall be charged as timework. Generally, timework charges will not be applicable. Each item and the time required therefore must be indicated separately and fully described on or with the contractor's voucher; otherwise, the charges will not be allowed. The Government Printing Office reserves the right to determine the appropriate amount of time to be allowed for all such charges.

14. Departmental Random Copies (Blue Label).

(a) Orders must be divided into equal sublots in accordance with the chart below. A random copy must be selected from each sublot. Copies must not be chosen from the same general area in each sublot. The contractor will be required to execute a furnished statement certifying that copies were selected as directed. The random copies constitute a part of the total quantity ordered, and no additional charge will be allowed.

Books		Forms	
Quantity Ordered	Number of Sublots	Quantity Ordered	Number of Sublots
500-3,200	50	12,000-35,000	125
3,201-10,000	80	35,001 and over	200
10,001-35,000	125		
35,001 and over	200		

(b) These randomly selected copies must be packed separately and identified by a special Government-furnished blue label, affixed to each affected container. The container and its contents shall be recorded separately on all shipping documents and sent in accordance with the distribution list.

(c) A copy of the PRINT ORDER/SPECIFICATION and a signed Government-furnished certificate of selection, shall be included.

PROOFS

15. General Requirements.

(a) All proofs must be accompanied by the original GFP and submitted for approval when indicated in the specifications and/or print order, and shall be sent to the U.S. Government Printing Office, Contract Compliance Section, Stop PPSC, Washington, DC 20401, or the regional printing procurement office in which the order originated, unless otherwise specified.

(b) It will be the contractor's responsibility to perform all necessary proofreading to insure that all proofs are in conformity with the copy submitted.

(c) All proofs must be collated in sets and numbered in sequence, have the proof date at the top and the jacket number at the bottom, both at least 13 mm (½-inch) from the type areas, and there must be at least a 25 mm (1 inch) clear margin around the type image. Contractor's firm name must not appear on any proofs. All packages of proofs and manuscript **MUST BE IDENTIFIED BY THE JACKET NUMBER AND, WHEN APPLICABLE, THE PROGRAM AND PRINT ORDER NUMBERS** on the outside of the package.

(d) Electrostatic or similar proofs will be acceptable for cold-type or photocomposition and shall be on clean, white paper, with all images clearly legible and of uniform density. Proofs made on dry or wet copying machines which utilize grayish-colored paper, or proofs which exhibit dirty or spotty backgrounds, pasteup shadows, or blurred, faint, or missing images will not be accepted.

(e) Proofs may not be submitted in installments unless authorized in the specifications.

(f) No additional production time will be allowed for revised proofs or new preproduction samples or advance copies, etc., that may be required due exclusively to printer's errors.

(g) Unless otherwise specified, the contractor must not proceed with production or print any portion of an order prior to receiving an "OK to proceed" or an "OK to print" from the Government Printing Office.

16. Author's Alterations.

(a) Author's alterations consist of all marks made by the author at variance with the original Government furnished mechanical or electronic media as submitted to the contractor, but do not include corrections made by the author due to the failure of the contractor to follow the furnished material literally.

(b) *Proof of charge.* Charges for author's alterations will not be honored unless the voucher which is submitted to the Government Printing Office is supported by all marked proofs, or facsimiles thereof, showing author's alteration marks. Charges will not be allowed for proofing operations or materials which are due to the fault of the contractor.

17. Proofing Procedures.

(a) *Intermediate Operations.* At each proof stage other than the final (reproduction proofs), the contractor will be required to make all marked corrections and submit the specified number of sets of proofs, accompanied by the manuscript copy or the last proof set received containing the author's marks. These marked proofs will be returned to the contractor for billing purposes.

(b) *Contractor Errors.*

(1) Contractor errors consist of mistakes (i) made in variance of the original furnished media (mechanical or electronic), or (ii) introduced in the correction of author's alterations.

(2) Errors discovered and marked on proofs by Government personnel will not be all inclusive and shall be an indication only that mistakes have been introduced by the contractor. It is the responsibility of the contractor to determine the extent of the errors made and their subsequent correction.

18. Proofs.

(a) *Photocomposition.* Proofs must be on white photographic paper which has been fixed and washed in such manner that it will be commercially stable (not less than 5 years).

(b) *Coldtype Composition.* Proofs may be either photoprints complying with the requirements for paper as listed in par. (b) above, or on a good grade of white paper not less than 0.097 mm (0.0038 inch) thick.

(c) *Pasteup.* Corrections, display lines, page numbers, and/or running heads may be mortised (stripped) or mounted on the reproduction proofs using thin, double-coated adhesive tape. The use of cement, glue, or wax will not be accepted, except when mounting columns in a multi-column format. No corrections or alterations which are made by chemical opaques or by pasting over finished copy will be accepted.

(d) It is the responsibility of the contractor to inspect repro/camera copy to insure their suitability for use as camera copy.

CTCN 01-01 APRIL 10, 2001

LABELING AND MARKING SPECIFICATIONS

INNER PACKAGES: Each inner package must be marked or labeled with the following: department name and requisition number, form number (including revision date, if any), title, and quantity. Mark or label boxes and wrapped packages on one end (never top, bottom, or sides), banded packages on the band, and tied packages on the chipboard or newsboard. Shrink film packages must be labeled, not marked, on the top or the end; labels may be placed inside the wrap.

SHIPPING CONTAINERS: Each shipping container must have a shipping label applied to one end (not top, bottom, or sides). The label shall be reproduced to 200 mm x 156 mm (7⁷/₈ x 6¹/₈") from the facsimile below in black ink on white paper. The label must be filled in accurately and legibly, using bold characters at least 6 mm (1/4") high, except the "From" box which may be smaller. The name and requisition number of the receiving department must be used in the "Dept." box and "Dept. Req. No." box of shipping container labels in lieu of the name and requisition number of the ordering department. Label entries must remain clear and legible for a period of at least two years under normal warehouse

conditions. Label information may be rearranged on shipping containers of such dimensions that preclude acceptance of 200 mm x 156 mm (7⁷/₈ x 6¹/₈") labels.

SHIPPING BUNDLES: The information required in the facsimile below must appear in a convenient location on each shipping bundle.

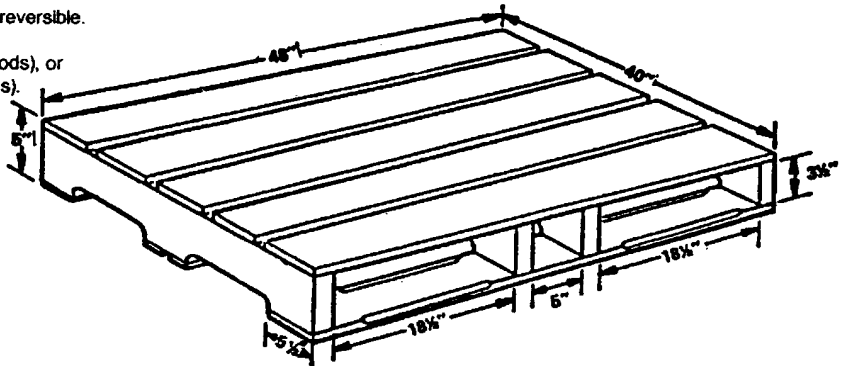
MAILED SHIPMENTS: A separate mailing label conforming to Postal Regulations must be used for all shipments by U.S. mail.

CAUTION: Noncompliance with the labeling and marking specifications may be cause for the Government to reject the shipment, at destination, and return it to the contractor at his expense. After giving notice of the deficiency and affording the contractor an opportunity and a reasonable time to correct, the Government may, at its option, relabel and/or remark in accordance with the specifications and charge all costs to the contractor.

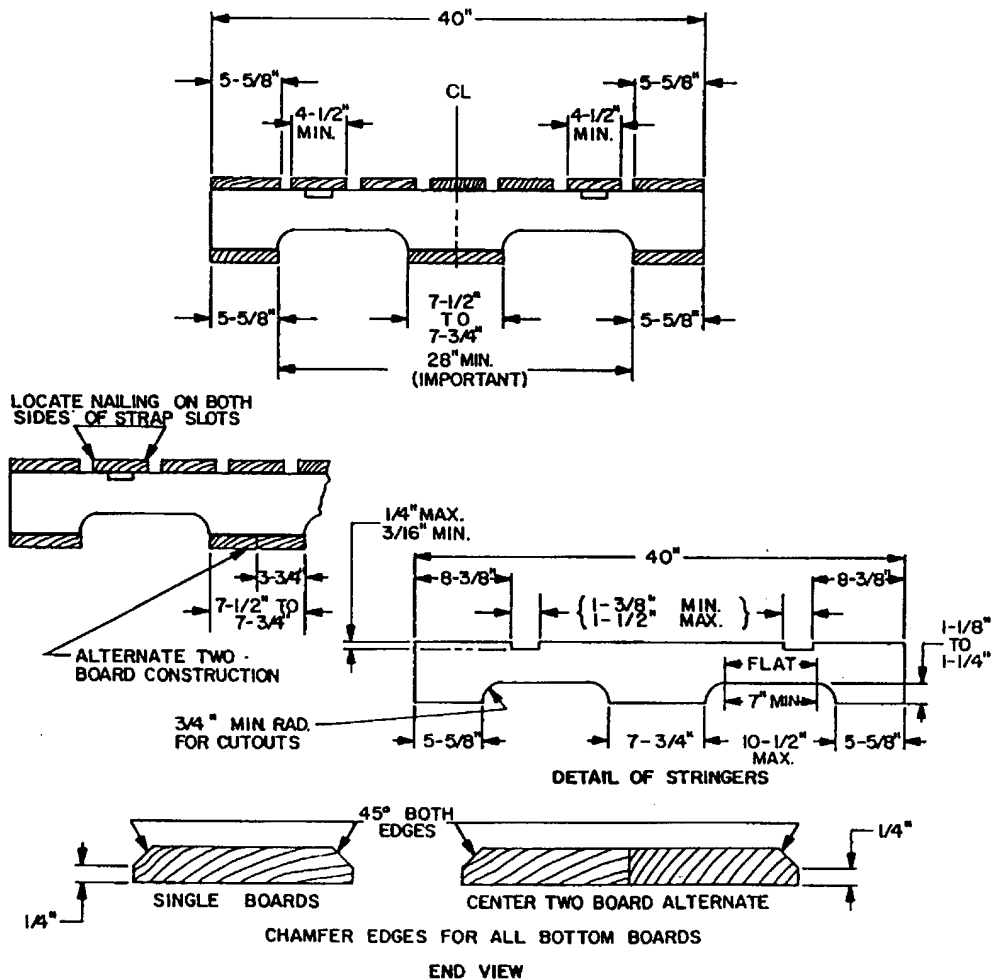
FROM		FOR USPS DELIVERY APPLY POSTAGE	
DEPT.	STOCK/PROPERTY NO.		
DEPT. REQUISITION NO.	CONTROL NO.		
GPO JACKET NO.	SUB. ID NO.		
GPO ORDER NO.	TITLE		
PROGRAM/PRINT ORDER NO.	TO		
FORM OR PUBLICATION NO./DATE			
QUANTITY PER CONTAINER			
PACKAGES PER CONTAINER			
PKGS. OF			

Stringer and Deckboard Design for Type III, Four-way (Partial) Flush Pallet

- a) Federal Specification Pallets, Material Handling, Wood, Stringer Construction, 2-way and 4-way (partial), NN-P-71C, dated 9-10-73.
- b) Classification:
 - 1. Type III—four-way (partial), flush, assembled, nonreversible.
 - 2. Size 2—40" x 48".
 - 3. Wood Group II—medium density woods (softwoods), or Wood Group III—high density woods (hardwoods).
 - 4. Grade A—untreated.
- c) Preproduction model not required.
- d) Moisture content as per specification.
- e) Manufacturer's identification not required.
- f) Bundling for shipment not required.



NN-P-71C



- 1. Dimensions are in inches.
- 2. Notches are to be centered about the centerline (CL).
- 3. Corners of notches shall be rounded as indicated.
- 4. One or two bottom deckboards may be used at the center.

Contract Clauses

1. Contractual Responsibility.

Awards by GPO for printing, binding, and related services are the sole responsibility of GPO and not of its customer agencies. Modifications shall have no force or effect unless addressed before the fact to and subsequently confirmed in writing by the Contracting Officer. Failure to comply with this clause may be cause for nonpayment of additional costs incurred or rejection of the order.

2. Order of Precedence.

In the event of an inconsistency, the inconsistency shall be resolved by giving precedence in the following order: (a) specifications; (b) supplemental specifications; (c) solicitation provisions; (d) contract clauses; and (e) other provisions whether incorporated by reference or otherwise.

3. Workday.

(a) The term “workday” is defined as Monday through Friday of each week, exclusive of the days on which Federal Government holidays are observed. Also excluded are those days on which the Government Printing Office is not open for the transaction of business, such as days of national mourning, hazardous weather, etc.

(b) References to “days” other than “workdays” shall mean calendar days.

4. Changes.

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The contractor must submit any “proposal for adjustment” (hereafter referred to as proposal) under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted anytime before final payment.

(d) If the contractor’s proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the contractor from proceeding with the contract as changed.

5. Disputes.

(a) Except as otherwise provided, all disputes concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall render a decision in writing and mail or otherwise furnish a copy to the contractor.

(b) “Claim,” as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under the contract. A claim arising under a contract is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$50,000 shall not be a claim until certified as required by subparagraph (c)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted into a claim by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(c)(1) A claim by the contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the contractor shall be subject to a written decision by the Contracting Officer.

(2)(i) Contractors shall provide the certification specified in subparagraph (c)(2)(iii) of this clause when submitting any claim exceeding \$50,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the contractor."

(3) The certification may be executed by any person duly authorized to bind the contractor with respect to the claim.

(d) For contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the contractor, render a decision within 60 days of the request. For contractor-certified claims over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the contractor of the date by which the decision will be made.

(e) The decision of the Contracting Officer shall be final and conclusive unless, within 90 days from the date of receipt of such copy, the contractor mails or otherwise furnishes a written notice of appeal to the Government Printing Office Board of Contract Appeals.

(f) The decision of the Board shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence.

(g) In connection with any appeal under this clause, the contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the contractor shall proceed diligently with performance and in accordance with the Contracting Officer's decision.

(h) This clause does not preclude consideration of law questions in connection with decisions provided for in paragraph (d); provided, that nothing shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

(i) The contractor shall proceed diligently with performance of the contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the contracting Officer.

6. Subcontracts.

(a) The contractor may make contracts with any other party for the furnishing of any part of the supplies or work called for, with the exception that the predominant production function required in the performance of the contract shall not be subcontracted. If the predominant production function is other than presswork, it shall be so identified in the specifications.

(b) The term "Presswork" includes, but is not limited to digital imaging, laser, inkjet, and bubblejet printing.

7. Government Furnished Property (GFP).

The contractor is required to examine the furnished property immediately upon receipt. If at that time there is disagreement with the description or the requirements as presented in the specification (or print order/GPO Form 2511), and prior to the performance of any work, the contractor shall contact the U.S. Government Printing Office, Central Office Printing Procurement Division, Washington, DC 20401, or the originating Regional Printing Procurement Office, and contest the description. (Failure to examine the GFP/specifications and bring any discrepancies to the attention of the Contracting Officer *will not* relieve the contractor of responsibility to perform.) The Contracting Officer will then investigate and make a determination which will be final. If the decision is reached that the original description is proper, the contractor will be required to proceed with the work. Failure to agree to the description shall be a dispute within the meaning of the Disputes clause. If the decision is reached that the description is erroneous, the Contracting Officer will proceed in one of the following manners:

(a) In the case of sealed bids, either an equitable adjustment will be negotiated with the contractor or the order will be terminated.

(b) In the case of a print order placed through a term contract, an equitable adjustment will be negotiated and a supplemental agreement issued. However, in multiple award contracts where GPO determines contractor sequence on each print order, GPO will recompute the print order sequence using the revised specifications. If this results in a different contractor having the overall low cost for that print order, the order may be terminated in accordance with the Termination for the Convenience of the Government clause and, if terminated, will be offered to the new low contractor.

(c) The Contracting Officer may at his/her option, when requested, furnish the contractor with

materials or supplies not readily obtainable in the open market which are required by the contractor for performance. In such event, the cost to the Government of the materials or supplies, plus any handling and administrative costs, shall be deducted from the contract price of the items, supplies, or work herein contracted for in such manner and at such times as the Contracting Officer may specify.

8. Use of Government Furnished Property.

The Government furnished property shall, unless otherwise provided or approved by the Contracting Officer, be used only for performance of the requirement.

9. Risk of Loss.

Unless otherwise provided, the contractor assumes the risk of, and shall be responsible for, any loss or damage to Government property (including U.S. Government bill(s) of lading (GBL's)) provided under the contract upon receipt by its agent (including pickup delivery services) for delivery to the contractor or any of its subcontractors. The contractor shall be liable for loss, damage or destruction of Government property caused by its negligence. Should the property be destroyed or damaged by an act of God and the contractor used sound judgment in protecting it, then the contractor shall be absolved of liability.

10. Return of Government Property.

(a) Government furnished production media such as positives, negatives, artwork, camera copy, shall be returned to the agency upon completion or termination of the contract, without demand by the Government, at the contractor's expense unless specifically provided otherwise in the specifications or by the Contracting Officer.

(b) GBL's shall be returned via certified mail, return receipt requested.

(c) The contractor agrees to return all excess paper, supplies, or materials received from the Government resulting from overdelivery of such materials, more economical production than anticipated, or for any other reason, at the Government's expense unless specifically provided otherwise. The contractor shall request advice from the Contracting Officer as to the disposition of the excess materials. The contractor warrants, in submitting a claim upon the Government, that all such materials, supplies, and excess paper have been returned to the Government. It shall be the responsibility of the contractor to secure evidence of return of such Government property in the form

of delivery receipts signed by an authorized officer or agent of GPO, or any other receipt acceptable to the Government.

11. Quantity Variations.

(a) No variation in the quantity of any item ordered will be permitted unless authorized in the specifications. If authorized, the extent of the variation will also be prescribed.

(b) Unless otherwise indicated, any plus quantity within the variation permitted must be prorated to all destinations. The contractor shall contact the Contracting Officer for direction before delivery of an order with an authorized minus quantity.

(c) Any plus quantity of printed matter in excess of the permissible variation, which was printed on Government furnished property, is the property of the Government. The right to purchase overruns on other than Government furnished property at (1) a negotiated rate, or (2) the additional rate contained in the contract, is reserved to the Government, at its option. If, however, such overruns are not purchased by the Government, they shall be disposed of by the contractor so as to preclude their use for any purpose other than salvage. (See the clause "Reproduction of Printing Prohibited".) Requests for information regarding disposal of overruns must be furnished in writing to the Contracting Officer as soon as possible. Delay in requesting or receiving instructions concerning such overruns shall not delay shipment of the basic order beyond the date specified in the contract.

(d) Notwithstanding any authorized variation in quantity, the contractor shall take every precaution to insure a full count of all quantities ordered for delivery to the U.S. Government Printing Office, Washington, D.C. 20401, marked either "Consigned Stock," "Depository Copies," "Sales Copies," "File Copies," "Capitol—Hold for Binding," or other "Doc Title," or "Plain Titles." Shortages occurring in these or other consignments will be cause for requiring the contractor to make up shortages at no additional cost to the Government.

12. Notice of Compliance With Schedules.

In order to successfully and adequately maintain progress records, GPO must have certain information concerning shipment/delivery. The contractor, therefore, must furnish contract compliance information required in accordance with the following:

(a) *Orders originating from the Central Office Printing Procurement Department.*

(1) If material, such as copy, negatives, paper, GBL's, etc., to be furnished by the Government

has not been received on or before the dates scheduled, the contractor shall immediately notify the Contract Compliance Section by telephone. (See subpar. (6) below.)

(2) Immediately after shipment/delivery of proofs (if required), the contractor shall notify the Contract Compliance Section of the date of shipment/delivery and advise of the method used (e.g. certified mail, local delivery, etc.).

(3) When pickup of shipments has been pre-arranged by the Transportation Management Section, the contractor must notify the Traffic Manager no later than 3:00 p.m. (EDT or EST) of the workday prior to the scheduled pickup day of any inability to release the completed product.

(4) If shipment/delivery of the finished product has not been made on the scheduled date(s), the contractor shall immediately notify the Contract Compliance Section by telephone of the failure to ship/deliver as scheduled, the reasons for the failure, and a revised date(s) for shipment/delivery.

(5) Immediately after shipment(s)/delivery(s) have been made the contractor shall notify the Contract Compliance Section by telephone of the fact and identify the method used; e.g., U.S. Postal Service, common carrier, local delivery service or contractor-owned transportation. The name of the contractor, GBL or freight bill number, and name of the carrier must be furnished in the case of shipment by common carrier; only the name of the company is required in the case of local delivery service.

(6) Toll free WATS lines are available for use in making the above progress reports. The numbers for these telephone lines are set forth in the specifications.

(b) *Orders originating from regional printing procurement offices.* The contractor will be furnished a preaddressed postage-free card (GPO Form 138). This card is to be used by the contractor to report compliance or noncompliance with the established schedule for shipment/delivery of the finished job. This card is to be completed and mailed the same day shipment/delivery is made. In the event shipment/delivery has not been made on the scheduled date(s), the contractor shall state the reason for not making shipment/delivery and indicate the date(s) on which it will be made. This card is to be completed and mailed not later than the day each shipment/delivery is scheduled.

(c) *Extension of schedules.*

(1) In the event a delay is caused by any action of the Government, including failure to fur-

nish purchase/print order, copy, GBL and/or materials as scheduled, the shipping/delivery schedule will be extended automatically by the total number of workdays that work was delayed PLUS 1 workday for each day of delay; such period of grace for any schedule will not exceed 3 workdays. For example:

Order, etc., 1 workday late+1 workday grace=2 workdays extension

Order, etc., 2 workdays late+2 workdays grace=4 workdays extension

Order, etc., 3 workdays late+3 workdays grace=6 workdays extension

Order, etc., over 3 workdays late: total number of workdays late+3 workdays grace=total number of workdays extension. No more than 3 workdays grace will be allowed on any one order.

(2) If, as a result of Government-caused delay, additional time is required beyond that provided for in paragraph (c)(1), the contractor shall mail or otherwise furnish a written request to the Contracting Officer within 10 calendar days from the end of the Government-caused delay. If, in the opinion of the Contracting Officer, additional time beyond the 10 calendar days for submitting such written request is warranted, it may be granted. If time does not permit written notification, telephone or telegraph notification can be made. In those cases, written confirmation of the request must be promptly provided.

(3) In the event no adjustment of schedule has been requested, the contractor will be considered to be delinquent if shipment/delivery has not been made by the date established by the automatic extension.

(4) In the event an adjustment of schedule has been requested in writing by the contractor and is approved by the Contracting Officer, the contractor will be required to meet the adjusted shipping/delivery date and will be considered to be delinquent if it is not met.

(5) (Applicable to contracts for Composition only.) In the event any of the following situations occur, and at the written request of the contractor, the schedule may be extended by such time as the Contracting Officer determines to be fair and reasonable:

- (i) Additional manuscript copy for composition or additional artwork is furnished.
- (ii) The actual units of production exceed the estimated number of units indicated in the specifications by more than 20 percent.

- (iii) Author's alterations are excessive in the opinion of the Contracting Officer.

13. Failure to Ship/Deliver Full Quantities.

The contractor shall be considered delinquent on an order that ships/delivers with any shortage that is not authorized.

14. Inspection and Tests.

(a) *Definition.* "Supplies," as used in this clause includes but is not limited to raw materials, components, intermediate assemblies, end products, and supplies by lot.

(b) The contractor shall provide and maintain an inspection system acceptable to the GPO covering supplies under the contract and shall tender to the Government for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the contractor to be in conformity with contract requirements. As part of the system, the contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the GPO until expiration of the warranty period. The GPO may perform reviews and evaluations, as reasonably necessary to ascertain compliance with this paragraph, which shall be conducted in a manner that will not unduly delay performance. The right of review, whether exercised or not, does not relieve the contractor of contractual obligations.

(c) The Government has the right to inspect and test all supplies called for, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance. The Government shall perform inspections and tests in a manner that will not unduly delay performance and assumes no contractual obligation to perform any inspection and test for the benefit of the contractor unless specifically set forth elsewhere.

(d) If the Government performs inspection or test on the premises of the contractor or a subcontractor, the contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided, the Government shall bear the expense of Government inspections or tests made at other than the contractor's or subcontractor's premises; *provided*, that in case of rejection, the Government shall not be liable for any reduction in the value of inspection or test samples.

(e)(1) When supplies are not ready at the time specified by the contractor for inspection or test or an unreasonable amount of time is taken to produce satisfactory press sheets, the Contracting Officer may charge to the contractor the additional cost of inspection or test.

(2) The Contracting Officer may also charge the contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.

(f) The Government has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The Government may reject nonconforming supplies with or without disposition instructions.

(g) The contractor shall, promptly after notice, remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the contractor. The contractor shall not tender for acceptance, corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

(h) If the contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either:

- (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the contractor, or

- (2) terminate for default as provided in the Default clause.

Unless the contractor corrects or replaces the supplies within the established delivery schedule, the Contracting Officer may require their later delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute concerning a question of fact within the meaning of the Disputes clause.

(i)(1) If the contract provides for the performance of Government quality assurance at source, or if requested by the Government, the contractor shall furnish advance notification of the time (i) when contractor inspection or tests will be performed in accordance with the terms and conditions of the contract, and (ii) when the supplies will be ready for Government inspection.

(2) The GPO request shall specify the period and method of the advance notification and the Government representative to whom it shall be furnished.

(j) The Government shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Government failure to inspect and accept or reject the supplies shall not relieve the contractor from responsibility, nor impose liability on the Government, for nonconforming supplies.

(k) Inspections and tests by the Government do not relieve the contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(1) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of the contract, shall have the right to require the contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the contractor's plant at the Contracting Officer's election, and in accordance with a delivery schedule as may be agreed upon between the contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in the contract price if the contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the contractor of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the contractor, the contractor shall bear the transportation cost from the original point of delivery to the contractor's plant and return to the original point when that point is not the contractor's plant. If the contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 5 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right by contract or otherwise to replace or correct such supplies and charge to the contractor the cost occasioned the Government thereby.

15. Warranty.

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

"Acceptance" means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or ap-

proves specific services as partial or complete performance of the contract.

"Correction" means the elimination of a defect.

"Supplies" means the end item furnished by the contractor and related services required under the contract. The word does not include "data."

(b) *Contractor's obligations.* (1) Notwithstanding inspection and acceptance by the Government of supplies furnished under the contract, or any condition of the contract concerning the conclusiveness thereof, the contractor warrants that for 120 days from the date of the check tendered as final payment—

(i) All supplies furnished under the contract will be free from defects in material or workmanship and will conform to all requirements of the contract; and

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform with the requirements of the contract.

(2) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the contractor. However, the contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the place of delivery specified in the contract and the contractor's plant, and return.

(3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.

(4) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this clause.

(c) *Remedies available to the Government.* (1) The Contracting Officer or his/her authorized representative shall give written notice to the contractor of any breach of warranties in paragraph (a)(1) above within 120 days, unless otherwise specified, from the date of the check tendered as final payment.

(2) Within a reasonable time after the notice, the Contracting Officer may either—

(i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the

requirements of the contract within the meaning of paragraph (b)(1) of this clause; or

(ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances.

(3)(i) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty shall be determined by the applicable sampling procedures in the contract. The Contracting Officer—

(A) May, for sampling purposes, group any supplies delivered under the contract;

(B) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;

(C) May project warranty sampling results over supplies in the same shipment or other supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; provided, that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and

(D) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.

(ii) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, the Contracting Officer may exercise one or more of the following options:

(A) Require an equitable adjustment in the contract price for any group of supplies.

(B) Screen the supplies grouped for warranty action under this clause at the contractor's expense and return all nonconforming supplies to the contractor for correction or replacement.

(C) Require the contractor to screen the supplies at locations designated by the Government within the continental United States and to correct or replace all nonconforming supplies.

(D) Return the supplies grouped for warranty action under this clause to the contractor (irrespective of the f.o.b. point or the point of acceptance) for screening and correction or replacement.

(4)(i) The Contracting Officer may, by contract or otherwise, correct or replace the nonconforming supplies from another source and charge to the contractor the cost occasioned to the Government thereby if the contractor—

(A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or

(B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and in either of these circumstances does not cure such failure within a period of 5 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(ii) Instead of correction or replacement by the Government, the Contracting Officer may require an equitable adjustment of the contract price. In addition, if the contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the contractor's account in a reasonable manner. The Government is entitled to reimbursement from the contractor, or from proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(5) The rights and remedies of the Government provided in this clause are in addition to, and do not limit, any rights afforded to the Government by any other clause.

16. Notice and Assistance Regarding Patent and Copyright Infringement.

(a) The contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on performance of the contract of which the contractor has knowledge.

(b) In the event of any claim or suit against the Government, due to alleged patent or copyright infringement arising out of performance or out of the use of any supplies furnished or work or services performed hereunder, the contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the contractor.

(c) The contractor agrees to include, and require inclusion of this clause in all subcontracts at any tier for supplies or services (including those for material, supplies, models, samples, or design or testing services) expected to exceed \$25,000.

17. Patent Indemnity.

(a) The contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement

of any United States patent (except a patent issued upon an application which is now or may hereafter be withheld from issue pursuant to a secrecy order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies or the performance of services, under the contract, or out of the use or disposal by or for the account of the Government of such supplies.

(b) This indemnity shall not apply unless the contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and, further, such indemnity shall not apply if:

(1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the contractor; or

(2) An infringement resulting from addition to or change in supplies or components furnished that was made subsequent to delivery or performance; or

(3) A claimed infringement is unreasonably settled without the consent of the contractor, unless required by final decree of a court of competent jurisdiction.

18. Reproduction of Printing Prohibited.

No printing or other work to be performed shall be reproduced by the contractor for sale or for any purpose other than that provided.

19. Termination for the Convenience of the Government.

(a) The Government from time to time may terminate performance of work in whole or in part if the Contracting Officer determines that a termination is in the Government's interest. The Contracting Officer shall terminate by delivering to the contractor a Notice of Termination specifying the extent of termination and the effective date.

(b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:

(1) Stop work as specified in the notice.

(2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for ma-

terials, services, or facilities, except as necessary to complete the continued portion of the contract.

(3) Terminate all subcontracts to the extent they relate to the work terminated.

(4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.

(5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.

(6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.

(7) Complete performance of the work not terminated.

(8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of property that is in the possession of the contractor and in which the Government has or may acquire an interest.

(9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; *provided*, however, that the contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(10) Use its best efforts to sell, as directed or authorized by the Contracting Officer, termination inventory other than that retained by the Government under subparagraph (6) above; *provided, however*, that the contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by,

the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.

(c) After termination, the contractor shall submit a final termination settlement proposal on GPO Form 911 to the Contracting Officer. The contractor shall submit the proposal promptly, but no later than 3 months from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the contractor within this 3-month period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 3 months from the effective date of termination or any extension thereof. If the contractor fails to submit the proposal within the time allowed, the Contracting Officer may determine, on the basis of information available, the amount, if any, due the contractor because of the termination and shall pay the amount determined.

(d) Subject to paragraph (c) above, the contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (d) or paragraph (e) below, exclusive of costs shown in subparagraph (e)(3) below, may not exceed the total contract price as reduced by (1) the amount of payments previously made, and (2) the contract price of work not terminated. The contract shall be modified and the contractor paid the agreed amount. Paragraph (e) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.

(e) If the contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (d) above:

(1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any savings of freight and other charges.

(2) The total of—

- (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (e)(1) above;
 - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and
 - (iii) A sum, as profit on subdivision (i) above, determined by the Contracting Officer to be fair and reasonable; however, if it appears that the contractor would have sustained a loss on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.
- (3) The reasonable costs of settlement of the work terminated, including—
- (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlement); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (f) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the contractor under paragraph (e) above, (1) the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer; and (2) the value of property that does not conform to contract specifications.
- (g) The cost principles and procedures of Procurement Directive 306.2 shall govern all costs claimed, agreed to, or determined under this clause.
- (h) The contractor shall have the right of appeal, under the Disputes clause from any determination made by the Contracting Officer under paragraph (c), (e), or (j), except that if the contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (c) or (j), and failed to re-

quest a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (c), (e), or (j), the Government shall pay the contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

(i) In arriving at the amount due the contractor under this clause, there shall be deducted—

(1) All unliquidated advance or other payments to the contractor under the terminated portion;

(2) Any claim which the Government has against the contractor under this contract; and

(3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the contractor or sold under the provisions of this clause and not recovered by or credited to the Government.

(j) If the termination is partial, the contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.

(k)(1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the contractor for the terminated portion, if the Contracting Officer believes the total of these payments will not exceed the amount to which the contractor will be entitled.

(2) If the total payments exceed the amount finally determined to be due, the contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 50 U.S.C. App. 1215(b)(2). Interest shall be computed for the period from the date the excess payment is received by the contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.

(l) Unless otherwise provided or by statute, the contractor shall maintain all records and documents relating to the terminated portion for 3

years after final settlement. This includes all books and other evidence bearing on the contractor's costs and expenses. The contractor shall make these records and documents available to the Government, at the contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions may be maintained instead of original records and documents.

20. Default.

(a)(1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the contractor, terminate the contract in whole or in part if the contractor fails to—

(i) Deliver the supplies or to perform the services within the time specified or any extension thereof;

(ii) Make progress, so as to endanger performance (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions.

(2) The Government's right to terminate under subdivision (1) (ii) and (iii) above, may be exercised if the contractor does not cure such failure within 10 days (or such other period as the Contracting Officer may determine to be reasonable and authorize in writing) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the contractor will be liable to the Government for any excess costs for those supplies or services. However, the contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the contractor shall not be liable for any excess costs if the failure to perform arises from causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the contractor.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall

not be liable for any excess costs for failure to perform unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the contractor to meet the required delivery schedule.

(e) If terminated for default, the Government may require the contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any completed supplies, and partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (collectively referred to as "manufacturing materials" in this clause) that the contractor has specifically produced or acquired for the terminated portion. Upon direction of the Contracting Officer, the contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay the contract price for completed supplies delivered and accepted. The contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

21. Actual Damages.

Unless otherwise prescribed, the contractor is, upon failure to provide services, materials, supplies, and equipment within the time specified for delivery, chargeable with all expenses caused the Government by reason of such delays in delivery for which no extension of time is provided, as actual damages to the Government on account of such delays. Also, the contractor will be charged, as actual damages, for all expenses caused the Government occasioned by delivery of materials, supplies, and equipment not conforming to specifications.

22. Liquidated Damages.

Liquidated damages may be charged for contractor failure to ship/deliver or perform within the time specified, or any extension thereof, only if prescribed in the contract.

(a) When such damages for delay are to be charged, the Government will assess, and deduct, not by way of penalty, liquidated damages at the rate specified. The damages will be computed on the basis of the number of workdays delayed from the date shipment/delivery was due to the actual date of shipment/delivery.

(b) Should the contractor default on the specified shipping/delivery schedules, the contractor will be assessed liquidated damages against that part or parts of an order which have not been shipped/delivered to the specified destination on the specified date. Liquidated damages will not be assessed if the contractor has shipped/delivered at least 90 percent of the quantity ordered for shipment to a specified destination on or before the scheduled date.

(c) When prescribed, liquidated damages will apply to all shipments/deliveries except the following: materials furnished the contractor which are to be returned to the Government; sample copies or materials for file or storage purposes; and shipments marked either "File Copies" or "Depository Copies" sent to the Government Printing Office. However, payment of an order will be withheld until evidence of shipment/receipt of such material or copies is furnished.

(d) Alternatively, GPO may terminate in whole or in part as provided in paragraph (a) of the Default clause, and in that event the contractor shall be liable, in addition to the excess costs provided in paragraph (b) thereof, for such liquidated damages accruing until such time as GPO may reasonably obtain shipment/delivery or performance of similar supplies or services.

(e) The contractor shall not be liable for liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the contractor, as defined in paragraph (c) of the Default clause. In such event, and subject to the Disputes clause, the Contracting Officer shall determine the facts and extent of the delay.

23. Delay in Deliveries.

Damages shall not be applied against the contractor for delays in shipment/delivery occasioned by unforeseeable causes beyond the control and without the fault or negligence of the contractor as detailed in paragraph (c) of the Default clause;

provided, that the contractor shall, within 10 calendar days (by telephone or telegraph, confirmed promptly in writing, if the remaining production time is less than 10 days) from the beginning of such delay, notify the Contracting Officer in writing of the cause of the delay; provided further, that such notice to the Contracting Officer shall contain the justification for such delay. In the event that Government bills of lading are furnished and the contractor elects to make more shipments/deliveries than provided for by the specifications or the number of bills of lading which are furnished, the contractor will not be relieved of any damages for delays in shipment/delivery occasioned by its failure to request additional bills of lading which may be required or any increased cost of shipment/delivery.

24. Payments on Purchase Order.

(a) Payment will be made to the contractor upon submission of a proper voucher (Standard Form 1034, Public Voucher for Purchases and Services Other than Personal; GPO Form 2511, Print Order; or the contractor's own invoice), in accordance with GPO Publication 300.3, Billing Instructions. Vouchers must be submitted to Comptroller—FMCE, Office of Financial Management, U.S. Government Printing Office, Washington, DC 20401. The following are required in support of the charges:

(1) Any of the forms listed below, properly filled out, signed, and dated will be accepted as evidence of shipment:

- (i) Memorandum copy of Government bill of lading (Standard Form 1103a), signed and dated by the carrier on the date material is picked up. The date must be the actual pickup date.
- (ii) U.S. Postal Service certificates of mailings (see Section 931, Domestic Mail Manual) or other form evidencing payment of postage which may be acceptable by the Contracting Officer, properly filled out, stamped, and initialed or signed by the postmaster or a Postal Service clerk. These forms must show the amount of postage paid, number of copies mailed, jacket number, and GPO purchase or print order numbers.

(iii) Where shipments are prepaid, and reimbursement for such charges will be made to the contractor, the contractor must submit with its voucher U.S. Postal Service receipts evidencing payment of postage or a copy of the commercial carrier prepaid airway bill or freight bill.

(iv) A properly executed GPO Form 712, "Certificate of Conformance," for ordered products which are mailed using Government-furnished postage and fees paid labels.

(v) A copy of the contractor's own delivery receipt when contractor-owned transportation is utilized.

(vi) Small parcel carrier receipts in any form providing the correct GPO identifiers appear on the receipt.

(2) The following forms, filled out, signed, and dated will be accepted as evidence of delivery:

(i) A copy of the commercial carriers' airway bill or freight bill.

(ii) U.S. Postal Service receipts.

(iii) A copy of contractor's own delivery receipt signed by a representative of the Government.

(iv) A valid receipt from a small package carrier signed by a representative of the Government.

(3) Evidence of return of plates, patterns, negatives, excess stock, and other articles supplied by GPO shall be in the form of delivery receipts, signed by a representative of the Government. U.S. Postal Service receipts, Government bill of lading memorandum copies, or copies of commercial carrier airway bills or freight bills will be acceptable as proof of shipment.

(4) One completed copy of the specified product (except classified documents) only when required by the contract.

(5) A copy of the print order or purchase order as applicable.

(b) The submission of a voucher to GPO is a certification by the contractor that the contractor has furnished the supplies or services called for in the contract in accordance with all applicable requirements, and that the supplies or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification (part or form number), and are in the quantity shown on the attached acceptance document.

(c) Checks tendered by GPO in payment of any invoice submitted by the contractor, whether equal to or less than the amount invoiced, are tendered as final payment. Acceptance of payment of any check so tendered shall operate as a bar to the assertion of any exceptions by the contractor to the amount paid by GPO unless the contractor notifies the Contracting Officer in writing within 60 calendar days of the date of such check. Such notice shall specify the exceptions taken to the sum tendered, and the reasons therefor.

25. Partial Payment.

Partial payments may be made provided vouchers are submitted in accordance with the clause "Payments on Purchase Order," and the amounts billed are properly supported by acceptable evidence of shipment or delivery.

26. Payment for Accelerated Delivery.

Reimbursement to the contractor for any additional costs incurred for accelerated delivery authorized by the Contracting Officer, shall be paid upon approval by GPO of the actual net increase in manufacturing expense. A contract modification (GPO Form 913) will be issued by the Contracting Officer authorizing a maximum amount reimbursable to the contractor. However, if the actual expense incurred is less than the authorized maximum amount, GPO's liability shall extend to that lesser amount only. In the determination of actual expenses incurred, the Contracting Officer may require the contractor to furnish labor or other records which will clearly substantiate the additional expense incurred.

27. Federal, State, and Local Taxes.

Definition of terms used in this clause are—"Contract date" means the date set for bid opening or, if it is a negotiated contract or a modification, the effective date of the contract or modification.

"All applicable Federal, State, and local taxes and duties" means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by the contract.

"After-imposed Federal tax" means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by the contract that the contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not

include social security tax or other employment taxes.

"After-relieved Federal tax" means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by the contract, but which the contractor is not required to pay or bear, or for which the contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

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

(b) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(c) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(d) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the contractor is required to pay or bear, or does not obtain a refund of, through the contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(e) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.

(f) The contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(g) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the contractor requests such evidence and a reasonable basis exists to sustain the exemption.

28. Mandatory Information for Electronic Funds Transfer Payment. (May 1999)

(a) *Method of payment.* Payments by the Government Printing Office under the contract, including invoice and contract financing payments, may be made by check or electronic funds transfer (EFT) at the option of the GPO. If payment is made by EFT, GPO may, at its option, also forward the associated payment information by electronic transfer. As used in this clause, the term "EFT" refers to the funds transfer and may also include the information transfer.

(b) *Mandatory submission of contractor's EFT information.* The contractor is required, as a condition to any payment under the contract, to provide GPO with the information required to make payment by EFT as described in paragraph (d) of this clause, unless the payment office determines that submission of the information is not required.

(c) *Contractor's EFT information.* Prior to submission of the first request for payment under the contract, the contractor shall provide the information required to make contract payment by EFT, as described in paragraph (d) of this clause, directly to GPO. In the event that the EFT information changes, the contractor shall be responsible for providing the changed information to GPO.

(d) *Required EFT information.* GPO makes payment by EFT through an Automated Clearing House (ACH) subject to the banking laws of the United States. The contractor shall provide the EFT information on SF 3881, a copy of which can be obtained by calling 1-800-BILLGPO.

(e) *Suspension of payment.* (1) Notwithstanding the provisions of any other clause of the contract, the Government is not required to make any payment under the contract until after receipt, by the designated payment office, of the correct EFT payment information from the contractor in accordance with paragraph (b) of this clause. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a valid invoice or contract financing request as defined in the Prompt Payment clause of the contract.

(2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than the 30th day after its receipt to the extent payment is made by EFT. However, the contractor may request that no further payments be made until the changed EFT information is implemented by the payment office. If such suspension would result in a late payment under the Prompt Payment clause of the contract, the contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(f) *Contractor EFT arrangements.* The contractor shall designate a single financial agent capable of receiving and processing the electronic funds transfer using the EFT methods described in paragraph (d) of this clause. The contractor shall pay all fees and charges for receipt and processing of transfers.

(g) *Liability for uncompleted or erroneous transfers.* (1) If an uncompleted or erroneous transfer

occurs because the Government failed to use contractor-provided EFT information in the correct manner, the Government remains responsible for—

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because contractor-provided EFT information was incorrect at the time of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

- (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the contractor is responsible for recovery of any erroneously directed funds; or
- (ii) If the funds remain under the control of the payment office, the Government retains the right to either make payment by mail or suspend the payment in accordance with paragraph (e) of this clause.

(h) *EFT and prompt payment.* (1) A payment shall be deemed to have been made in a timely manner in accordance with the Prompt Payment clause of the contract if, in the EFT payment transaction instructions given to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(2) When payment cannot be made by EFT because of incorrect EFT information provided by the contractor, no interest penalty is due after the date of the uncompleted or erroneous payment transaction; provided, that notice of the defective EFT information is issued to the contractor within 7 days after the Government is notified of the defective information.

(i) *EFT and assignment of claims.* If the contractor assigns the proceeds of the contract as provided for in the Assignment of Claims clause of the contract, the assignee shall provide the assignee EFT information required by paragraph (d) of this clause. In all respects, the requirements of this clause shall apply to the assignee as if it were the contractor. EFT information which shows the ultimate recipient of the transfer to be other than the contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (e) of this clause.

(j) *Payment office discretion.* If the contractor does not wish to receive payment by EFT methods for one or more payments, the contractor may submit a request to the designated payment office to refrain from requiring EFT information or using the EFT payment method. The decision to grant the request is solely that of the Government.

(k) *Change of EFT information by financial agent.* The contractor agrees that the contractor's financial agent may notify the Government of a change to the routing transit number, contractor account number, or account type. The Government shall use the changed data in accordance with paragraph (e)(2) of this clause. The contractor agrees that the information provided by the agent is deemed to be correct information as if it were provided by the contractor. The contractor agrees that the agent's notice of changed EFT data is deemed to be a request by the contractor in accordance with paragraph (e)(2) that no further payments be made until the changed EFT information is implemented by the payment office.

29. Assignment of Claims.

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 3727, 41 U.S.C. 15) (hereinafter the act), if this contract provides for payments aggregating \$1,000 or more, claims for moneys due or to become due the contractor from the Government may be assigned to a bank, trust company, or other financial institution, including any Federal lending agency, and may thereafter be further assigned and re-assigned to any such institution.

(b) Any such assignment or reassignment shall cover all amounts payable and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing.

(c) Unless otherwise provided, payments to an assignee of any moneys due or to become due shall not, to the extent provided in the act, as amended, be subject to reduction or setoff. (The preceding sentence applies only if the contract is made in time of war or national emergency as defined in the act and is with the Department of Defense, the General Services Administration, the Department of Energy, the National Aeronautics and Space Administration, the Federal Aviation Administration, or any other department or agency of the United States designated by the President pursuant to clause 4 of the proviso of sec. 1 of the act.)

(d) In no event shall copies of the contract or of any plans, specifications, or other similar documents relating to work to be performed if marked "Top Secret," "Secret," or "Confidential," be furnished to any assignee of any claim arising or to any other person not entitled to receive the same. However, a copy of any part or all of the contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

(e) Assignment of claim forms shall be furnished to the Contracting Officer who awarded the contract on behalf of the GPO.

30. Convict Labor.

The contractor agrees not to employ in the performance of the contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Mariana Islands, or the Trust Territory of the Pacific Islands. This limitation, however, shall not prohibit the employment by the contractor in the performance of the contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the contractor in the performance of the contract of persons confined for violation of the laws of any of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Mariana Islands, or the Trust Territory of the Pacific Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

(a)(1) The worker is paid or is in an approved work training program on a voluntary basis;

(2) Representatives of local union central bodies or similar labor union organizations have been consulted;

(3) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and

(4) The rates of pay and other conditions of employment will not be less than those payed or provided for work of a similar nature in the locality in which the work is being performed; and

(b) The Attorney General of the United States has certified that the work-release laws or regula-

tions of the jurisdiction involved are in conformity with the requirements of executive order 11755, as amended by executive orders 12608 and 12943.

31. Contract Work Hours and Safety Standards Act—Overtime Compensation.

The contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–334), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(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 shall require or permit 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 one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) *Violation, liability for unpaid wages, and 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 therefore 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 the contract 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 the 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 de-

termined 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.* 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.

(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.

32. Walsh-Healey Public Contracts Act.

If the 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 otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35–45), the following terms and conditions apply:

(a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These 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).

33. Equal Opportunity.

(a) If, during any 12-month period (including the 12 months preceding award), 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 performance, 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 GPO 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 Officer for the purposes of investigation to ascertain the contractor's compliance with the applicable rules, regulations, and orders.

(9) If the Contracting Officer 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 Officer 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.

34. Nondiscrimination Because of Age.

During performance, the contractor agrees to conform to the provisions of the Age Discrimination in Employment Act of 1967 (Public Law 90-202, 29 U.S.C. 621, et. seq., as amended) and the regulations issued pursuant thereto by the Secretary of Labor (Title 29 CFR, Part 1625).

35. Affirmative Action for Workers With Disabilities.

This clause applies to all nonexempt contracts and subcontracts over \$2,500.

(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 individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—

- (i) Recruitment, advertising, and job application procedures;
- (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (iii) Rates of pay or any other form of compensation and changes in compensation;
- (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (v) Leaves of absence, sick leave, or any other leave;
- (vi) Fringe benefits available by virtue of employment, whether or not administered by the contractor;
- (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (viii) Activities sponsored by the contractor, including social or recreational programs; and
- (ix) Any other term, condition, or privilege of employment.

(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 individuals with disabilities; 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. The contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (*e.g.*, the contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Director for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Director), and shall be 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 individuals with physical or mental disabilities.

(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 \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

36. Affirmative Action for Special Disabled and Vietnam Era Veterans.

This clause is applicable if the contract is for \$10,000 or more.

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

“All employment openings” includes all positions except executive and top management positions, those positions that will be filled from within the contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment.

“Appropriate office of the State employment service system” means the local office of the Federal-State national system of public employment offices with assigned responsibilities to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, the

Commonwealth of Puerto Rico, and the Virgin Islands.

“Positions that will be filled from within the contractor’s organization” means employment openings for which no consideration will be given to persons outside the contractor’s organization (including any affiliates, subsidiaries, and parent companies) and includes any opening that the contractor proposes to fill from regularly established “recall” lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

“Veteran of the Vietnam era” means a person who—

(1) Served on active duty for a period of more than 180 days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed between August 5, 1964, and May 7, 1975.

(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 disabled veteran or a veteran of the Vietnam era. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era 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 Veteran’s Readjustment Assistance Act of 1972 (the Act), as amended.

(c) *Listing openings.* (1) The contractor agrees to list all 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 oc-

curing at any contractor facility, including one not connected with performing the 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 employment openings with the appropriate office of the State employment service.

(3) The listing of 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.

(d) *Applicability.* (1) This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(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 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 Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary), 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 affirma-

tive action to employ, and advance in employment, qualified disabled veterans and veterans of the Vietnam era.

(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 Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

37. Buy American Act.

The Buy American Act (41 U.S.C. §§ 10a–10d) provides that the Government give preference to domestic end products.

(a) *Definitions.* (1) “Components,” as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

(2) “Domestic end product,” as used in this clause, means (i) an unmanufactured end product mined or produced in the United States, or (ii) 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.

(3) “End products,” as used in this clause, means those articles, materials, and supplies to be acquired for public use under the contract.

(4) “Foreign offer,” as used in this clause, means an offered price for a foreign end product, including transportation to destination and duty (whether or not a duty-free entry certificate is issued).

(b) The contractor shall deliver only domestic end products, 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 quantities of a satisfactory quality;

(3) For which the Public Printer determines that domestic preference would be inconsistent with the public interest; or

(4) For which the Public Printer determines the cost to be unreasonable.

(c) The offered price of a domestic end product will be determined unreasonable by the Public Printer when the lowest acceptable domestic offer exceeds the lowest acceptable foreign offer, inclusive of duty, by—

(1) More than 6 percent, if the domestic offer is from a large business that is not a labor surplus area concern; or

(2) More than 12 percent, if the domestic offer is from a small business concern or any labor surplus area concern.

38. Advertising of Award Prohibited.

It shall be strictly understood and agreed that all contracts will be treated confidentially in every respect and that the contractor shall refrain from the use of its imprint, label, and any other publicity or advertising concerning the furnishing of articles to the Government.

39. Maintenance of Records on Recovered Materials in Paper Products.

The contractor shall maintain manufacturer/mill accounting and record summaries on the fiber weight content used as feedstock, for purposes of Government audit, that will verify (a) the contractor’s certification of the minimum percentage of recovered materials used in performance of the contract, (b) that the paper and paper products are in compliance with the specification requirements, and (c) the paper is manufactured in accordance with the Environmental Protection Agency Paper Products Recovered Materials Advisory Notice (61 FR 26985, May 29, 1996) whether the products are manufactured by the contractor or another paper mill. The contractor, if not the manufacturer, shall obtain this information from the paper manufacturer. The contractor shall maintain, and make available to the Government, these documents for one year after the expiration of the contract. Nothing in this clause shall excuse the contractor from furnishing the specified paper.

40. Examination of Records.

(a) This clause applies if the contract exceeds \$10,000 and was entered into by negotiation.

(b) The GPO Office of Inspector General or Comptroller General of the United States (or a duly authorized representative from the General Accounting Office) shall, until 3 years after final payment, have access to and the right to examine any of the contractor’s directly pertinent books, documents, papers, or other records involving transactions related to the contract.

(c) The contractor agrees to include in first-tier subcontracts, a clause to the effect that the GPO

Office of Inspector General or Comptroller General (or a duly authorized representative from the General Accounting Office) shall, until 3 years after final payment under the subcontract, have access to and the right to examine any of the subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. "Subcontract," as used in this clause, excludes (1) purchase orders not exceeding \$10,000, and (2) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.

(d) The period of access and examination in paragraphs (b) and (c) above for records relating to (1) appeals under the Disputes clause, (2) litigation or settlement of claims arising from the performance, or (3) costs and expenses to which the Inspector General or Comptroller General (or a duly authorized representative from the General Accounting Office) has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

41. Audit and Records—Sealed Bidding.

This clause is effective when the contract amount exceeds \$100,000:

(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 submitted cost or pricing data in connection with the pricing of any modification to the 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/GPO Inspector General.* In the case of pricing any modification, the GPO Office of Inspector General or Comptroller General of the United States, or authorized representatives, 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 (a) of this clause, for examination, audit, or reproduction, until 3 years after final payment under the contract:

(1) If the 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 the performance of the contract shall be made available until disposition of such appeals, litigation, or claims.

(e) The contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts expected to exceed \$50,000 for submission of cost or pricing data, altering the clause only as necessary to identify properly the contracting parties and the GPO under the Government prime contract.

42. Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.

(a) This clause shall become operative only for any modification to the contract involving aggregate increases and/or decreases in costs, plus applicable profits, expected to exceed \$100,000 except that this clause does not apply to a modification for which the price is—

- (1) Based on adequate price competition;
- (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
- (3) Set by law or regulation.

(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 subparagraph (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 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.

43. Audit—Negotiation.

(a) *Examination of costs.* If the contract 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 a representative who is an employee of the Government, shall have the right to examine and audit—books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing the 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.

(b) *Cost or pricing data.* If, pursuant to law, the contractor has been required to submit cost or pricing data in connection with pricing the contract or any modification to the contract, the Contracting Officer, or representatives of the Contracting Officer who are employees of the Government, shall have the right to examine and audit all books, records, documents, and other data of the contractor (including computations and projections) related to negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost of pricing data submitted, along with the computations and projections used.

(c) *Reports.* If the contractor is required to furnish cost, funding, or performance reports, the Contracting Officer, or representatives of the Contracting Officer who are employees of the Government, shall have the right to examine and audit books, records, other documents, and supporting 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.

(d) *Availability.* The contractor shall make available at its office at all reasonable times the materials described in paragraphs (a) and (b) above, for examination, audit, or reproduction, until 3 years after final payment under the contract—

(1) If the 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 of the settlement of claims arising under the contract shall be made available until such appeals, litigation, or claims are disposed of.

(e) The contractor shall insert a clause containing all the terms of this clause, including this paragraph (e), in all subcontracts over \$50,000 under the contract, altering the clause only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

44. Gratuities.

(a) The right of the contractor to proceed may be terminated by written notice if, after notice and hearing, the Public Printer 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 the contract is terminated under paragraph (a) above, 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 Public Printer or a designee. (This subparagraph (c)(2) is applicable only if the 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 the contract.

45. Covenant Against Contingent Fees.

(a) The contractor warrants that no person or agency has been employed or retained to solicit or obtain the 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 the 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.

46. Contract Cost Principles and Procedures.

When required, contracts shall be subject to GPO Instruction 305.9, Contract Cost Principles and Procedures, dated May 25, 1999.

47. Joint Ventures.

The Government will recognize the integrity and validity of contractor team arrangements only for contracts valued in excess of \$25,000. Agreements shall be in writing and signed by all parties to a joint venture and contain the following before acceptance by the Government:

(a) The agreement shall give the Government the right to enforce the terms of the contract against the coventurers on a joint and/or severable basis.

(b) The agreement must contain a statement from the attorney for each venturer that the joint venture is within the corporate power of each venturer.

(c) One party to the joint venture shall have total control of all phases of contract performance. Control must include delegated authority to fix the responsibilities of the other coventurers.

(d) One party to the joint venture must perform the contract primary production function. All other parties must perform at least one of the remaining production functions as described in the solicitation.

(e) Invoices for all phases of contract performance must be submitted by only one party to the joint venture. All payments will be made in the name of the joint venture.

(f) The agreement should identify each venturer's contribution toward contract completion such as materials, personnel, and expenses.

(g) The joint venture agreement must be limited solely to the objective of the contract.

(h) A copy of the executed agreement must be submitted with the proposal or bid.

48. Protest After Award. (May 1999)

(a) Upon receipt of a notice of protest (as defined in section 3 of GPO Instruction 305.7) or a determination that a protest is likely (see section 4(d) of GPO Instruction 305.7), the Contracting Officer may, by written order to the contractor, direct the contractor to stop performance of the work called for by the contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either—

- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the Default, or the Termination

for Convenience of the Government, clause of the contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of the contract; and

(2) The contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under the contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate the contract at any time are not affected by action taken under this clause.

(f) If, as a result of the contractor's intentional misstatement, misrepresentation, or miscertification, a protest related to the contract is sustained and the Government pays costs, as provided in 4(c)(2) or 6(h)(1) of GPO Instruction 305.7, the Government may require the contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, the Government may collect this debt by offsetting the amount against any payment due the contractor under any contract between the contractor and the Government.

49. Anti-Kickback Procedures. (May 1999)

(a) *Definitions.*

"Kickback," as used in this clause, means any money, fee, commission, 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 contract 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 pos-

sible violation. Such reports shall be made to the GPO 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 subparagraph (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subparagraph (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 contracts exceeding \$100,000.

50. Bankruptcy. (May 1999)

In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within 5 days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under the contract.

51. Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity. (May 1999)

This clause is prescribed for contracts that exceed \$100,000.

(a) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National De-

fense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106), the Government may—

(1) Cancel the solicitation, if the contract has not yet been awarded or issued; or

(2) Rescind the contract with respect to which—

(i) The contractor or someone acting for the contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either—

(A) Exchanging the information covered by such subsections for anything of value; or

(B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under subsections 27(e)(1) of the Act.

(b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.

(c) 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, regulation, or under this contract.

52. Price or Fee Adjustment for Illegal or Improper Activity. (May 1999)

This clause is prescribed for contracts that exceed \$100,000.

(a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract 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 designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.

(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, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.

(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 the 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 the contract.

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53. Restrictions on Subcontractor Sales to the Government. (May 1999)

(a) Except as provided in paragraph (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 the 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.